

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1894 of 2014

R.Thirumalai Nambi

...Appellant
/Petitioner

vs.

1.Mohamad Aejaaz

2.ICICI Lombard General Insurance Co. Ltd.,

No.140, Chotabai Centre, II Floor,

Nungambakkam High,

Chennai - 600 034.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 13.12.2013 passed in MCOP.No.436 of 2013 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai.

For Appellant : Mrs.M.Malar

For Respondents : Mrs.R.Sreevidhya for R2
No appearance for R1

J U D G M E N T

The appellant is the claimant in MCOP.No.436 of 2013 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident on 14.10.2012.

2. The case of the claimant is that on 14.10.2012, he was riding his motorcycle bearing Registration No. TN 01 AL 3639 and was proceeding towards T.Nagar from Kodambakkam and at about 11.45 am, a speeding motorcycle bearing Registration No. TN 05 AJ 9941 belonging to the first respondent and insured with the second respondent hit him from behind, as a result of which, he sustained grievous injuries all over his body.

3. According to the claimant, the rash and negligent riding of the rider of the motorcycle belonging to the first respondent was the cause of the accident and that since the said motorcycle was insured with ICICI Lombard General Insurance Company, the owner and the insurer are jointly and severally liable to pay compensation.

4. The owner of the motorcycle remained absent before the Tribunal and therefore he was set exparte. The second respondent / ICICI Lombard General Insurance Company contested the claim petition on all the grounds available to the insured. The learned IV Judge, Court of Small Causes/Motor Accident Claims Tribunal, Chennai, while awarding compensation of Rs.1,70,000/- together with interest at the rate of 7.5% per annum to the claimant, directed the ICICI Lombard General Insurance Company to pay the compensation in the first instance and then recover the same from the owner of the motorcycle bearing Registration No. TN 05 AJ 9941, since the rider of the said motorcycle was not in possession of a valid driving licence on the date of accident. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Heard Mrs.M.Malar, learned counsel appearing for the appellant/ claimant and Mrs.R.Sreevidhya, learned counsel appearing for the second respondent. No appearance on behalf of the first respondent.

6. A perusal of the discharge summary (Ex.P2) shows that the appellant/claimant has sustained Cervico Trochanteric fracture of left femur and screw was also fixed on his left hip. Since he was working as a consultant, he would definitely find it difficult to continue his job and therefore, adopting multiplier method is warranted in the present case as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.M.Saravanabavanandam (PW2), has assessed the partial permanent disability as 65%. Since the disability of 65% cannot be for the whole body, 25% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 66 years on the date of the accident, the proper multiplier to be adopted in the instant case is 5, as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The claimant has filed salary slip (Ex.P3) showing his monthly income as Rs.23,000/-. However, there is no seal of the Company or the signature of the employer. Form-16A (Ex.P4) also does not reflect the actual monthly income received by the claimant. Since it is contended in the claim petition that the claimant was working as a consultant in a private concern, a sum of Rs.15,000/- is fixed as his notional monthly income.

Loss of earning capacity:

= Rs.15,000/- x 12 x 5 x 25/100

= Rs.2,25,000/-

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for 3 months and therefore, a sum of Rs.45,000/- (Rs.15,000/- x 3 months) is awarded towards "loss of income". The award passed by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.2,25,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.10,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.5,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.45,000/-
Total		Rs.3,20,500/-

7. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,70,000/- to Rs.3,20,500/-, which shall carry interest at the rate of 7.5% per annum.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / ICICI Lombard General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.3,20,500/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.436 of 2013 on the file of the Motor Accident Claims Tribunal / IV Judge, Court of Small Causes, Chennai within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the motorcycle bearing Registration No. TN 05 AJ 9941 on the same cause of action.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mbi

To

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

2.VR Section,
High Court of Madras.

+1cc to Mrs.R.Sreevidhya, Advocate SR.93310

+1cc to Mrs.M.Malar, Advocate SR.93099

CMA.No.1894 of 2014

PVS(CO)
CB(03/09/2020)



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