

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 03.09.2015

CORAM
THE HONOURABLE MS. JUSTICE K.B.K.VASUKI
C.M.A.No.1763 of 2004

R.Rajendran

.. Appellant/Petitioner

Vs.

1.S.Sukumar
2.M/S.Oriental Insurance Co. Ltd.
C/o.Motor Third Party Claims Offices
No.8, Esplanade, Chennai-600 108.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act-1988 against the judgment and decree dated 08.08.2002 made in M.C.O.P.No.96 of 1999 on the file of the Motor Accident Claims Tribunal, Additional District Judge-cum-Sessions Judge (Fast Track Court No.V) Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : (No appearance)

R1 : Notice dispensed with

JUDGMENT

For the sake of convenience, the parties are referred to as per their rank before the Tribunal.

2.Heard the learned counsel for the petitioner and perused the records.

3.The injured-claimant has filed this appeal against the award of compensation of Rs.1,00,000/- against the total claim of Rs.4,50,000/-. The facts that the petitioner met with an accident on 12.11.1997, while he was proceeding in his motor cycle from Guindy to his office at Ramapuram and the accident occurred due to rash and negligent driving of the driver of the Maruthi car bearing Registration No.TN-23 B3456 belonging to the first respondent and insured with the second respondent are not denied. The petitioner was on the date of accident 37 years and was employed as Personal Manager in India Shoes for monthly salary of Rs.6,000/-. The petitioner sustained fracture on left leg, contusion on left shoulder, head

injury and multiple injuries in the accident and was treated as an in-patient in St.Thomas Hospital from 12.11.1997 and 21.11.1997 and was operated for the fracture and plate and screws was fixed and he has been still continuing his treatment. It is in the evidence of the petitioner as P.W.2 that because of the fracture sustained by him, he suffered shortage of leg and he is not able to stand for a long time and he is not able to walk fast and he is unable to carry on his job as Personal Manager and was compelled to submit his resignation from the post of Personal Manager in India Shoes. The petitioner also examined the Doctor, who examined him for assigning his permanent disability as P.W.3. It is spoken by P.W.3 that the fracture sustained by the petitioner was after the operation, mal-united and plate and screw is still implanted and because of the shortage of leg, there is restriction of movement and the petitioner may not be able to fold and stretch his legs freely and P.W.3 by saying so assessed his permanent disability as 50% in Ex.P12/permanent disability certificate.

4.Considering the factors as stated above, the Tribunal assessed the permanent disability as 40% and rejected the theory of total loss of earning capacity and awarded the compensation as follows:

Transport to hospital	-	Rs.3,000/-
Extra nourishment	-	Rs.2,000/-
Medical expenses	-	Rs.25,000/-
Pain and suffering	-	Rs.15,000/-
Permanent disability	-	Rs.40,000/-
Loss of earning power	-	Rs.15,000/-
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Total	-	Rs.1,00,000/-
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The compensation amount is payable with interest at 9% per annum from the date of petition till the date of deposit.

5.According to the learned counsel for the petitioner, the Tribunal has erred in awarding too low and inadequate compensation under the heads above mentioned and not awarding any reasonable compensation for loss of partial earning, damage to clothes, loss of amenities and medical expenses for the treatment taken in private hospital etc.

6.This Court on the basis of the available evidence finds that such argument advanced by the learned counsel for the appellant/claimant deserves merit and acceptance. However, this Court is not inclined to accept 100% functional disability for the purpose of determining loss of earning capacity and loss of future earning. Though there are records to show that the claimant has resigned the post of Personal Manager from his company, the same was not duly proved by examining any witness from the management side. On his failure to do so, this Court feels no serious reliance can be placed on Exs.P16 and P17. I am of the considered view, the claimant is

entitled to claim lumpsum compensation for the degree of disability suffered by him and it is not a fit case to apply multiplier method. Thus, this Court is inclined to enhance the award of compensation as follows:

Transport to hospital	-	Rs.5,000/-
Extra nourishment	-	Rs.10,000/-
Damage to clothes	-	Rs.1,000/-
Future medical expenses	-	Rs.50,000/-
Medical expenses	-	Rs.50,000/-
Pain and suffering	-	Rs.50,000/-
Permanent disability	-	Rs.80,000/-
Loss of amenities	-	Rs.35,000/-

Total	-	Rs.2,81,000/-

The enhanced amount is payable with interest at 9% per annum from the date of petition till the date of deposit with proportionate costs.

7. In the result, the compensation is enhanced from Rs.1,00,000/- to Rs.2,81,000/- payable with interest at 9% per annum from the date of petition till the date of deposit and time for payment of additional court fee is two weeks from the date of receipt of a copy of this judgment. The second respondent/insurance company is directed to pay entire balance compensation amount with interest and costs within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit of amount into Court, the claimant is permitted to withdraw the entire amount by filing separate cheque petition. The Civil Miscellaneous Appeal is accordingly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

As per the order made in C.M.P.No.1414 of 2009, Ex.P19/Medical bills are received as additional evidence on the petitioner's side.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal, Additional District Judge-cum-Sessions Judge (Fast Track Court No.V) Chennai.

2. The Record Keeper, V.R.Section, High Court, Chennai.

1 cc to Mr. T.G.Balachandran, Advocate Sr.No.47464

C.M.A.No.1763 of 2004

gp(co)pmk.6.10.2015