

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.117 and 598 of 2020
and C.M.P.No.3657 of 2020

C.M.A.No.117 of 2020
G.Hemaraj

.. Appellant

Vs.

1.Y.Ramakrishna Reddy

2.United India Insurance Co. Ltd.
Policy issuing Office No.S-121
Railway station road
Nellore, Andhra Pradesh-524 121.
D.O.No.134, Greams Road
Anna salai, Chennai-600 002.

.. Respondents

C.M.A.No.598 of 2020
United India Insurance Co. Ltd.
Policy issuing Office No.S-121
Railway station road
Nellore, Andhra Pradesh-524 121.
D.O.No.134, Greams Road
Anna salai, Chennai-600 002.

.. Appellant

Vs.

1.G.Hemaraj

2.Y.Ramakrishna Reddy

.. Respondents

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 08.08.2019 made in M.C.O.P.No.4492 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

In C.M.A.No.117 of 2020

For Appellant : Mr.P.Nagaraaj

For R2 : Mr.D.Bhaskaran

In C.M.A.No.598 of 2020

For Appellant : Mr.D.Bhaskaran

For R1 : Mr.P.Nagaraj

C O M M O N J U D G M E N T

C.M.A.No.117 of 2020 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 08.08.2019 made in M.C.O.P.No.4492 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

C.M.A.No.598 of 2020 is filed by the Insurance Company challenging the award dated 08.08.2019 made in M.C.O.P.No.4492 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the claim petition in M.C.O.P.No.4492 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.V, Chennai, claiming a sum of Rs.43,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.08.2010.

4.According to the claimant, on the date of accident, i.e., on 08.08.2010 at about 11.30 hours, while the claimant was travelling as pillion rider in a motorcycle driven by one Janarthan on the New Bypass Road on Gudur to Vindur Road, a Bolero car belonging to the 1st respondent, driven by its driver in a rash and negligent manner, dashed against the motorcycle and caused the accident. Due to the accident, the claimant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the respondents.

5.The 1st respondent, owner of the car, remained exparte before the Tribunal.

6.The 2nd respondent/Insurance Company filed counter statement denying the averments made by the claimant and stated

that the claimant has to prove that the driver of the car belonging to the 1st respondent possessed valid driving license and the said car was insured with the 2nd respondent at the time of accident. The accident did not occur due to rash and negligent driving by the driver of the car as alleged by the claimant. On the other hand, the accident has occurred only due to rash and negligent riding by the rider of the motorcycle. The owner and insurer of the motorcycle are not made as parties. The claim petition is bad for non-joinder of owner and insurer of the motorcycle and therefore, the 2nd respondent/Insurance Company is not liable to pay any compensation to the claimant. The 2nd respondent/Insurance Company has also denied the age, avocation and income of the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7. Before the Tribunal, the rider of the motorcycle was examined as P.W.1, the claimant examined himself as P.W.2, Dr. Rajappa and Dr. Mathiazhagan, were examined as P.W.3 & P.W.5 respectively and one Thiagarajan, co-worker of the claimant, was examined as P.W.4 and marked twenty four documents as Exs. P1 to P24. The 2nd respondent/Insurance Company did not let in any oral and documentary evidence.

8. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the car belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said car to pay a sum of Rs. 8,26,300/- as compensation to the claimant.

9. Against the said award dated 08.08.2019 made in M.C.O.P.No.4492 of 2012, the 2nd respondent/Insurance Company has come out with C.M.A.No.598 of 2020 challenging quantum of compensation awarded by the Tribunal. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.117 of 2020 seeking enhancement of compensation.

10. The learned counsel appearing for the claimant contended that the claimant was an M.B.A. graduate working as Sales Executive in Heritage Company, Poonamallee, Chennai. Due to the injuries, he could not do the work as he was doing earlier. P.W.3/Ophthalmologist has assessed the disability of the claimant as 40% with regard to right eye traumatic optic neuropathy. P.W.5/Ortho Doctor has assessed the disability of the claimant as 40% with regard to fracture of frontal bone and right distal. The Tribunal without any basis, reduced the same to 35% and 30% respectively. The multiplier applied by the

Tribunal for arriving at disability and loss of earning capacity is not proper. The Tribunal ought to have granted more compensation towards loss of earning power. The 2nd respondent/Insurance Company has not let in any evidence to disprove the evidence of P.W.3 and P.W.5/Doctors. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of C.M.A.No.598 of 2020 filed by the 2nd respondent/Insurance Company.

