IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.10.2018

CORAM:

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

CMA.No.116 of 2018

R.Senthil Prabu ... Appellant/Petitioner

-vs-

1. M/s. SSG Agencies
No.15 Balaji Andar Kuppam,
Ponneri TK, Tiruvallur 601 204.

2. ICICI Lombard General Insurance Co. Ltd.,
Chhotabhai Centre No.140,
Nungambakkam High Road,
Chennai 600 034. .... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 29.11.2017 made in MCOP No.4209 of 2014 on the file of the Motor Accidents Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellant : Mr. R.Nalliyappan

For Respondent : Ms.R.Sreevidhya for R2

R1 - Not Ready in notice

J U D G M E N T

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The claimant in MCOP No.4209 of 2014 on the file of the Motor Accident Claims Tribunal (IVth Judge, Court of Small Causes), Chennai, is on appeal seeking enhancement of the compensation awarded by the Tribunal for the injuries suffered by him in a motor accident that occurred on 28.06.2014.

2. According to the claimant, while he was riding his motor cycle bearing Registration No.TN-22-BT-5565 along the Mambakkam Main Road, the Mahindra Van bearing Registration No.TN 18 AA 3532 belonging to the 1st respondent and insured with the 2nd respondent Insurance Company, driven by its driver in a rash and negligent manner came in the opposite direction and dashed against the motor cycle. As a result of the accident, the claimant suffered grievous injuries including skull fracture. Terming the negligence on the part of the driver of the Van as the cause for the accident, the claimant sought for a compensation of Rs.66,00,000/-.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested by the claimant. It was claimed that the claimant was under the influence of alcohol and he came and dashed against the Van without seeing the Van which was actually taking an U-turn at an opening of the centre median. The Insurance Company also denied the extent of disability and the loss of earning power claimed by the claimant.

4. The Tribunal which heard the Original Petition on appreciation of the evidence on record concluding that the accident occurred due to the rash and negligent driving of the Van insured with the 2nd respondent Insurance Company. In coming to the said conclusion, the Tribunal relied upon the copy of the Accident Register filed as Ex.P1 and the FIR filed as Ex.P7, apart from the evidence of the claimant who was examined as P.W.1.

5. Considering the nature of the injuries, the Tribunal fixed disability at 50%, even though the Doctor who was examined as P.W.2 assessed the disability at 100%. The Tribunal took into account the fact that the injuries were fractures of the left frontal bone, nasal bone and skull fractures concluded that the injuries caused have no impact on the future earning capacity of the claimant.

6. The Tribunal, therefore awarded the following amounts as compensation.

S.No.	Particulars	Amount
1.	Disability	Rs. 1,50,000/-

S.No.	Particulars	Amount
2.	Pain and Suffering	Rs. 1,00,000/-
3.	Extra Nourishment	Rs. 25,000/-
4.	Transport to Hospital	Rs. 50,000/-
5.	Damages to clothes	Rs. 1,000/-
6.	Attender charges	Rs. 8,800/-
7.	Medical Expenses	Rs.16,36,711/-
8.	Future Medical Expenses	Rs. 25,000/-
9.	Loss of Income	Rs. 90,000/-
10.	Loss of Amenities	Rs. 25,000/-
	Total	Rs.21,11,511/-

7. Aggrieved, the claimant is before us seeking enhancement.

8. We have heard Mr.R.Nalliyappan, learned counsel appearing for the appellant and Ms.R.Sreevidhya, learned counsel appearing for the Insurance Company. The 1st respondent owner of the offending Vehicle remained ex-parte before the Tribunal and hence notice to the 1st respondent is dispensed with.

9. Mr.R.Nalliyappan, learned counsel appearing for the appellant/claimant would contend that the Tribunal was error in concluding that there is no loss of earning power. Drawing our attention to the injuries caused in the accident, Mr.R.Nalliyappan, would contend that shortening of the limb, which would result in diminution of earning power of the claimant. He would also contend that the Tribunal erred in rejecting the evidence of P.W.2.

10. Per contra, Ms.R.Sreevidhya, learned counsel appearing for the Insurance Company would submit that the Tribunal has given valid and cogent reasons for rejecting the evidence of P.W.2 and has fixed the functional disability at 60%. According

to her, the said finding does not call for any interference at our hands.

