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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.12.2020

PRONOUNCED ON : 15.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1276 of 2009
(Through Video Conferencing)

Ashok ... Appellant/Petitioner
vs.

1.Karunakaran ... Respondents /1st Respondent

2.United India Insurance Company Limited,
No.19, Andiappa Gramani Street,
Royapuram,
Chennai -13. ... Respondents/2nd Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.07.2008 made in M.C.O.P.No.943 of 2006, on the file of the Motor Accident Claims Tribunal (Additional District Judge) Fast Track Court No.III, Chennai.

For Appellant : Mr.K.Varadhakamaraj
for Mr.K.Srinivasan

For R2 : Mr.M.J.Vijayaraghavan

R1 : Exparte

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal. In this appeal, the appellant/claimant seeks for enhancement of the compensation awarded by the Motor Accident Claims Tribunal (Additional District and Sessions Judge) Fast Track Court No.III, Chennai in its Judgment and Decree dated 17.07.2008 made in M.C.O.P.No.943 of 2006.

2. By the impugned Judgment and Decree, the Tribunal has



computed a compensation of Rs.1.25,055/- by directing the appellant-claimant and the 2nd respondent-Insurance Company to pay equally 50% of compensation on account of contributory negligence on the part of the driver of the insured Autorickshaw and the appellant - claimant involved in the accident.

3. The aforesaid compensation was awarded to the appellant/claimant together with interest at 9% per annum from the date of filing of the claim petition till the date of deposit.

4. Aggrieved by the said order, the appellant-claimant has filed the present appeal for enhancement of compensation.

5. On behalf of the 2nd respondent, it was submitted that the Tribunal adopted the 15 multiplier for awarding the aforesaid compensation was contrary to law.

6. It is submitted that the amounts awarded by the Tribunal under different heads are meagre. It was further prayed for setting aside the portion of the award which fixed 50% contributory negligence on the part of the appellant. The appellant therefore prayed for enhancement of compensation.

7. The learned counsel for the 2nd respondent submits that the Tribunal has rightly fixed 50% negligence on the part of the appellant. The amounts awarded by the Tribunal under different heads are not meagre and is therefore liable to be dismissed.

8. The learned counsel for the 2nd respondent submits that the Tribunal has rightly fixed 50% negligence on the part of the appellant. The amounts awarded by the Tribunal under different heads are not meagre and is therefore liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and also perused the material evidence on record.

10. The learned counsel for the appellant/claimant submitted that the Tribunal erred in fixing 50% contributory negligence on the part of the appellant and therefore deducted 50% of the compensation. The appellant sustained fractures.

11. As per the claim petition, the appellant suffered the following injuries :



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- i)) Right leg both bone fracture
- ii) Right hand fracture
- iii) Nosal bone fracture
- iv) Upper lower incisor fracture
- v) Left shoulder dislocation and injuries all over the body
- vi) Right ulna fracture

12. The appellant/claimant met with an accident on 04.07.2005 at about 00.30 when he was walking in the side of the road at near Checkpost Tambaram in GST Road. Whether the insured autorickshaw bearing Reg.No.TN 22-U-7237 was driven in a rash and negligent manner at a high speed and hit against the appellant and whether the appellant sustained injuries, contributed to the appellant is a question of fact. The Tribunal being the fact finding authority, the finding of the Tribunal cannot be disturbed in this appeal.

13. The appellant had marked exhibits viz., Exs.P.1 to P.11 which included a copy of the F.I.R., Medical Bills, Transportation charges. The disability certificate and x-ray were taken in the hospital at the time of admitting in the hospital. The appellant examined himself as P.W.1. Doctor who gave Ex.P10 Disability Certificate was examined as P.W.2 . P.W.2 certified the disability of the appellant/claimant.

14. From the material available on record, it is seen that the appellant/ claimant had suffered 65% disability on account of bone fracture in his right leg, right hand, nasal bone and he had taken treatment in private hospital on 05.07.2005 and was discharged on the same day. Subsequently, he has taken treatment as an inpatient at Govt.General Hospital from 05.07.2005 to 29.07.2005 and was thereafter again admitted for treatment in the same hospital from 11.11.2005 to 13.04.2006.

15. Before the Tribunal, the appellant/claimant had let in evidence through PW2 physician who assessed the permanent disability of the appellant as 65%. The Tribunal has however considered 40% towards permanent disability for computing the compensation and fixed monthly income at Rs.3,000/- and applied multiplier 15 and has awarded a sum of Rs.2,16,000 (Rs.3,000x12x15x40%) as compensation.

16. Further, the appellant / claimant was admitted for treatment as an inpatient in the same hospital from 18.04.2006 to 05.05.2006. Though the appellant/claimant was assessed to 65% disability by the P.W.2 in Ex.P.10, the Tribunal has considered only 40% permanent disability for compensation.



17. Considering the gravity of injuries and the period of treatment, the Tribunal ought to have applied multiplier method and added 25% towards future prospects as per the age of the appellant. Since there is contributory negligence as 50% on the part of the appellant and 50% contributory negligence on the part of the 2nd respondent-Insurance Company, is not disturbed.

18. The appellant- claimant has stated that he was earning a sum of Rs.200/- per day, as he is working as a chef in a hotel. He has however not produced any evidence to substantiate the income. It would therefore be reasonable to conclude that the appellant was having monthly income at Rs.4,500/- per month. He was aged about 42 years at the time of accident. Considering the nature of injuries suffered by the appellant/claimant and since the accident is of the year 2005, I am of the view that the Tribunal ought to have considered a higher compensation for the injuries suffered by the appellant. I therefore re-quantify the compensation awarded by the Tribunal as follows:-

Head and Calculation	Compensation re-quantified by this Court
Income of the injured : Rs. 4,500/-	
Annual Income (Rs.4,500x12): Rs.54,000/-	
Multiplier - 15 (54,000 x 15): Rs.8,10,000/-	
Disability 40% (Rs.8,10,000 x 40%) : Rs.3,24,000/-	
Add: Future prospects 25% : Rs.81,000/- (Rs.3,24,000 + 81,000) Rs.4,05,000/-	Rs. 4,05,000/-
Pain and suffering	Rs. 5,000/-
Transport and Medical bills	Rs. 7,110/-
Extra nourishment	Rs. 2,000/-
Loss of income	Rs.20,000/-
Total	Rs.4,39,110/- rounded off to Rs.4,40,000/-



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* Total award amount	: Rs.4,40,000
Less 50% negligence on the part of the appellant	: Rs.2,20,000

Net Amount	: Rs.2,20,000

19. Therefore, the 2nd respondent Insurance Company is directed to deposit the abovesaid amount of compensation of Rs.2,20,000 /-together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, less any amount deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

20. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest accrued thereon, less any amount already withdrawn, by filing suitable application before the Tribunal.

21. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kkd

To:-

The Motor Accident Claims Tribunal
(Additional District Judge)
Fast Track Court No.III, Chennai.

Copy To

The Section Officer,
VR Section,
High Court, Madras.
+lcc to Mr.K.Srinivasan, Advocate SR.No.41152

C.M.A.No.1276 of 2009

AP(CO)
GN(21/12/2021)