



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1330 of 2010

J.Selvam @ Dhivya Raj Selvam ...Appellant/Petitioner

Vs

1.Dr.N.Anbumani

2.M/s.New India Assurance Co. Limited,
C/o. Motor Third Party Claims Office,
No.43, Moore Street,
Chennai - 600 001.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award passed by the Hon'ble Motor Accidents Claims Tribunal (Small Causes Court No.III), Chennai in M.C.O.P.No.228/2006 dated 28.10.2009.

For Appellant : Mr.T.G.Balachandran

For Respondents : R1-No Appearance

: Mr.P.P.Purushothaman for R2.

ORDER

The instant appeal has been filed by the Claimant, challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal (Small Causes Court No.III) in M.C.O.P.No.228 of 2006 by its judgment and decree dated 28.10.2009.

2.The brief facts leading to the filing of the instant appeal are as follows:

(i)The Appellant sustained injuries on account of the accident caused by a Santro Car bearing Registration No.TN-41-H-2244, on 23.11.2005, at about 17.00 hours due to the rash and negligent driving by its driver. The Appellant is a cloth merchant, carrying on his business as a platform vendor at Lloyds Road, Gowdya Mutt Salai Junction, Chennai - 600 014.



(ii) The Appellant preferred a compensation claim before the Motor Accidents Claims Tribunal, in M.C.O.P.No.228 of 2006, against the second respondent for a sum of Rs.3,50,000/- on account of the injuries sustained by him due to the accident. The Motor Accidents Claims Tribunal by its judgement and decree dated 28.11.2009, directed the second respondent to pay the Appellant a sum of Rs.1,09,000/- together with interest at 9.5% per annum from the date of claim till the date of realization and also directed the second respondent to pay the Appellant a sum of Rs.5,200/- towards Advocate Fees and Rs.472/- towards Court Fees.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the Appellant/Claimant has preferred the instant appeal before this Court seeking enhancement of compensation.

4. Heard, Mr.T.G.Balachandran, learned Counsel for the Appellant and Mr.P.P.Purushothaman, learned Counsel for the second respondent.

5. The learned Counsel for the Appellant submits that the Appellant suffered 45% disability on account of the accident. Being a cloth merchant and a platform vendor, due to injuries caused on account of the accident, the Appellant has lost his earning capacity. But the Tribunal under the impugned Award has not granted any compensation to the Appellant towards loss of earning capacity. According to him, excepting for awarding a sum of Rs.45,000/- towards permanent disability, no amount was awarded for loss of earning capacity to the Appellant.

6. The learned Counsel for the Appellant further submitted that the Appellant was hospitalized as an inpatient at Government Hospital, Royapettah on two occasions. On the first occasion, it was between 23.11.2005 and 19.12.2005 for a period of 27 days and on the second occasion it was between 21.09.2007 and 05.10.2007 for a period of 15 days. According to the learned Counsel, the injuries sustained by the Appellant was fracture of both bones in the right leg, head injury and multiple injuries all over the body. According to the learned Counsel, despite grievous injuries sustained by the Appellant, the Tribunal without considering the loss of earning capacity, has awarded an inadequate compensation of only Rs.1,09,900/- to the Appellant.

7. Per contra, the learned Counsel for the second respondent/Insurance Company would submit that the Tribunal has awarded a reasonable and just compensation to the Appellant. The Tribunal has rightly awarded a sum of Rs.45,000/- as compensation to the Appellant calculated at the rate of Rs.1000/- per percentage of disability.



WEB COPY

8. The learned Counsel for the second respondent/Insurance Company further contended that the learned Tribunal has erroneously accepted the version of the Appellant that he was earning a monthly salary of Rs.5000/- without any basis.

9. This Court after considering the materials available on record and after perusing and examining the impugned Award and after hearing the submissions of the respective Counsels observes the following:

(a) It is an undisputed fact as seen from the Award that the Appellant sustained multiple injuries all over the body, head injury and fracture of both bones in the right leg.

(b) It is also an undisputed fact that the Appellant had to undergo hospitalization for a period of 27 days at Government Hospital, Royapettah between 23.11.2005 and 19.12.2005 and for another period of 15 days between 21.09.2007 and 05.10.2007.

(c) It is an undisputed fact that the claimant/Appellant was a platform vendor and a cloth merchant carrying on business at Royapettah, Chennai. The percentage of disability i.e. 45% suffered by the Appellant is also not disputed.

(d) No contra evidence has been placed by the second respondent before the Tribunal to disprove the nature of disability and the nature of injuries sustained by the Appellant on account of the accident.

10. Being a platform vendor, the Appellant needs to stand for a long period of hours to sell his products. As seen from the Medical Certificate, the Appellant cannot stand for a long period of hours nor can he squat for a long period of hours. Considering the nature of the business carried on by the Appellant, the Tribunal ought to have awarded compensation towards loss of earning capacity but under the impugned Award, the Tribunal has not awarded any amount towards loss of earnings.

11. In so far as, the other sums awarded towards the various other heads are concerned, this Court is of the considered view that the Tribunal has rightly awarded the compensation and no interference is called for from this Court. Only under the head, loss of earning capacity to the Appellant, this Court deems it fit that the Award needs to be enhanced and modified. Applying the multiplier method, the Appellant is entitled to further a sum of Rs.2,68,800/- towards loss of earning capacity in addition to a sum of Rs.1,09,900/- which was already awarded by the Tribunal under the impugned award. The said sum for Rs.2,68,800/- towards loss of earning capacity is calculated in the following manner:



(Loss of monthly salary is Rs.5000/-
+ Loss of future prospects 40% is Rs.2000/-
Whole body disability 20% per month*12*16=2,68,800/-)

WEB COPY

12. In the result, the appeal is partly allowed and the Award dated 28.11.2009, passed by the Motor Accidents Claims Tribunal in its judgement and decree dated 28.10.2009 in M.C.O.P.No.228 of 2006 is hereby modified by enhancing the compensation amount from Rs.1,09,900/- to Rs.3,78,700/- (Rs.1,09,900+Rs.2,68,800) together with interest at 9.5% per annum on Rs.2,68,800/- from the date of claim till date of realization. The second respondent is directed to deposit the balance amount of Rs.2,68,800/- together with interest at 9.5% to the credit of M.C.O.P.No.228 of 2006, on the file of the Motor Accidents Claims Tribunal (Small Causes Court No.III), within a period of eight weeks from the date of receipt of this order. The Appellant is permitted to withdraw the said sum, on such deposit being made by the second respondent by filing an appropriate application. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

arb/pam

To

1. The Motor Accidents Claims Tribunal
(Small Causes Court No.III), Chennai.

2. The Section Officer,
Vernacular Section,
Madras High Court.

+1 CC to Mr.P.P.Purushothaman, Advocate sr 56997

+1 CC to Mr.T.G.Balachandran, Advocate sr 56969.

C.M.A.No.1330 of 2010

CA (CO)
SP (24/12/2018)