IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.10.2018

CORAM

THE HONOURABLE Mrs.JUSTICE S.RAMATHILAGAM

CMA.No.2555 of 2006

D.Mohandoss ... Appellant/Claimant

Versus

1.R.Jaya Shanthi

2. The United India Insurance Co.Ltd.,
38, Anna Salai,
Chennai - 600 002. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the fair and decretal order dated 08.11.2005 in M.C.O.P.No.3943 of 2001 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) Chennai.

For Appellant : Ms.Ramya V.Rao

For Respondents: Mr.N.Vijayaraghavan, for R2

J U D G M E N T

The civil miscellaneous appeal has been preferred by the claimant against the award and decree passed in MCOP.No.3943 of 2001 dated 08.11.2005 on the file of the Motor Accidents Claims Tribunal (III Judge, Court of Small Causes) Chennai.

2.The brief facts in the claim application are as follows:

On 06.04.2000, at about 20.00 hours, when the claimant was crossing from west to east direction in Rajaji Salai, in front of Annai Sathya Nagar, A-Block, at the time, a motor cycle bearing Registration No.TN-07 W-7988, came in a rash and negligent manner from North to South direction and dashed against the claimant, resulting which the claimant had sustained grievous injury. The second respondent in the counter statement, has denied that the accident was due to rash and negligent act on the part of the rider of the two wheeler, and also denied the injuries sustained by the claimant and also denied the sum claimed under various heads for compensation at Rs.4,00,000/-.

3.The Tribunal, after analyzing the evidence and documents placed before it, has held that the accident had occurred due to negligence on the part of the rider of the two wheeler, due to which, the claimant sustained severe injuries. Hence, the respondents 1 and 2 are liable to pay the compensation. The Tribunal has assessed the compensation by taking into consideration the nature of injury, occupation and income of the injured person and awarded a sum of Rs.2,09,000/-. Aggrieved by the said award, the claimant has preferred this appeal.

4.In the grounds of appeal, it has been stated that the claimant was working as Clerk in a private Company and he was earning Rs.2,300/- per month and his loss of income has not been properly considered by calculating the exact period of treatment and he has to be awarded at least Rs,30,000/- against the award of Rs.11,500/-. It is also stated that the sum awarded for transport, medical expenses and nourishment are very much on the lower side. The sum awarded for pain and sufferings is also not justified. Regarding the disability, P.W.2 and P.W.3 were examined before the Tribunal. The Tribunal has not properly considered the evidence and arrived the sum by taking 40% as disability, against the disability certificate produced at 70%, hence it deserves to be enhanced. It is also the grievance of the appellant that the Tribunal has not awarded any sum for loss of amenities and also for loss of physical comfort. Hence, the entire compensation awarded by the Tribunal is very much on the lower side, as it is against the evidence and the probabilities.

5.Heard both sides and perused the materials available on record.

6.On perusal of the award, it is seen that the loss of income has been arrived for five months at Rs.2,300/- x5=Rs.11,500/-, for Nourishment Rs.4,000/-, Transport Rs.3,000/- medical expenses Rs.4,000/- pain and sufferings Rs.10,000/-, for 40% disability, Rs.80,000/- has been calculated and on the whole, the loss of income, by taking monthly income at Rs.1,300/- and by applying the multiplier method, the sum has been arrived at Rs.96,000/-. It is also argued by the appellant that the claimant was working as a clerk working in an office and thus his monthly income has been very much proved by the relevant document. Whereas, the Tribunal has taken it only Rs.1,300/- as monthly income, which is very much on the lower side. Hence, it is argued that for calculating the loss of future income, Rs.2,300/-per month has to be taken.

7.On a perusal of the evidence and documents, it is observed that he was working as Assistant in MGM Group. Hence, taking his monthly income at Rs.2,300/- as per Ex.P3 salary certificate, is reasonable and calculated loss of income for six months is arrived at Rs.2,300x6=13,800/-. The sum awarded for transport expenses is at Rs.3,000/- is also found very much reasonable. But on considering the fracture injury sustained by the claimant and even after effective treatment, the efficiency of the leg was not restored and surgery was also done to him and the sum awarded for pain and sufferings has to be properly considered. It is seen that the Tribunal has awarded a sum of Rs.80,000/- for the permanent disability sustained by the claimant. The Tribunal has also awarded Rs.96,000/- for loss of future earning by taking into consideration, the said disability. Hence, this Court is of the view that awarding a sum of Rs.80,000/- for permanent disability is not proper when the Tribunal has awarded the sum under the head loss of earning power by considering the said disability. Therefore, the sum awarded by the Tribunal under the head permanent disability is set aside and the sum awarded for loss of future earning needs to be modified. By considering the nature of injuries, this Court is inclined to enhance the amount under the head pain and sufferings to sum of Rs.20,000/- for six months.

8.Though, the Tribunal has calculated the "loss of income" by taking the monthly income at Rs.2,300/- and assessed the loss of income, but while calculating the "future loss of income", the Tribunal has taken his monthly income only at Rs.1,000/- by giving the reason that due to the injury sustained by him, he could not work as before and also could not earn full income. The reason given by the Tribunal for calculating the future loss of income by fixing at Rs.1,000/- per month is not at all justifiable. Because only due to the accident, he had sustained disability and suffered loss of income, hence, it would be appropriate to calculate the future loss of income by taking into account the income, which he was earning prior to the accident. Hence, the future loss of income has to be calculated by taking his actual income at Rs.2,300/-. Accordingly, the future loss of income is calculated at Rs.2,20,800/- (Rs.2,300/- x 12 x 8).

9.On perusal of the award passed by the Tribunal, considering the treatment and nature of injury, some reasonable amount has to be awarded for loss of amenities.

10.Accordingly, this Court modifies the amount awarded by the Tribunal as follows:-

Sl.No.	Heads	Amount awarded (Rs.)	Amount modified (Rs.)
1	Loss of income	Rs.11,500/-	Rs.13,800/-
2	Nourishment	Rs.4,000/-	Rs.4,000/-

Sl.No.	Heads	Amount awarded (Rs.)	Amount modified (Rs.)
3	Transport	Rs.3,000/-	Rs.3,000/-
4	Medical Expenses	Rs.4,000/-	Rs.4,000/-
5	Pain and suffering	Rs.10,000/-	Rs.20,000/-
6	Permanent disability	Rs.80,000/-	-
7	Loss of future earning	Rs.96,000/-	Rs.2,20,800/-
	Total	Rs.2,08,500/-	Rs.2,65,600/-

11.In the result, the civil miscellaneous appeal is partly allowed. No costs. Appellant/claimant is directed to pay additional court fee for the enhanced award amount.

12.Accordingly, the second respondent Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the enhancement of this Court, with interest and costs, before the Tribunal, after adjusting the amount,in any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the same to the claimant bank account through RTGS within one week thereon. The enhanced amount shall carry the same rate of interest as awarded by the Tribunal.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

gbi/at
To

1.The Motor Accidents Claims Tribunal,
(III Judge, Court of Small Causes) Chennai.

2.The Section Officer,
V.R.Section, High Court, Madras.

+1 cc to Mr.A.N.Viswanatha Rao, Advocate, Sr.No. 74012
+1 cc to Mr.N.Vijayaraghavan, Advocate, Sr.No. 74552

CMA.No.2555 of 2006

NRL(CO)
CSL/23.07.2019