

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.01.2019

CORAM:

THE HON'BLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1091 of 2015

K.Krishnamoorthy

..Appellant/Claimant

Vs

1.Louis Walter

2.ICICI Lombard General Insurance Co. Ltd.,
No.140, 3rd Floor,
Nungambakkam High Road,
Chennai - 600 034. ...Respondents 1 & 2/Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.04.2014 made in M.C.O.P.No.4089 of 2012 on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

For Appellant : Mr.A.Shanmugaraj
For R2 : Mrs.R.Sreevidhya

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award dated 30.04.2014 made in M.C.O.P.No.4089 of 2012 on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai.

2.The appellant is claimant in M.C.O.P.No.4089 of 2012 on the file of Motor Accidents Claims Tribunal, IV Judge, Small Causes Court, Chennai. The appellant 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 08.06.2008. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent-insurer of the said motor cycle to pay a sum of Rs.3,45,100/- as compensation to the appellant-claimant at first instance and

recover from the first respondent. Not being satisfied with the award amount granted by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

3.The learned counsel appearing for the appellant contended that the appellant was working as electrician under the contractor viz., Mohan Electrical Works in Dharmaprakash Kalyanamandapam and he was earning Rs.350/- per day by doing electrical work. The Tribunal without considering Ex.P17-salary certificate, erroneously fixed a meagre sum of Rs.6,000/-per month as notional income of the appellant. The appellant has examined three Doctors as PW2 to PW4 and they have certified that the appellant suffered disability at 35%, 45% and 40% respectively, totally 120%. The Tribunal ought to have awarded compensation towards loss of earning capacity at 100% as per the judgment of the Hon'ble Apex Court. The amounts awarded by the Tribunal under different heads are meagre and ought to have awarded more amounts. The appellant has produced medical bills/Exs.P14, P15 and P16 and the Tribunal has erroneously rejected the medical bills/ Exs.P14 and Ex.P15 and awarded only Rs.13,221/- towards medical expenses. The reasons given by the Tribunal for rejecting Exs.P14 and P15 are not valid. Even though the appellant has claimed lesser amount as compensation, the Tribunal ought to have awarded just compensation and prayed for enhancement of compensation.

4.Per Contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant has not produced any acceptable evidence with regard to the claim that he was earning Rs.350/- per day. Even though the learned counsel appearing for the appellant contended that the appellant was working as electrician under the contractor viz., Mohan Electrical Works in Dharmaprakash Kalyana Mandapam, the appellant would not have got work throughout the month and the Tribunal has fixed notional income of the appellant at Rs.6,000/- per month and the same is reasonable. The appellant has not produced any document to prove the amounts spent by him towards medical expenses. The Tribunal has rightly rejected Exs.P14 and P15 by giving valid reason. The Tribunal has awarded excessive amount towards loss of earning, loss of income and permanent disability twice by applying multiplier method as well as percentage method. The total amount of compensation awarded by the Tribunal is excessive and prayed for dismissal of the appeal.

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

6.The learned counsel for the appellant contended that the

appellant was working as electrician in Dharmaprakash Kalyanamandapam under the contractor Mohan Electrical Works and he was paid Rs.350/- per day and to substantiate the same, the appellant has produced Ex.P17/salary certificate and examined PW5-owner of the Mohan Electrical Works. The Tribunal considering the contention of the appellant, evidence of P.W.5 and Ex.P17, held that the appellant would not be getting work continuously on all days and fixed notional income of the appellant at Rs.6,000/- per month. The accident took place on 08.06.2008 and the amount fixed by the Tribunal is reasonable in view of the nature of work done by the appellant.

