IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.09.2018
CORAM:
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

C.M.A. No.892 of 2005

Muthiah .. Appellant/Petitioner

Versus

1.N.Rajkumar

2.The United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002. .. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.12.2003 in M.C.O.P.No.160 of 2000 on the file of Motor Accidents Claims Tribunal (II Judge, Small Causes Court) at Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondent 2: Mr.S.Udayakumar

J U D G M E N T

The civil miscellaneous appeal has been preferred by the claimant as appellant against the judgment and decree passed in MCOP No.160/2000.

2.The facts leading to the claim application is that on 31.12.1988 at about 23.30 hours, when the petitioner was walking in the South Usman Road near Rajiv Hospital, an Auto bearing Registration No.TN 09 Y 6870 which was driven by its driver in a rash and negligent manner, came from behind and hit the claimant/appellant, due to which the claimant sustained grievous injury. The claimant/appellant is an Electrical and Electronic Service Engineer and he was earning Rs.4,500/- per month and due to the injury he sustained disability to the maximum and also incurred heavy loss of income, hence claimed a sum of Rs.5 lakhs as compensation.

3.The respondent/insurance company has averred in the counter statement denying the rash and negligent driving on the part of the first respondent. The insurance company also denied the facts stated by the claimant for claiming such a huge sum as compensation. The Tribunal after analyzing the evidence and the documents placed before it, has fixed the liability on the Insurance Company and awarded a sum of Rs.2,20,000/-.

4.Aggrieved against the said amount, the claimant appellant has preferred this appeal.

5.In the grounds of appeal, the appellant has stated that the Tribunal has erred in fixing the quantum of compensation without considering the qualification of the claimant and his monthly income. The loss of vision and the head injury and permanent disability sustained by the claimant was not properly considered by the claimant. Nourishment and Medical expenses also not properly considered by the Tribunal. The further ground raised by the appellant is that when P.W.2, the Doctor has assessed the disability at 25%, the Tribunal without considering the disability arrived the said compensation.

6.Further, the eye surgeon P.W.3 who has also assessed the disability at 40% and the certificate issued by P.W.11 was also not considered by the Tribunal. Hence, the sum awarded in all the above heads by the Tribunal is denied by the appellant as the same is very meager.

7.Heard both sides and perused the documents available on record.

8.On the side of the appellant, it is argued that the claimant is a Electrical and Electronic Service Engineer and was earning Rs.4,500/- per month. Regarding the qualification of the claimant, though the claimant has produced relevant documents with regard to his qualification, the Tribunal has not considered the same while arriving the compensation. The learned counsel further submitted that the disability assessed by the two surgeons, was also not properly considered by the Tribunal, since the claimant sustained head injury and his vision was also very much affected, which have been very much spoken by the concerned medical experts in their reports, the sum awarded under the head ''loss of income'' at Rs.1,32,000/- is not justified.

9.On the side of the respondent, it is argued that the accident is of the year 1998 and there is no deficiency in the vision as argued by the claimant appellant.

10.The argument of the claimant is that the claimant has incurred loss of income because of the disability sustained especially his eye vision, since the claimant is a Electrical and Electronic Service Engineer. Further it is argued by the appellant/claimant that when considering the age and qualification of claimant, who was earning Rs.4,500/- per month, at the time of the accident, the lumpsum amount awarded by the Tribunal under the head loss of earning power at Rs.1,22,000/- is not at all justified.

11. By taking into consideration of the qualification, age and occupation of the claimant and also disability certificate submitted by two medical experts, this Court finds it reasonable to enhance the amount awarded by the tribunal under the head loss earning power by applying mulitiplier. Accordingly, by taking Rs.3000/- and adding 40% toward future prospects, the monthly income comes to Rs.4200/-. By adding multiplier 17 according the age of the claimant and taking diability at 20%, the loss of earning power would comes to Rs.1,71,360/-, this Court grants the same under the head "Loss of Future Earning".

12. This Court also considers the grievance of the claimant appellant that no sum has been awarded for attended charges when the claimant sustained head injury and grants a sum of Rs.5,000/- towards 'Attendant charges'. Likewise, the sum awarded by the tribunal under the head Transport expenses, nourishment, medical expenses are also enhanced. Since, the sum awarded under the head Loss of Income, pain and suffering and disability are found reasonable, this Court does not interfere with the same amounts. Accordingly,this Court modifies the award passed by the Tribunal as follows:-

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Loss of Income	20,000/-	20,000/-
Transport Expenses	2,000/-	5,000/-
Nourishment	3,000/-	5,000/-
Medical Expenses	3,000/-	5,000/-
Pain and Sufferings	10,000/-	10,000/-
Loss of Future Earning	1,22,000/-	1,71,360/-
Diability	60,000/-	60,000/-
Attendant Charges	--	Rs. 5,000/-

Heads	Amount awarded by the Tribunal (Rs.)	Amount modified by this Court (Rs.)
Total	2,20,000/-	2,81,360/-

13. In view of the above said enhancement, this Civil Miscellaneous Appeal is allowed. No costs. The Appellant/claimant is directed to pay the necessary court fee for the enhanced award amount.

14. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if 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's bank account through RTGS within one week thereon. The rate of interest for the enhanced amount shall carry 7.5% per annum.

-s/d-
Assistant Registrar(CSVIII)

True Copy
Sub-Assistant Registrar

AT

To
1.The United India Insurance Co. Ltd.,
No.38, Anna Salai,
Chennai - 600 002.
2.The II Judge,
Court of Small Causes
Motor Accidents Claims Tribunal.
Chennai.
3. The Section Officer,
V.R. Section,
High Court,Madras.

+1 cc to Mr.S.Udayakumar Advocate sr67111
+1 cc to Mr.A.N.Vishwanatha Rao Advocate sr66611

C.M.A. No.892 of 2005

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