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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.3503 of 2010

D.Devadoss

... Appellant/Petitioner

..Vs..

1.M/s.Sri Rajendran Transport,
No.40, Venkatanarayana Road,
T.Nager,
Chennai - 17.

2.The United Insurance Co. Ltd.,
Silingi Buildings, HUB,
752, Anna Salai, V - Floor,
Chennai -6.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment in M.C.O.P.No.376 of 2000 dated 07.07.2004 on the file of the VI - Small Causes Court Judge, Chennai/Motor Accident Claims Tribunal, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Surya

For Respondents : Mr.D.Bhaskaran for R2
R1 - exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.376 of 2000 on the file of the VI Judge, Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the M.A.C.T. Rules seeking compensation of Rs.4,00,000/- for the injuries sustained by him in a road accident that took place on 22.11.1999, when he was riding his bicycle along G.S.T. Road, Pallavaram, Chennai.



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2.The appellant/claimant was proceeding towards Meenambakkam from Pallavaram in his bicycle. At about 07.30 p.m., a speeding lorry bearing Registration No. TN 09 J 6379 belonging to the first respondent hit the bicycle, as a result of which, he sustained injuries.

3.According to the appellant/claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TN 09 J 6379 belonging to the first respondent was the cause of the accident and that since the said vehicle was insured with the second respondent, both of them are jointly and severally liable to pay compensation to him.

4.The owner of the lorry remained absent before the tribunal and therefore, he was set ex-parte. The United India Insurance Company Limited contested the claim petition. After analysing the evidence on record, the tribunal awarded compensation of Rs.2,00,000/- together with interest at the rate of 9% per annum. Not satisfied with the award passed by the tribunal, the appellant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988 seeking for enhancement of compensation.

5.Mr.K.R.Ponnusamy, learned counsel appearing for the appellant would contend that the appellant was a lorry driver by profession and that he sustained a head injury. He drew the attention of this Court to the discharge summary (Ex.P1), which shows that the appellant/claimant has sustained the following injuries:

- " ® Parietal Fissure #Z
- ® Fronto Parietal DH
- ® Fronto Parietal Craniotomy
- DH evacuation done"

The discharge summary (Ex.P1) also shows the CT Scan report of the Brain as follows:

- " ® Parietal Fissure #
- ® Fronto Parietal DH
- Ventricles N in size
- No mid line shift
- Basal cisten (N)"

6.A perusal of the photographs (Ex.P3) shows that the appellant/claimant has sustained severe injury on his head and since the appellant/claimant was working as a driver, he would definitely find it difficult to continue his job as a driver. In the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 it has been held thus:

"8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon



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should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

7. Dr. Thiru. Gopalan (P.W.3) has assessed the partial permanent disability as 75%. The tribunal however, has awarded only a sum of Rs.75,000/- towards partial permanent disability. The tribunal did not apply the multiplier method, especially, when the appellant/claimant has suffered functional disability on account of his head injury. The age of the appellant/claimant is mentioned as 40 years in the claim petition and therefore, the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Since the accident took place in the year 1999, the income of the appellant/claimant is fixed at Rs.2,500/- per month. As per the decision rendered in National Insurance Co. vs Pranay Sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospects of the appellant/claimant. Thus after adding future prospects, a sum of Rs.3,500/- is taken up for calculating (Rs.2,500/- + Rs.1,000/- (40% of Rs.2,500/-) = Rs.3,500/-) the loss of earning capacity.

$$= \text{Rs.}3,500/- \times 15 \times 12 \times 75/100$$

$$= \text{Rs.}4,72,500/-$$

The appellant/claimant would not have been in a position to attend to his work at least for one year on the account of the accident and therefore, loss of income is Rs.2,500/- x 12 = Rs.30,000/-.



8.The enhanced compensation under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.4,72,500/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.10,000/-
6.	Damage to clothes	Rs.1,000/-
7.	Loss of amenities	Rs.15,000/-
8.	Loss of income	Rs.30,000/-
9.	Future medical expenses	Rs.10,000/-
Total		Rs.5,78,500/-

Thus the compensation awarded by the tribunal is enhanced to Rs.5,78,000/-.

9.In the result,

(i)The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii)The compensation awarded by the tribunal is enhanced from Rs.2,00,000/- to Rs.5,78,000/-.

(iii)The appellant/claimant is directed to pay the court fee for the enhanced compensation amount within a period of two weeks from today i.e., 07.01.2019 for the enhanced compensation amount and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The second respondent, the United India Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.5,78,000/- (less the amount already deposited) together with interest at the rate of 7.5% per annum on Rs.5,68,000/- from the date of numbering the appeal till the date of deposit to the credit of M.C.O.P.No.376 of 2000, dated 07.07.2004, on the file of the VI Judge, Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this order. No interest is awarded for future medical expenses (i.e., Rs.10,000/-).

(v)It is made clear that the appellant/claimant is entitled to claim interest at the rate of 7.5% per annum only from the date of numbering this appeal.



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(vi) On such deposit being made by the second respondent, the appellant/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-

Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

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To
The VI Judge,
The Motor Accidents Claims Tribunal,
Court of Small Causes, Chennai.

+1cc to Mr.D.Bhaskaran, Advocate SR.No.1272

+1cc to M/s.Anand& Surya, Advocate SR.No.1515

C.M.A.No.3503 of 2010

SSD (CO)
GMY (21/10/2019)