

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2897 of 2018

A.Sridharan @ Sridhar

.. Appellant/Petitioner

Vs.

1.Ramakrishnan

2.The Divisional Manager,
National Insurance Company Limited,
Door No.110, J.N.Street,
Puducherry - 605 001.

.. Respondents/Respondents

(R1 remained exparte before Tribunal
hence notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 28.02.2018 made in M.C.O.P.No.2769 of 2012, on the file of Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore.

For Appellant : M/s.T.Anusuya

For R1 : Exparte before Tribunal

For R2 : Mr.S.ArunKumar

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 28.02.2018 made in M.C.O.P.No.2769 of 2012, on the file of Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore.

2.By consent of both the parties, this Civil Miscellaneous Appeal is taken up for final disposal at the admission stage itself.

3.The appellant is claimant in M.C.O.P.No.2769 of 2012 on the file of Motor Accidents Claims Tribunal, II Additional Sub Court, Cuddalore. He filed the above claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.10.2012.

4.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to rash and negligent driving by the rider-cum-owner of the motorcycle/first respondent and directed the second respondent/Insurance Company being the insurer of the motorcycle to pay a sum of Rs.2,68,000/- as compensation to the appellant/claimant.

5.Not being satisfied with the award amount granted by the Tribunal, the appellant/claimant has come out with the present appeal seeking enhancement of compensation.

6.The learned counsel appearing for the appellant contended that the appellant has suffered permanent disability and loss of earning capacity and the Tribunal ought to have awarded compensation by applying multiplier method instead of granting compensation based on the percentage method. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment and attendant charges are meager and prayed for enhancement of compensation.

7.Per contra, the learned counsel appearing for the second respondent/Insurance Company contended that the appellant has not proved that he has lost his earning capacity and suffered permanent disability. The Tribunal considering the percentage of disability as certified by the Medical Board, has awarded a sum of Rs.3,000/- per percentage of disability. The amounts awarded by the Tribunal under different heads are not meager and the appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

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

9.From the materials on record, it is seen that the appellant was examined by the Medical Board attached to the Government Hospital, Cuddalore. The Medical Board certified that the appellant has suffered 39% permanent disability. The Tribunal considering the evidence, concluded that the appellant will not suffer any loss of earning capacity and awarded a sum of Rs.1,17,000/- under this head by awarding Rs.3,000/- per percentage for 39% disability. The appellant has failed to prove that he suffered functional disability and loss of earning capacity. For the above reason, I hold that there is no error in the award of the Tribunal warranting interference by this Court

for granting compensation towards loss of earning capacity by applying multiplier method. In the nature of injuries sustained by the appellant and the treatment taken by him, the amounts awarded by the Tribunal under different heads are not meager and the same are hereby confirmed.

10. Accordingly, the award passed by the Tribunal is hereby confirmed and the Civil Miscellaneous Appeal is dismissed. The second respondent/Insurance Company is directed to deposit the award amount along with accrued interest and costs, less the amount already 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/claimant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

kj/krk

To

1. The Motor Accidents Claims Tribunal,
II Additional Subordinate Judge,
Cuddalore.
2. The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.R.Sreedhar, Advocate SR.No.87176

+1cc to Mr.S.Arunkumar, Advocate SR.No.87023

C.M.A.No.2897 of 2018

NM(CO)
GMY(20/03/2019)