

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.2728 & 2729 of 2018

K.Karthik .. Appellant in
C.M.A.No.2728/2018

M.Venkatesan .. Appellant in
C.M.A.No.2729/2018

Vs.

1.D.Gandhi

2.ICICI Lombard General Insurance Co. Ltd.,
No.140, 3rd Floor,
Nungambakkam High Road,
Chennai 600 034.
Now at:
No.84 & 85, Harihant Plaza, 1st floor,
Walltax Road, Chennai 600 003.

.. Respondents in both
C.M.As.

(R1 set exparte before the Tribunal)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree dated 03.04.2018 made in M.C.O.P.Nos.4776 & 5000 of 2011 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.A.Shanmugaraj (in both C.M.As.)

For R2 : Ms.R.Sreevidhya

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed against the award and decree dated 03.04.2018 made in M.C.O.P.Nos.4776 & 5000 of 2011 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai.

2.Both appeals are arising out of the same accident and common award. Hence, they are disposed of by this common judgment.

3.The appellants in both appeals are the claimants in M.C.O.P.Nos.4776 and 5000 of 2011 on the file of the II Court of Small Causes, (Motor Accident Claims Tribunal), Chennai. They filed the said claim petitions claiming a sum of Rs.3,00,000/- and Rs.1,50,000/- respectively as compensation for the injuries sustained by them in the accident that took place on 17.01.2011.

4.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the car belonging to the 1st respondent and awarded a sum of Rs.94,200/- and Rs.42,300/- respectively as

compensation to the appellants and directed the 2nd respondent-Insurance Company to pay the same.

5. Not being satisfied with the amounts granted by the Tribunal, the appellants/claimants have come out with these appeals.

6. The learned counsel appearing for the appellants contended that the amounts granted by the Tribunal is meager. The Doctors who were examined as P.Ws. 3 and 4 certified that permanent disability of the appellant in C.M.A.No.2728 of 2018 is 45% and the appellant in C.M.A.No.2729 of 2018 is 30% for knee injury and 25% for head injury. The Tribunal on erroneous consideration, reduced the same to 20% from 45% for the appellant in C.M.A.No.2728 of 2018 and 10% from 55% for the appellant in C.M.A.No.2729 of 2018. The appellants are entitled to compensation for 45% and 55% disability respectively. The Tribunal ought to have taken into consideration the disability suffered by the appellants and ought to have awarded compensation for loss of earning capacity, in addition to compensation for disability. The Tribunal has not awarded any amounts for future loss of earning capacity and ought to have awarded compensation by applying multiplier method.

7. Ms. R. Sreevidhya, learned counsel appearing for the 2nd respondent contended that the Doctors who certified the disability have exaggerated the percentage of disability and it is not supported by any medical guidelines. P.W.3, Doctor has admitted that the disability of the appellant in C.M.A.No.2728 of 2018 is not permanent disability and he has not assessed the disability for entire body. P.W.4, Doctor in the cross examination has stated that he has given certificate based on the information given by the appellant in C.M.A.No.2729 of 2018 and he is not aware whether the said appellant is taking continuous treatment. Both the appellants have not suffered any functional disability and hence, they are not entitled for any enhancement of compensation and prayed for dismissal of the appeals.

8. Heard learned counsel appearing for the appellants as well as the 2nd respondent and perused the materials available on record.

9. The contention of the learned counsel appearing for the appellants in both the appeals is that the Tribunal has erroneously reduced the percentage of disability without any basis and that the Tribunal ought to have awarded compensation for loss of income in addition to compensation for the disability they suffered and appellants

are entitled to future loss of income. All these contentions are contrary to the evidence on record and especially, the evidence of Doctors P.Ws.3 and 4. The Doctors have admitted in the cross-examination that the percentage of disability certified by them do not relate to whole body. P.W.3 Doctor in his cross examination has admitted that disability of the appellant in C.M.A.No.2728 of 2018 is not permanent and he could do the work with some difficulty. The Doctors P.Ws.3 and 4 have not deposed that the appellants cannot do any work or cannot do work as they were doing earlier. The Tribunal considering the evidence of Doctors as P.Ws.3 and 4 in proper perspective, reduced the percentage of disability to 20% and 10% respectively. The reason given by the Tribunal is valid. The appellants have not proved any functional disability and loss of earning capacity. In such circumstances, the appellants are not entitled for any compensation for loss of income and loss of future earning capacity. The amounts awarded by the Tribunal under different heads are just compensation and there is no reason to interfere with the same.

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10. In the result, both the Civil Miscellaneous Appeals are dismissed and sum of Rs.94,200/- and Rs.42,300/- awarded by the Tribunal as compensation to the claimants in both claim petitions

respectively, with interest and costs are confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount with 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 to the credit of M.C.O.P.Nos.4776 and 5000 of 2011 respectively. On such deposit, the appellants/claimants in both the appeals are permitted to withdraw the award amount with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

10.12.2018

Index : Yes / No
Speaking Order : Yes/ No

gsa

To

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V.M.VELUMANI, J.,

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