IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.599 of 2013

G.Dilip ... Appellant/Petitioner

..Vs..

1.P.Yuvaraj

2.M/s.ICICI Lambord General Insurance
Company Limited,
No.140, Chottabhai Centre,
Nungambakkam High Road,
Chennai 6.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 24.01.2012 in M.C.O.P.No.850 of 2009 on the file of II Judge, Court of Small Causes, Motor Accidents Claims Tribunal, Chennai.

For Appellant : Mr.C.Richard Suresh Kumar
for M/S.K.Sivakumar

For Respondents : R1 - Set Exparte before Claims Tribunal
R2- Mrs.R.Sree vidhya

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai, in and by its award dated 24.01.2012 in M.C.O.P.No.850 of 2009, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 10.01.2009, at about 13.00 hours, when the appellant/claimant was riding a motorcycle, bearing Registration No. TN 22 BC 6580, from west to east direction on northern side of the Pazhavanthangal Sub way, a Car, bearing Registration No. TN 05 U 4484 owned by the first respondent, insured with the second respondent, came from the same direction in a rash and

negligent manner, and hit the motorcycle from behind, as a result of which, the appellant/claimant sustained grievous injuries all over his body. Hence, the claimant made a claim in a sum of Rs.12,00,000/- as compensation as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4. The second respondent/Insurance Company, Chennai contested the claim petition by filing a counter statement, denying their liability on the ground that the driver of the Car was not having valid driving licence, and hence, they are not liable to pay compensation. Further, they also disputed the age, occupation, income of the claimant and the injuries sustained by him. Furthermore, they contended that the claimant rode the motorcycle in a careless manner, and therefore, there is contributory negligence on the part of the claimant also and that, the claim made is excessive. Thus, the Insurance Company prayed for dismissal of the claim petition on the aforesaid grounds.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining Dr.J.R.R.Thiagarajan as P.W.2, Dr.N.Saichandran as P.W.3 and one Selvam as P.W.4 and marked 27 documents as Exs.P.1 to P.27. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was due to the rash and negligent driving of the car, belonging to the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.6,69,000/-. Out of total compensation amount of Rs.6,69,000/-, a sum of Rs.20,000/- is awarded towards 'future medical expenses' which carried no interest. The rate of interest at 7.5% per annum is applicable for the balance amount of Rs.6,49,000/- from the date of Petition till payment as compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.2,70,000/-
2.	Permanent Disability	Rs.50,000/-

S.No	Head	Amount granted
3.	Loss of income	Rs.15,000/-
4.	Transportation	Rs.5,000/-
5.	Extra Nourishment	Rs.5,000/-
6.	Damage to clothes and articles	Rs.1,000/-
7.	Medical Expenses	Rs.2,78,000/-
8.	Future Medical Expenses	Rs.20,000/-
9.	Pain and Sufferings	Rs.25,000/-
Total		Rs.6,69,000/-

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already stated above.

8. The learned counsel appearing for the appellant/claimant submitted that the age of the claimant was 20 years at the time of the accident and he was working as an Office Assistant cum Supervisor in M/s. Nanchil Builders Private Limited, Adambakkam, Chennai, and earning a sum of Rs.7,000/- per month, as per the Salary Certificate (Ex.P.25). However, the Tribunal, while determining the compensation towards Loss of Earning Power, fixed the monthly income of the claimant at Rs.5,000/- per month. In this connection, the learned counsel placed reliance on the decision of the Honourable Supreme Court, in the case Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 (SC), wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/-. The learned counsel, therefore, submitted that, when the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income fixed by the Tribunal at Rs.5,000/-, who sustained injuries in the accident occurred in the year 2009, is meager. He, therefore, submitted that, since the claimant was aged about was working as an Office Assistant cum Supervisor and earning Rs.7,000/- per month, the monthly notional income ought to have been fixed by the Tribunal at Rs.6,500/- instead of Rs.5,000/-, and therefore, requested this Court to fix the monthly notional income of the injured atleast to a sum of Rs.6,500/- per month.

9. The learned counsel for the appellant/claimant further submitted that the Tribunal has failed to award any amount towards 'future prospects' and as held by the Honourable Supreme Court, in National Insurance Co. vs Pranay sethi and others

reported in 2017 (2) TNMAC 601, the Tribunal ought to have awarded 40% towards future prospects of the injured. The learned counsel further submitted that the when both the Doctors, who were examined as P.W.2 and P.W.3 assessed the disability sustained by the claimant as 40% and 50% respectively, the Tribunal, without assigning any reasons, has fixed the functional disability as 25% and determined compensation towards Permanent Disability, which is unreasonable. The learned counsel furthermore submitted that the Tribunal has failed to award any amount towards "Loss of amenities" and "Attender's Charges", and even the compensation awarded by the Tribunal under other heads are low and therefore, prays for appropriate enhancement of the award passed by the Tribunal.

