

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2527 of 2018

Reginald Patrick Rozario

.. Appellant/Petitioner

Vs.

1.S.Uma Maheswari

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

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 10.07.2018 made in M.C.O.P.No.734 of 2015, on the file of the Special Sub Court-I, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

For Appellant : Mr.S.Ravikumar

For R2 : Ms.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation granted by the award dated 10.07.2018 made in M.C.O.P.No.734 of 2015, on the file of Special Sub Court-I, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai.

2.The appellant is the claimant in M.C.O.P.No.734 of 2015 on the file of Special Sub Court-I, (Motor Accidents Claims Tribunal), Small Causes Court, Chennai. He filed the said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.12.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred only due to the rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent-Insurance Company to pay a sum of Rs.88,100/- as compensation to the appellant.

4. Not being satisfied with the compensation awarded by the Tribunal, the appellant has come out with the present appeal, seeking enhancement of compensation.

5. The learned counsel appearing for the appellant contended that the appellant has examined P.W.2-Doctor who after examining the appellant, considering the materials on record and X-Ray, has certified that the appellant has suffered 20% of partial and permanent disability. The Tribunal on erroneous consideration, reduced the percentage of disability to 10%. The Tribunal ought to have applied multiplier method for calculating future loss of earning capacity. The amounts awarded under the different heads are meager and prayed for enhancement of the same.

6. Per contra, the learned counsel appearing for the second respondent-Insurance Company contended that the injuries suffered by the appellant are only simple injuries. The appellant took treatment only as out-patient. No surgery was conducted. The percentage of disability assessed by the P.W.2-Doctor is on an higher side and is not supported by any material. The appellant has not proved that he has suffered loss of income and loss of future earning capacity. The amounts awarded by the Tribunal under different heads are not meager and prayed for dismissal of the appeal.

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

8. From the materials on record, it is seen that the contention of the learned counsel for the second respondent-Insurance Company has considerable force and is acceptable. It is not in dispute that the appellant did not suffer any fracture and did not undergo any surgery. The appellant was treated as out-patient conservatively. The Tribunal considering these facts, has reduced the percentage of disability from 20% to 10%. There is no error in the said finding warranting interference by this Court. The appellant has submitted that the accident occurred when he was not employed in the ship and he will get salary only when he is employed in the ship. As rightly pointed out by the learned counsel appearing for the second respondent-Insurance Company, the appellant has not let in any evidence to show that his earning capacity has been reduced. The Tribunal considered the entire materials on record in proper perspective and awarded compensation under different heads. In view of the fact that the appellant has not suffered any loss of future earning capacity as he has not suffered any functional disability, the contention of the learned counsel appearing for the appellant that the Tribunal ought to have applied multiplier method and awarded compensation, is without merits. There is no

reason to interfere with the said award of the Tribunal.

9. In the result, the Civil Miscellaneous Appeal is dismissed and the sum of Rs.88,100/- awarded by the Tribunal as compensation is confirmed. The second respondent-Insurance Company is directed to deposit the award amount with interest, 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.No.734 of 2015. On such deposit, the appellant/claimant is 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.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

krk/gsa

To

1. The Special Subordinate Judge-I,
(Motor Accidents Claims Tribunal),
Small Causes Court,
Chennai.

2. The Section officer/Record Keeper
VR Section, High Court, Madras 104.

+1 CC to Mr.S.Ravikumar, Advocate sr 79733.

+1 CC to Ms.R.Sreevidhya, Advocate sr 80071.

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VGI (CO)

SP(29/01/2019)

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