IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.394 of 2013

Nagarajan ...Appellant/Petitioner

-Vs-

1. S.Ramachandran

2. The New India Insurance Co. Ltd.,
   No.45, Moore Street,
   Chennai - 1. ...Respondents/ Respondents

PRAYER :
The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 25.09.2007 made in MACTOP.No.4873 of 2002 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes Court, Chennai.

For Appellant : Mr. F.Terry Chellaraja

Respondent-1 : Set exparte

Respondent.2 : Mr. K.Padmanabhan

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accidents Claims Tribunal (II Judge, Small Causes Court,) Chennai, dated 25.09.2007 in and by the award passed in MCOP.No.4873 of 2002, the claimant has filed the present appeal seeking for enhancement of the compensation.

2. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3. On 10.08.2002 at about 8:00 p.m., when the claimant was walking at L.B.Road, near J2 Adayar police station, a Motor cycle, bearing Registration No.TN-09-Z-2915, driven by the first respondent came in a rash and negligent manner and dashed against the petitioner and thus caused the accident. In the said accident, the claimant sustained grievous injuries. Hence, he filed a claim petition against both the insured/first respondent and the insurer/second respondent seeking compensation in a sum of Rs.2,00,000/-

4. The Insurance Company resisted the Claim Petition by filing a counter statement, inter alia contending that, it was the claimant, who contributed to the accident, inasmuch as, he was darting across the road unconcerned about the vehicular traffic on the road, and this has led to the accident. Therefore, the Insurance Company cannot be mulcted with any liability to pay compensation to the claimant. It was further stated that the compensation amount claimed by the claimant is excessive, and therefore, the Insurance Company prayed for dismissal of the claim petition.

5. Before the Tribunal, the claimant examined himself as P.W.1 besides examining one Dr.N.Saichandran as P.W.2 and marked 9 documents as Exhibits Ex.P1 to Ex.P9. On the side of the Insurance Company, neither any witness were examined nor any documents were marked.

6. The Tribunal on the basis of both oral and documentary evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the Motorcycle by the first respondent, and therefore, held that both the owner of the vehicle and the Insurance Company, with whom the Motorcycle was insured, are jointly and severally liable to pay the compensation amount and awarded a total sum of Rs.71,000/- as compensation to the appellant and directed the second respondent/Insurance Company to pay the same.

7. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same, as stated supra.

8. The learned counsel appearing for the appellant/claimant would contend that the claimant was 61 years old at the time of accident and he was working as a Medical Transcription Consultant and earning Rs.5,000/- per month, and, on account of the accident he is not able to do his work, as before. But the Tribunal has failed to award any compensation towards Loss of Income. The learned counsel further submitted that the Tribunal, while determining the loss of earning during the

treatment period, though taken note of the fact that the claimant was earning Rs.5000/- per month, and due to the fracture sustained by him in the accident, the claimant undertook treatment for seven days and was unable to work for a period of three months thereafter, fixed the monthly income only at Rs.3,000/- per month, and awarded a sum of Rs.9,000/- under the head " Loss of Earnings" which is too low. The learned counsel further submitted that due to the accident, the claimant sustained compound fracture of left humerus and Dr.N.Saichandran (PW2) had assessed the partial and permanent disability suffered by the claimant as 35%, whereas, the Tribunal has reduced it to 30% and fixed a sum of Rs.1000/- towards per percentage of disability, and awarded a very meager amount of Rs.30,000/- as compensation to the claimant towards disability. Hence, he prays for appropriate enhancement of the compensation awarded by the Tribunal.

