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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA No.1655 of 2014 and
M.P.No.1 of 2014

D.Kumar

.... Appellant/Petitioner

-vs-

1.R.Saikumar

(Set exparte in the Trial Court)

2.IFFCO - TOKIO GI. Insurance Co. Ltd.,

No.28, 2nd Floor, North Usman Road,

T.Nagar, Chennai - 600 017.

Office now functioning at:

IFFCO - TOKIO General Insurance Co. Ltd.,

Iffco Bhavan, 4th Floor,

No.128, Habibullah Road, T.Nagar,

Chennai - 600 017.

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 07.02.2014 made in M.C.O.P.No.885 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Judge -1, Chennai.

For Appellant : Ms.P.T.Salim Fathima

For Respondents: Mr.J.Michael Visuvasam for R2

R1 Exparte

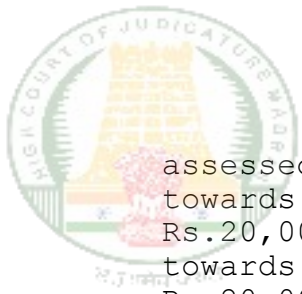
J U D G M E N T

[Judgment of the Court was delivered by

R.SUBRAMANIAN,J.]

This Civil Miscellaneous Appeal is filed by the claimant seeking enhancement of compensation awarded by the Tribunal for the injuries suffered by him in a motor accident that occurred on 09.08.2010.

2. The Tribunal found that the accident occurred due to the negligence of the driver of the car bearing Registration No.TN 22 E 0261. The Insurance Company has not challenged the Award. Therefore, the only question that arises for consideration in this appeal is to the quantum of compensation. The Tribunal



assessed the disability at 50% and arrived a sum of Rs.45,000/- towards loss of earning capacity. The Tribunal also awarded Rs.20,000/- towards transportation to hospital; Rs.15,000/- towards extra nourishment; Rs.20,000/- towards medical expenses; Rs.20,000/- towards attender charges; Rs.30,000/- towards pain and suffering and Rs.1,00,000/- for continuing and permanent disability. In all, the Tribunal awarded Rs.2,50,000/- as compensation.

3. We have heard Ms.P.T.Salim Fathima, learned counsel for the appellant and Mr.Michael Visuvasam, learned counsel for the Insurance Company. The first respondent was set ex parte before the Trial Court.

4. The learned counsel for the appellant would contend that the appellant was referred to Medical Board and the Medical Board has assessed the disability at 40%. Therefore, according to the learned counsel, the Tribunal must have applied the multiplier method for calculating future loss of earning power due to the disability suffered by the appellant.

5. Per contra, the learned counsel for the Insurance Company would however point out that the Medical Board has not said that 40% disability is functional disability.

6. We have perused the report of the Medical Board, wherein, it is stated that the appellant has undergone hip replacement surgery, which ended in failure. It is also stated that there is instability in his walk. Admittedly, the appellant is a two wheeler mechanic and runs a small service centre. There is no dispute that the injury would definitely affect his earning power. We are therefore of the considered opinion that loss of earning capacity would be Rs.10,000/- per month. If 40% is added towards future prospects, the loss of earning power comes to Rs.14,000/- per month. Since the appellant was aged 36 years at the time of the accident, the multiplier of "15" is adopted. Therefore, the total loss of earning power works out to Rs.25,20,000/- (Rs.14,000 x 12 x 15). 40% of Rs.25,00,000/- would be Rs.10,08,000/-.

7. The Tribunal has awarded Rs.1,00,000/- towards permanent disability taking the permanent disability at 50%. In view of the percentage of disability assessed by the Medical Board at 40%, the loss of earning capacity granted by the Tribunal requires to be modified as follows:- Rs.2000 per % of disability x 40 = Rs.80,000/-. The compensation awarded by the Tribunal under other heads are sustained.

8. Thus, the total compensation would be as follows:-

- i) Loss of Earning Power : Rs.10,08,000/-
- ii) Pain and Suffering : Rs. 30,000/-



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iii) Extra nourishment	: Rs.	15,000/-
iv) Transport to Hospital:	Rs.	20,000/-
v) Attender Charges	: Rs.	20,000/-
vi) Medical Expenses	: Rs.	20,000/-
vii) Permanent Disability:	Rs.	80,000/-
Total	: Rs.	11,93,000/-

9. In the result, the Civil Miscellaneous Appeal is Partly Allowed as follows:-

(i) The award of the Tribunal is enhanced to Rs.11,93,000/- from Rs.2,50,000/-

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The 2nd respondent-Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment.

(iv) On such deposit, the claimant is permitted to withdraw the amount deposited by filing proper application before the Tribunal. The Tribunal shall pass appropriate directions for the disbursal of the amount as stated supra on filing of such application.

(v) The appellant shall pay necessary court fee before receiving the copy of this judgment for the enhanced compensation amount, if any.

No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

svki

To

1.The Motor Accident Claims Tribunal,
Special Sub Judge -1, Chennai.



Copy to

The Section officer
VR Section, High Court, Madras 104.

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+1 CC to Mr.T. Michael Visuvasam, Advocate sr 59584.

+1 CC to Mr.M.Swamikannu, Advocate sr 59891.

CMA No.1655 of 2014

SAI (CO)

SP (20/11/2018)