



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.04.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1887 of 2015

K.Siddhiq

.. Appellant/Petitioner

Vs.

1. Shivananda

2. IFFCO Tokio General Insurance Co. Ltd.,
KSCMF Building, 3rd Floor,
3rd Block, No.8, Cunningham Road,
Bangalore.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.09.2014, made in M.C.O.P.No.4486 of 2011, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

For Appellant : Mr.K.Suryanarayanan

For R2 : Ms.K.Saraswathi
for M/s.C.R.Krishnamoorthy

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant-claimant, seeking enhancement of the compensation granted by the award dated 24.09.2014, made in M.C.O.P.No.4486 of 2011, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai.

2.The appellant-claimant filed M.C.O.P.No.4486 of 2011, on the file of the II Small Causes Court, (Motor Accident Claims Tribunal), Chennai, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.10.2011. Subsequently, by the order dated 28.07.2015 made in M.P.No.1 of 2015 in C.M.A.SR.No.60532 of 2015, the claim amount has been amended to Rs.13,40,000/-.



3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent, driver-cum-owner of the van and directed the 2nd respondent-Insurance Company to pay a sum of Rs.6,40,000/- as compensation to the appellant.

4.Not being satisfied with the amounts granted by the Tribunal in the award dated 24.09.2014, made in M.C.O.P.No.4486 of 2011, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant underwent two surgeries and he was suffering from loss of memory, reduction in IQ, Post traumatic Vertigo and such other mental impairment. The Tribunal having found that due to the injuries and disability, the appellant lost his earning capacity, erroneously fixed loss of earning capacity at 10%, whereas the Doctor assessed 60% partial and permanent disability. The amount awarded by the Tribunal at the rate of Rs.2,000/- per percentage for 50% disability is very low. The Tribunal ought to have awarded compensation by adopting multiplier method for 60% disability as assessed by P.W.2-Doctor. The amounts awarded by the Tribunal for pain and suffering and other heads are meagre and prayed for enhancement of the compensation.

6.Per contra, the learned counsel appearing for the 2nd respondent-Insurance Company contended that the appellant have not proved that he suffered functional disability and loss of earning power. P.W.2-Doctor assessed 50% disability with regard to particular part of the body and not for the whole body. The Tribunal erroneously awarded compensation for the disability as well as loss of earning power separately. The amounts awarded by the Tribunal under different heads are excessive and prayed for dismissal of the appeal.

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

8.From the materials on record, it is seen that P.W.2-Doctor has examined the appellant and assessed the disability at 60%. The Tribunal considering the evidence of P.W.2-Doctor and disability certificate, reduced the percentage of disability to 50% and granted compensation at the rate of Rs.2,000/- per percentage. The accident is of the year 2011. The appellant is entitled to a sum of Rs.1,50,000/- towards disability at the rate of Rs.3,000/- per percentage for 50% disability. As far as the loss of earning power is concerned, the Tribunal considering



the nature of work, injuries and disability, fixed 10% loss of earning power. The percentage of disability fixed by the Tribunal for loss of earning power is less. The loss of earning power is fixed at 20%. Thus, the amounts granted by the Tribunal for loss of earning power is modified to Rs.6,48,000/- [Rs.15,000/- x 12 x 18 x 20%]. The appellant has taken treatment as in-patient in Hospital from 08.11.2013 to 20.11.2013. The Tribunal failed to grant any amount towards loss of amenities and attendant charges. Hence, a sum of Rs.30,000/- and Rs.20,000/- are granted towards the said heads respectively. The amounts granted by the Tribunal towards extra nourishment, damages to clothes are meagre and the same are enhanced to Rs.30,000/- and Rs.2,000/- respectively. The amounts granted by the Tribunal under other heads are just and reasonable and the same are 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 income	90,000/-	90,000/-	confirmed
2.	Transportation	10,000/-	10,000/-	confirmed
3.	Extra nourishment	15,000/-	30,000/-	enhanced
4.	Damages to clothes	1,000/-	2,000/-	enhanced
5.	Medical expenses	60,000/-	60,000/-	confirmed
6.	Pain and suffering	40,000/-	40,000/-	confirmed
7.	Disability	1,00,000/-	1,50,000/-	enhanced
8.	Loss of earning power	3,24,000/-	6,48,000/-	enhanced
9.	Loss of amenities	-	30,000/-	granted
10.	Attendant charges	-	20,000/-	granted
	Total	6,40,000/-	10,80,000/-	Enhanced by Rs.4,40,000/-



9. In the result, the appeal is partly allowed and amount awarded by the Tribunal at Rs.6,40,000/- is enhanced to Rs.10,80,000/- along with interest and costs. The 2nd respondent is directed to deposit the enhanced award amount along with interest and costs, 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.4486 of 2011. On such deposit, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount already withdrawn if any, by filing necessary application before the Tribunal. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

gsa

To

1. The II Judge,
Small Causes Court,
(Motor Accident Claims Tribunal),
Chennai.

+1 CC to Mr.K.Suryanarayanan, Advocate sr 38377

+1 CC to Mr.C.R. Krishnamoorthy, Advocate sr 37982.

C.M.A.No.1887 of 2015

MP (CO)
SP (14/10/2019)