9. Per contra, the learned counsel appearing for the second respondent/Insurance Company submitted that the Tribunal has awarded a just and fair compensation of Rs.71,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

10. Heard the learned counsel for the appellant and the learned counsel for the second respondent.

11. On a perusal of the award, it is seen that since the claimant has not produced any document as proof to show the monthly income earned by him, the Tribunal has not awarded any compensation towards Loss of Income. However, the Tribunal taking into consideration that the age of the claimant was 61 years at the time of the accident and working as a Medical Transcription Consultant and earning Rs.5,000/- p.m, as stated in the claim petition, fixed the monthly income at Rs.3,000/- p.m. by following the Hon'ble High Court's Ruling TAC 2002 (2) page 260. Though the claimant has not produced any document as proof to show that he was earning Rs.5000/- per month, this Court, considering the fact that the claimant was working as Medical Transcription Consultant and by following the principles laid down by the Hon'ble Supreme Court, in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, wherein, the monthly income of a vegetable vendor, who sustained injuries in the accident in the year 2008 is fixed at Rs.6,500/-, is inclined to fix a sum of Rs.5000/- per month as notional monthly income of the claimant. Therefore, this Court is inclined to fix the monthly income at Rs.5,000/-. Thus, taking into consideration the nature of injury suffered by the claimant/appellant, viz., compound fracture of surgical neck of left humerus, it would have affected the earning power of the appellant/claimant at least for a period of five months, and

hence, it would be appropriate to enhance the loss of earning from Rs.9,000/- to Rs.25,000/- (i.e. Rs,5,000/- x 5months = Rs.25,000/-.

12. So far as the compensation awarded by the Tribunal towards disability is concerned, as rightly pointed by the learned counsel for the petitioner, the Tribunal has awarded only a meager sum of Rs.30,000/- towards disability. When, Dr.N.Saichandran (PW2) had assessed the partial and permanent disability suffered by the claimant as 35% and issued Exs.P.8/ Disability Certificate and P.9/X-ray, the Tribunal, without rhyme or reason ought not to have reduced it to 30%. Similarly, the compensation fixed by the Tribunal towards per percentage of disability, viz., Rs.1,000/- is less. Hence, this Court fix the partial and permanent disability as 35% as assessed by the Doctor (PW2) and the amount of Rs.1,000/- per percentage is enhanced to Rs.2,000/- per percentage i.e., (2,000 x 35% = 70,000). Thus, this Court deems it fit to award Rs.70,000/- towards Partial and Permanent Disability suffered by the appellant. Similarly, the compensation awarded by the Tribunal, towards Extra Nourishment at Rs.1,000/- is low and the same is enhanced to Rs.10,000/-.

13. So far as the compensation awarded towards Transportation is concerned, the Tribunal has awarded only a sum of Rs.1,000/-, and the same is enhanced to Rs.5,000/-. The Tribunal has failed to award any amount towards Attender charges, and this Court is inclined to award a sum of Rs.5,000/- under this head. Insofar as the compensation awarded by the Tribunal under the heads of i) Medical Expenses at Rs.20,000/- and Pain and Suffering at Rs.10,000/- are concerned, and the same stand confirmed.

| S.No | Head | Amount granted |
|---|---|---|
| 1 | Transportation | Rs.5,000/- |
| 2 | Extra nourishment | Rs.10,000/- |
| 4 | Medical expenses | Rs.20,000/- |
| 5 | Pain and sufferings | Rs.10,000/- |
| 6 | Attender charges | Rs.5,000/- |
| 7 | Loss of earning capacity due to partial and permanent disability at 35% | Rs.70,000/- |
| 8 | Loss of earning for five months | Rs.25,000/- |
| Total | | Rs.1,45,000/- |

14. The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court with interest

and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order. The claimant is not entitled to interest for the enhanced amount for the delay period.

15. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.71,000/- is enhanced to Rs.1,45,000/-. No costs. Consequently, connected miscellaneous petition is also closed, if any.

dpq

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To
1. II Court of Small Causes Court,
Motor Accidents Claims Tribunal, Chennai.

+1cc to Mr.K.Padmanabhan, Advocate, SR.No.23864
+1cc to M/s.M.Malar, Advocate, SR.No.24111

C.M.A.No.394 of 2013

Kak(05/07/2019)