

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1733 of 2009

S.K.Sudhakar

.. Appellant/Petitioner
Vs.

1.N.Dhanraj

2.The New India Assurance Co. Ltd.,
No.45, Moore Street,
Chennai - 600 001. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.2226 of 2005 dated 24.07.2008 on the file of the Additional District Sessions Judge, III Fast Track Court, Chennai and praying to set aside the same.

For Appellant : Mr.K.A.Ravindran
for Mr.A.Shanmugaraj

For Respondents : Mr.N.Vijayaraghavan [for R2]
R1 - No appearance

JUDGMENT

The claimant before the Tribunal has come forward with this appeal challenging the award passed in MCOP.No.2226 of 2005 on the file of the Additional District Sessions Judge, Fast Track Court No.III, Chennai, seeking enhancement of compensation awarded by the Tribunal.

2. It is seen that two vehicles were involved in an accident that took place on 01.12.2004 and the claimant was the owner cum driver of the car bearing Registration No. TN01-H-4428, whereas the offending vehicle bearing Registration No.TN07-K-3051 belonged to the first respondent. The accident had taken in a junction of two roads where both the vehicles proceeded in their respective directions and in this regard vehicle of the first respondent found to be negligent and it hit the claimant's vehicle almost perpendicularly. The claimant was at the wheels then. In the said accident, the claimant suffered some injuries, the significant among is tearing of ligament in his left knee. On various heads he moved the Motor

Accidents Claims Tribunal seeking a compensation of Rs.2,00,000/-, whereas the Tribunal has passed an award for Rs.49,000/-.

3. The learned counsel for the appellant submitted that in the accident, the appellant had suffered ligament tear of his left knee and P.W.2, the doctor, has determined his disability @ 20% . The appellant is a driver by avocation and the nature of disability has impaired his ability to pursue his avocation as effectively as he could prior to the accident. Therefore, the functional disability must be differently assessed and not by a mechanical process of awarding compensation at certain rate per percentage. The appellant has claimed Rs.5,000/- as his monthly income, but the Tribunal has not gone into this question at all and consequently denied the appellant loss of earning during the treatment period. On the general heads of compensation such as pain and sufferings, transport, supply of nourishment etc., the Tribunal has fixed it at Rs.5,000/-, Rs.2,000/- and Rs.2000/- respectively. Not only that, it is the admitted case that the appellant was driving his Ambassador car at that relevant time and the damage to the vehicle has not been awarded by the Tribunal.

4. The learned counsel for the second respondent/Insurance Company submitted that inasmuch as the accident had taken place in the year 2004, the income at that relevant time alone would be considered. So far as disability is concerned, there is no evidence to indicate that the appellant has suffered permanent disability of any kind and that he has lost his earning capacity. As far as damage to the vehicle is concerned, the appellant has not produced any evidence whatsoever to support his claim. To sum up, the award is in order and does not required to be interfered with.

4. The appellant was not treated as in-patient, but said to have suffered some damages. At any rate, he being a driver, it would have been difficult for him to drive the vehicle for atleast two months and this can be reasonably presumed. As the appellant has not produced any document to indicate his monthly income, this can be notionally fixed at Rs.3,000/- per month and accordingly, his loss of earning for two months is fixed at Rs.6,000/-. On the head of pain and sufferings, since the Tribunal has found that the nature of injury suffered by the appellant is grievous, it had awarded Rs.5,000/-, I enhance it from Rs.5,000/- to Rs.10,000/-. Overall the award amount is increased by Rs.11,000/-. To conclude, this appeal is partly allowed and the claim amount is enhanced from Rs.49,000/- to Rs.60,000/- and the same has been tabulated below :

Heads	Amount awarded (Rs.)	Amount enhanced (Rs.)
Disability	40,000	40,000
Pain and sufferings	5,000	10,000
Transportation	2,000	2,000
Nourishment	2,000	2,000
Loss of income for 2 months	Nil	6,000
Total	49,000	60,000

5. The respondents are directed to deposit the enhanced award amount, less if any already deposited, within six weeks from the date of receipt of a copy of this order, and on such deposit, the claimant is entitled to withdraw it forthwith. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ds

To:
The Additional District Sessions Judge,
III Fast Track Court,
Chennai.

+1 cc to Mr.A.Shanmugaraj Advocate sr 68562
+1 cc to Mr.N.Vijayaraghavan Advocate sr 69346

C.M.A.No.1733 of 2009

nrjk(co)
aa19/01/2017

WEB COPY