11.The learned counsel appearing for the 2nd respondent/Insurance Company contended that the Tribunal erred in relying on the disability certificate as certified by P.W.5/Doctor. The assessment of the disability by the Doctor is not based on the scientific method. They have not filed any working sheet for awarding compensation towards disability. The Tribunal failed to note that the disability suffered by the claimant is only physical disability and that will not cause loss of earning power. The claimant completely cured after treatment and failed to prove that even during the treatment period, he suffered loss of income. The claimant failed to prove that he could not continue his avocation after the accident. The Hon'ble Apex Court in the judgment reported in 2010 (2) TNMAC 581 SC (Raj Kumar vs Ajay Kumar) held that the Tribunal should not apply multiplier method mechanically for awarding compensation. The Tribunal without any basis, fixed 20% as loss of earning capacity and percentage of disability and adopted multiplier method for granting compensation. The amounts awarded by the Tribunal towards pain and suffering, extra nourishment, transportation and loss of amenities are excessive and prayed for setting aside the award of the Tribunal and for dismissal of C.M.A.No.117 of 2020 filed by the claimant.

12.Heard the learned counsel appearing for the claimant as well as the 2nd respondent/Insurance Company and perused the entire materials available on record.

13.It is the contention of the claimant that he was working as Sales Executive in Heritage Company, Poonamallee, Chennai and was earning a sum of Rs.15,000/- per month. The claimant examined one Thiyagarajan, co-worker of the claimant as P.W.4, who deposed in his evidence that the claimant was earning a sum of Rs.9,237/- per month and produced Exs.P13 to P18/documents. The Tribunal accepting the same, fixed a sum of Rs.9,237/- as monthly income of the claimant. The claimant examined P.W.3 and P.W.5/Doctors, who separately examined the claimant and assessed his disability as 40% for the eye & 40% for bone injury respectively. The 2nd respondent/Insurance Company has not let in

any contra evidence to disprove the evidence of P.W.3 and P.W.5/Doctors. The Tribunal considering the nature of injuries and evidence of P.W.3 and P.W.4, reduced the disability to 35% from 40% and 30% from 40% respectively on the ground that the percentage of disability assessed by the Doctors is on the higher side. It is the contention of the claimant that due to the injuries, he could not do the work as he was doing earlier, he suffered functional disability and there is loss of earning power. The Tribunal considering the entire materials available on record, fixed 20% as functional disability, granted 50% enhancement towards future prospects, applied multiplier '17' and awarded compensation towards loss of earning power. P.W.3 and P.W.5/Doctors have assessed the disability for eye and bone injuries separately. The disability assessed by P.W.3 and P.W.5/Doctors are for two parts of the body and not for the whole body of the claimant. Hence, 20% disability fixed by the Tribunal as functional disability and the compensation awarded is valid and proper. The claimant is not entitled to more compensation. The Tribunal erred in granting 50% instead of 40% enhancement towards future prospects. The claimant is entitled to only 40% enhancement towards future prospects as per the judgment of the Hon'ble Apex Court reported in 2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi). Thus, the compensation awarded by the Tribunal towards loss of earning power is modified to Rs.5,27,617/- (Rs.9,237 + 3694.8 [Rs.9,237/- X 40%] X 12 X 17 X 20%). The claimant has taken treatment as in-patient in the Government Hospital, Chennai, from 09.08.2010 to 16.08.2010 for eight days. The Tribunal awarded a sum of Rs.2,000/- towards attendant charges, but while calculating compensation, the Tribunal failed to add the said sum. Considering the nature of injuries sustained and period of treatment taken by the claimant, the compensation awarded by the Tribunal towards attendant charges is hereby enhanced to Rs.15,000/-. A sum of Rs.1,00,000/- altogether awarded by the Tribunal towards transportation and extra nourishment is excessive and the same is hereby reduced to Rs.75,000/-. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby 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 or reduced
1.	Pain and suffering	1,00,000	1,00,000	Confirmed

2.	Transportation and Extra nourishment	1,00,000	75,000	Reduced
3.	Medical expenses	10,000	10,000	Confirmed
4.	Loss of amenities	50,000	50,000	Confirmed
5.	Damage to clothes	1,000	1,000	Confirmed
6.	Loss of earning power	5,65,304.40	5,27,617	Reduced
7.	Attendant charges	2,000 Tribunal failed to add	15,000	Enhanced
	Total	8,26,304.40 rounded off to 8,26,300	7,78,617 rounded off to 7,78,600	Reduced by Rs.47,700/-

14. In the result, both the Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.8,26,300/- is hereby reduced to Rs.7,78,600/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

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

2.The Section Officer
V.R.Section, High Court, Chennai.

+lcc to Mr.D.Bhaskaran, Advocate SR.16134

C.M.A.Nos.117 and 598 of 2020

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



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