7.The contention of the learned counsel for the appellant is that the appellant by examining three Doctors as PW2 to PW4 proved that he has suffered totally 120% of disability for three different parts of his body and the Tribunal ought to have awarded compensation towards loss of earning capacity for 100% permanent disability. The Tribunal has erred in fixing 15% disability for entire body and awarding lesser amount. The said contention is without merits and contrary to the judgment of the Hon'ble Apex Court reported in 2011 ACJ volume 1 (Raj Kumar vs Ajay Kumar) and in paragraph 13, the Hon'ble Apex Court held as follows:

"13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

8.A reading of the above judgment of the Hon'ble Apex Court clearly reveals that percentage of disability suffered by a person for a particular part of the body cannot be the disability for entire body. The Hon'ble Apex Court has held that when the disability for different parts of the body amounts to 100%, the same cannot be the disability for entire body. It is for the Tribunal to fix the disability for entire body and percentage for loss of earning capacity. The Tribunal considering the evidence of PW2 to PW4-three doctors, fixed the disability of the appellant for his whole body at 15% and awarded compensation by applying multiplier method. Further, the Tribunal has awarded a sum of Rs.81,000/- for 45% disability at the rate of Rs.1,800/- per percentage of disability. Further, the Tribunal has awarded two sums of Rs.25,000/- each towards loss of earning and loss of earning capacity. The accident occurred in the year 2008 and compensation awarded as mentioned above under different heads are not meagre and there is no reason to enhance the same. As far as Exs.P14 and P15 are concerned, the Tribunal has rejected the same on the ground that there is no proof for the appellant having spent the amount mentioned in the said document, these bills are final bills and the said reasoning is erroneous.

9.It is not in dispute that the appellant took treatment in Apollo hospital. Ex.P14 is issued under the seal of Apollo hospital and it has been stated that a sum of Rs.1,31,192.81 is the expense under various heads and that the total sum of Rs.1,18,000/- deposited earlier and balance sum of Rs.13,192.81 was paid on 21.06.2008. In view of the same, the appellant is entitled to a sum of Rs.1,31,192.81/-.

10.As far as Ex.P15 is concerned, it is of the year 2013 i.e., five years after the accident and there is nothing on record to show that the appellant took treatment in the Noble hospital in the year 2013 in connection with the injuries sustained by him in the accident occurred on 08.06.2008. Hence, the appellant is not entitled to any amount as per Ex.P15 and the rejection of Ex.P15 by the Tribunal is valid. The Tribunal has awarded a sum of Rs.13,221/- towards medical expenses and the appellant is entitled to Rs.1,17,971.81 rounded off to Rs.1,18,000/- (Rs.1,31,192.81 - Rs.13,221/-) in addition to the amount awarded by the Tribunal towards medical expenses. The

amounts awarded by the Tribunal under other heads are hereby confirmed. The pay and recovery ordered by the Tribunal is also confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning	25,000	25,000	Confirmed
2.	Transport to hospital	7,000	7,000	Confirmed
3.	Extra nourishment	15,000	15,000	Confirmed
4.	Medical expenses	13,221	1,18,000	Enhanced
5.	Loss of amenities	10,000	10,000	Confirmed
6.	Loss of earning capacity	25,000	25,000	Confirmed
7.	Pain and suffering	50,000	50,000	Confirmed
8.	Permanent disability Rs.6,000 X 12 X 11 X 15%	1,18,800	1,18,800	Confirmed
9.	Disability of 45% at Rs.1,800/- per percentage	81,000	81,000	Confirmed
	Total	3,45,021 rounded off to 3,45,100	4,49,800	Enhanced by Rs.1,04,700 /-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,45,100/- is hereby enhanced to Rs.4,49,800/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. It is made clear that the appellant/claimant shall not be entitled for any interest for the delay period in filing the appeal. The second

respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along 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, at first instance and recover the same from the first respondent. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar (Admin II)

//True Copy//

Sub Assistant Registrar

kj/rst

To

1. The Motor Accidents Claims Tribunal,
IV Judge, Small Causes Court, Chennai.

+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.59191

+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No. 5827

C.M.A.No.1091 of 2015

VD(CO)
GN(11/06/2019)

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