IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

C.M.A.No.1184 of 2011

M.John Ekambaram .. Appellant /(Claimant)

Vs.

1. Hari Narayanan

2. M/s.New India Assurance Co. Limited,
No.43, Moore Street,
Chennai-600 001. .. Respondents (Respondents)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award dated 30.06.2010 made in M.C.O.P.No.724 of 2006 on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.IV), Chennai.

For appellant : Mr.T.G.Balachandran

For Respondents : R-1 - Ex-parte before the Tribunal
Miss.A.Salomi for R-2

JUDGMENT

The appellant is the claimant in M.C.O.P.No.724 of 2006 on the file of the Motor Accidents Claims Tribunal (IV Judge, Small Causes Court), Chennai.

2. The brief case of the appellant/claimant is as follows:

On 08.01.2006 at about 14.45 hours, when the appellant/claimant was ironing clothes in a movable wooden platform opposite to B-5 Block, 2nd Cross Street, Customs Colony, Besant Nagar, a speeding Santro Car bearing Registration No.TN-07-AH-0976 hit the appellant/claimant, as a result of which, he sustained grievous injuries. According to the claimant, the accident took place due to the rash and negligent driving of the driver of the Santro Car belonging to the first respondent and that since the first respondent has insured his vehicle with the second respondent-New India Assurance Company Limited, both of them are jointly and severally liable to pay the compensation to him.

3. The first respondent remained absent before the Tribunal and he was set ex-parte. The second respondent-Insurance Company denied all the allegations of the appellant/claimant. The Tribunal, after analysing the evidence on record, awarded a compensation of Rs.1,71,450/- together with interest @ 7.5% p.a. to the appellant/claimant. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal seeking enhancement of compensation.

4. Learned counsel for the appellant/claimant contended that the claimant is doing mobile laundry business and since he has to stand the whole day, the Tribunal is wrong in not applying the multiplier method. He relied on a decision of this Court in the case of The Managing Director, TNSTC (Villupuram) Ltd., Vs. R.Hyder Ali, reported in 2015 (2) TN MAC 624 in this regard.

5. In the instant case, the appellant/claimant has sustained fracture on his right leg and an operation was also performed implanting a plate. The main contention of the appellant/claimant is that he is doing mobile laundering business, and therefore, he has to stand the whole day for doing his work. In the facts and circumstances of the present case, by applying the principles laid down by the Supreme Court in the case of Raj Kumar Vs. Ajay Kumar and another, reported in 2011 (1) SCC 343, the multiplier method is to be adopted. Further, Dr.Sai Chandran (P.W.2) has assessed the partial permanent disability of the claimant as 50%. Though the appellant/claimant has contended that he was earning a sum of Rs.7,500/-, no documentary evidence was adduced to establish his contention. Therefore, a sum of Rs.4,500/- p.m. is fixed as notional income of the appellant/claimant. Since the age of the claimant on the date of accident was 42 years, the proper multiplier to be adopted is '14' as per the decision of the Supreme Court in the case of Sarala Verma and others Vs. Delhi Transport Corporation and another, reported in 2009 (6) SCC 121. Thus, the loss of earning capacity is fixed as follows:

4,500 x 12 x 14 x 50/100 = Rs.3,78,000/-.

6. The appellant/claimant is entitled to the following amounts under various heads, which are detailed hereunder:

Head under which the amount is awarded	Amount (in Rs.)
Loss of earning capacity	3,78,000
Transportation	7,500
Extra nourishment	7,500
Attendar charges	5,000

Head under which the amount is awarded	Amount (in Rs.)
Damage to clothes	500
Pain and sufferings	25,000
Loss of amenities	15,000
Future medical expenses	10,000
Total	4,48,500

Thus, the appellant is entitled to a total compensation of Rs.4,48,500/- (Rupees four lakhs forth eight thousand and five hundred only).

7. A perusal of the records shows that the first respondent drove his vehicle without driving licence and the Tribunal, after analysing the evidence adduced on the side of the respondents, has held that the Insurance Company has to pay the award amount and recover the same from the first respondent/owner of the vehicle. I do not see any reason to intefere with the findings recorded by the Tribunal in this regard.

8. Therefore, the second respondent-Insurance Company should pay the said sum of Rs.4,48,500/- with interest @ 7.5% p.a. on Rs.4,38,500/- from the date of petition till the date of payment, within a period of four weeks from the date of receipt of this judgment, less the amount already deposited by them. No interest is awarded for a sum of Rs.10,000/- under the head 'future medical expenses'. On such deposit being made by the second respondent/Insurance Company, the appellant/claimant is entitled to withdraw the entire amount. The appellant/claimant shall pay Court fee, if any, on the enhanced compensation amount.

9. With the above observations and directions, the appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cs

To

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

Copy to

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

+1cc to Mr.T.G.Balachandran, Advocate Sr.79884

C.M.A.No.1184 of 2011

sv[co]
srg 30/01/2019