

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.11.2018

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

CMA.No.2497 of 2015

John Solomon

... Appellant/Claimant

Vs

1.T.P.Sarala

2.Reliance General Insurance Co. Ltd.,
No.628, II Floor, Balmer Lawrie House,
Annasalai,
Chennai.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 01.02.2014 made in M.A.C.T.O.P.No.3565 of 2011 on the file of the Motor Accident Claims Tribunal II Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry ChellaRaja

For Respondent : Exparte
No.1

For Respondent : Mr.S.Arunkumar
No.2

JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation awarded by the Tribunal by award dated 01.02.2014 made in M.A.C.T.O.P.No.3565 of 2011 on the file of the Motor Accident Claims Tribunal and II Court of Small Causes, Chennai.

2.The appellant is claimant in M.A.C.T.O.P.No.3565 of 2011 on the file of the Motor Accident Claims Tribunal II Court of Small Causes, Chennai. He filed the above claim petition claiming a sum of Rs.12,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.06.2011.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the vehicle belonging to the first respondent and directed the second respondent/Insurance Company to pay a sum of Rs.5,13,694/- as compensation to the appellant.

4.Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal for enhancement of compensation.

5.The learned counsel appearing for the appellant contended that the appellant as PW1 and Doctor as PW2 have deposed with regard to the injuries, nature of treatment taken and the percentage of disability suffered by the appellant. The Doctor has certified that the appellant suffered 50% of disability and the Tribunal, without giving proper reason, has reduced the same to 40%. The Tribunal ought to have adopted multiplier method for awarding compensation under the head of permanent disability. The Tribunal has fixed income of the appellant only at Rs.6,000/- per month, while the appellant was earning a sum of Rs.25,000/- per month. The Tribunal ought to have awarded more compensation under different heads and prayed for enhancement of compensation.

6.Per contra, the learned counsel appearing for the second respondent / Insurance Company contended that the Tribunal, considering the evidence of PW2, has fixed the disability at 40%, which is proper. The Tribunal having awarded compensation for disability by applying multiplier method, erred in awarding compensation for loss of earning capacity by applying multiplier method. The amounts awarded under the different heads are excessive and the same has to be reduced. Therefore, he prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8.From the materials placed on record, it is seen that the appellant has suffered fracture of right shaft of Femur, for which, nailing right femur done and the appellant has taken treatment as inpatient for six days from 27.06.2011 to 02.07.2011. PW2 doctor, considering the above facts, has certified that disability suffered by the appellant is at 50%. The doctor has not deposed that the appellant is totally immobilized and suffered functional disability and he could not do any work as he was doing earlier. In such circumstances, the Tribunal, considering the evidence of doctor PW2, has fixed disability at 40% and applied multiplier method and awarded

compensation. There is no error in the said findings warranting interference by this Court.

9.The appellant has not let in any evidence to show that he is unable to work as he was doing earlier and his earning capacity has been reduced. He has also not let in any evidence that he could not do any work after treatment period and could not earn any income. The Tribunal has fixed notional income of the appellant at Rs.6,000/- per month in the absence of any evidence and loss of earning capacity at 20% and awarded compensation by applying multiplier method. In addition to that, the Tribunal has awarded compensation for permanent disability. Further, the Tribunal has also awarded compensation for loss of income for six months in the absence of any evidence and thus the amounts awarded by the Tribunal under different heads are not meager. In my considered opinion, the amount awarded by the Tribunal is just and reasonable and it does not warrant any interference by this Court for enhancement and the same is confirmed.

In the result, this Civil Miscellaneous Appeal is dismissed confirming the award passed by the Tribunal. The second respondent / Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount with interest and costs less the amount, if any already withdrawn. No costs. Consequently, connected Miscellaneous Petition, if any, is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

tta/sms

To

1. The II Judge, (Motor Accident Claims Tribunal), Chennai.

+1cc to Mr.S.Arunkumar, Advocate SR.No.80586

+1cc to Mr.m.Malar, Advocate SR.No.80081

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TM(CO)
GMY(25/01/2019)