10. The learned counsel appearing for the second respondent/Insurance Company strongly contended that the Tribunal has awarded a just and fair compensation, and the same requires no interference, and if at all this Court feels that the award needs modification, the failure of the Tribunal to award compensation towards future prospects alone requires interference.

11. Keeping in view the submissions made on either side, this Court has carefully gone through the entire materials available on record. Though the learned counsel appearing for the appellant/claimant relied on the decision in Syed Sadiq (supra), wherein, the Hon'ble Supreme Court has awarded a sum of Rs.6,500/- per month for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008, however, it could be seen in the very same said decision that no separate compensation was awarded under the head 'Permanent Disability'. Whereas, in the present case on hand, since the Tribunal has awarded a sum of Rs.50,000/- separately for 'permanent disability ', the monthly notional income fixed by the Tribunal as Rs.5,000/- is just and proper, and this Court is not inclined to interfere on the same, in the absence of any Appeal on the part of the Insurance Company.

12. As far as the compensation fixed by the Tribunal towards Permanent Disability is concerned, except the evidence of P.W.2 and P.W.3 stating that on account of the accident, the disability sustained by the claimant is 40% and 50% respectively, and issuance of Disability Certificates (Ex.P.20 & Ex.P.22) in this regard, there is no tangible evidence produced to prove the same. In the absence of any such evidence, the disability assessed by the P.W.2 and P.W.3 cannot be taken into consideration. Therefore, this Court finds that the functional disability fixed by the Tribunal at 25% is just and fair, requires no interference in this Appeal.

13. As rightly pointed out by the learned counsel appellant, the Tribunal has not awarded any amounts towards future prospects, especially, when the injured was aged just 20 years on the date of accident. As held by the Honourable Supreme Court, in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards future prospects and if added, the monthly income of the claimant works out to a sum of Rs.7,000/-(Rs.5,000/- + Rs.2,000/-) per month. Thus, the loss of earning power of the injured claimant is determined as follows:

Calculation:

Notional Income = Rs.5,000/-
40% Future Prospects = Rs.2,000/-
Total = Rs.5,000/- + Rs.2,000/-
= Rs.7,000/-

Loss of earning capacity
= Rs.7,0000/- x 18 x 12 x 25/100
= Rs.3,78,000/-

14. Similarly, the compensation awarded by the Tribunal under the heads "Transportation" and " Extra Nourishment" at a sum of Rs.5000/- each, are low and the same are hereby modified and enhanced to a sum of Rs.10,000/- each. As rightly pointed out by the learned counsel for the appellant/claimant, the Tribunal has failed to award any amount towards "Loss of amenities" and "Attender's Charges", and this Court is inclined to award a sum of Rs.10,000/- towards "Loss of amenities" and Rs.20,000/- towards "Attender's Charges". The compensation awarded by the Tribunal under other heads, viz., i) Loss of income; ii) Damage to Clothes and articles; iii) Medical Expenses; iv) Future Medical Expenses; and v) Pain and sufferings, are concerned, the same are found to be just and reasonable and requires, no reduction. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.3,78,000/-
2.	Permanent Disability	Rs.50,000/-
3.	Loss of income	Rs.15,000/-
4.	Transportation	Rs.10,000/-
5.	Extra nourishment	Rs.10,000/-
6.	Damage to clothes	Rs.1,000/-
7.	Medical Expenses	Rs.2,78,000/-
8.	Future Medical Expenses	Rs.20,000/-

S.No	Head	Amount granted
9.	Pain and sufferings	Rs.25,000/-
10.	Loss of amenities	Rs.10,000/
11	Attender charges	Rs.20,000/-
Total		Rs.8,17,000/-

Thus, the appellant/claimant is entitled to a sum of Rs.8,17,000/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

15. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.6,69,000/- to Rs.8,17,000/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv)The second respondent/ICICI Lombard General Insurance Company Limited is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six 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.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr

To

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

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to Ms.R.Sree Vidya, Advocate Sr.33998
+2cc to Mr.S.Sankaralingam, Advocate Sr.34203

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srg 26/06/2019