

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.406 of 2013

K.Rajendran

.. Appellant

Vs.

1.T.Somasundaram

2.Universal Sompo General Insurance Co. Ltd.,
No.554 & 555, Anna Salai,
Teynmpet, Chennai - 600 018.

.. Respondents

[R1 was set ex parte before the trial Court]

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.06.2012 made in MCOP.No.1279 of 2011 on the file of the learned IV Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellant : Ms.P.T.Salim Fathima

For Respondents : Mr.Vijayakamal [for R2]

R1 - Ex parte

JUDGMENT

The appellant who is not satisfied with the compensation awarded to his injuries, more particularly the fracture to his left shoulder, that he suffered in a road accident has come forward with this appeal. The accident had taken place on 24.03.2011 at about 6.45 a.m., when the claimant was riding the cycle, a water tanker lorry belonging to the first respondent and insured with the second respondent knocked him down.

2. For the injuries suffered, the appellant came out with a claim of Rs.7,00,000/- before the Tribunal and the Tribunal has passed an award for Rs.1,02,500/- payable with interest at 7.5% per annum. The major component of the amount awarded is Rs.50,000/-, which the Tribunal has determined as just and fair compensation towards continuing permanent disability of the appellant.

3. The learned counsel for the appellant strenuously contended that the appellant was working as a tailor in Chennai at the

time of the accident, and going by the costs of living prevailing then, the Tribunal has fallen in error in fixing his monthly income notionally at Rs.4,500/-. She also added that the nature of injury has impaired the appellant functionally and it is a fit case where the Tribunal ought to have applied the multiplier method.

4. Per contra, the learned counsel for the second respondent/insurance company has argued that the evidence of P.W.2., the doctor indicates that there is malunion of the fractured bone only to the extent of 20%, and that in any case since the appellant is only a tailor, the nature of his avocation can still be managed, for it involves only constant use of the legs.

5. There is some merit in the submissions of both sides. While the very nature of the job of the appellant generally involves the use of leg, it cannot be said that he does not require his hands during tailoring. Even sewing is part of tailoring and it requires use of both the hands and legs. Therefore, this Court does believe that the claimant has suffered a degree of functional disability, which given the fact of the case can be only to the extent of 20%. So far as notional income fixed by the Tribunal is concerned, this Court is satisfied that Rs.4,500/- a month that the Tribunal had fixed is just and reasonable. Therefore, this Court proposes to interfere only with the compensation awarded on the head of permanent disability alone. This is valued at [Rs.4,500x12x14x20%, where 14 represents the multiplier] Rs.1,51,200/-. On other aspects, the award of the Tribunal is confirmed. The break-up details of the enhanced award of compensation reads as under :

Heads of compensation	Amount Enhanced (Rs.)
Loss of income	13,500.00
Transport to Hospital	3,000.00
Extra nourishment	5,000.00
Damages to clothing	1,000.00
Attendant charges	10,000.00
Pain and sufferings	20,000.00
Permanent disability	1,51,200.00
Total	2,03,700.00

6. In the result, the appeal is partially allowed and the award amount of compensation is enhanced from Rs.1,02,500/- to Rs.2,03,700/-. It is submitted by the learned counsel for the insurance company that the entire award of compensation as fixed

by the Tribunal has already been deposited to the credit of MCOP.No. 1279 of 2011 on the file of the Motor Accident Claims Tribunal, Court of Small Causes No.IV, Chennai. The second respondent/insurance company is directed to pay the enhanced amount of compensation alone along with the interest @ 7.5% per annum, within a period of six weeks from the date of receipt of a copy of this order and upon deposit, the claimant is entitled to withdraw the same forthwith. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To:

1.The Judge
IV Court of Small Causes
Motor Accidents Claims Tribunal
Chennai.

2.The Section Officer
VR Section
High Court, Madras.

+ 1 cc to M/s.M.Swamikkannu, Advocate,SR.54743

+ 1 cc to M/s.R.Vijaya Kamala, Advocate,SR.54720

+ 1 cc to The Govt.Pleader, SR.

C.M.A.No.406 of 2013

SVI (CO)
NR 10/10/2017

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