11. We have considered the rival submissions.

12. A perusal of the injuries suffered by the claimant shows that there cannot be a major impact on his earning power due to the injuries. The major injuries are a skull fracture and the fracture of left neck of humerus bone and right femur. The Tribunal has found that there is a shortening of limb to a certain extent. Though, it is claimed that the claimant was doing business in installation of CCTV Camera and earning about Rs.30,000/- per month, no evidence has been produced to show any loss of income.

13. Mr.R.Nalliyappan, learned counsel would contend that Income-Tax Return has been filed as Ex.P6, which would show that the claimant was earning about Rs.30,000/- per month. We find that the Income-Tax Returns have been filed after the accident and therefore, there cannot be safely relied upon to determine the income or the loss of income. In the absence of any evidence to show loss of earning power multiplier method cannot be resorted to grant compensation in the case of the injury.

14. The Tribunal has observed that it has seen the injured and has fixed the quantum of disability at 50%. The Tribunal has also found the evidence of Doctor P.W.2 was unreliable, since he has not treated the claimant. Apart from finding that he has not produced any work sheet to justify its conclusion that the disability was 100%. We see no reason to interfere with the said conclusion of the Tribunal, in fact Mr.R.Nalliyappan, is unable to point out any valid reason which would enable us to differ from the conclusions of the Tribunal regarding the reliability of the evidence of the Doctor namely P.W.2.

15. We, however, find that the awards under the heads of pain and suffering, attender charges and future medical expenses are low. It is an admitted case that the claimant has been an in-patient for more than 45 days. From the nature of the injuries, it can be safely presumed that the claimant would have undergone considerable pain and suffering during and after treatment. We, therefore find that the award of Rs.1,00,000/- under the head of pain and suffering is below par. We accordingly increase the same to Rs.2,00,000/-. The Tribunal

has awarded Rs.8,800/- towards attender charges. Again taking into account the long spell of hospitalization and the fact that various surgeries to perform, it cannot be said that the sum of Rs.8,800/- granted towards attender charges is just and reasonable.

16. Admittedly, the claimant has suffered fracture of the right femur bone as well as the fracture on the left neck of the humerus bone. These injuries would have definitely forced to the claimant to seek assistance of an attender even after treatment. We are, therefore, of the considered opinion that an award of Rs.50,000/- towards attender charges would be just and reasonable. The Tribunal has awarded a sum of Rs.25,000/- towards future medical expenses, we find that the claimant had suffered skull fractures, which would require further treatment from the evidence on record. We, therefore, award a sum of Rs.1,00,000/- towards future medical expenses instead of Rs.25,000/- awarded by the Tribunal. In view of the above, the award of the Tribunal is re-worked as follows:

S.No.	Particulars	Amount
1.	Disability	Rs. 1,50,000/-
2.	Pain and Suffering	Rs. 2,00,000/-
3.	Extra Nourishment	Rs. 25,000/-
4.	Transport to Hospital	Rs. 50,000/-
5.	Damages to clothes	Rs. 1,000/-
6.	Attender charges	Rs. 50,000/-
7.	Medical Expenses	Rs.16,36,711/-
8.	Future Medical Expenses	Rs. 1,00,000/-
9.	Loss of Income	Rs. 90,000/-
10.	Loss of Amenities	Rs. 25,000/-
	Total	Rs.23,27,711/-

The same is rounded off to Rs.23,30,000/-. The award will carry interest at 7.5% per annum from the date of petition till the date of payment.

17. In view of the above conclusion, the Appeal is partly allowed, the award of the Tribunal is modified and increased to Rs.23,30,000/-. There shall be no order as to costs.

18. It is stated that the Insurance Company has satisfied the award passed by the Tribunal. The Insurance Company is directed to deposit the enhanced amount within a period of 4 weeks from the date of receipt of a copy the judgment. On such deposit, the claimant will be entitled to withdraw the same.

Sd/-
Assistant Registrar(CS-IX)

//True copy//

Sub Assistant Registrar

jv

To
The Motor Accidents Claims Tribunal,
(IV Small Causes Court), Chennai.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mr.R.Nalliyappan, Advocate SR.No.70730

+1cc to Mrs.R.Sreevidhya, Advocate SR.No.71397

CMA.No.116 of 2018

PA(CO)
GMY(11/12/2018)