IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1707 of 2015

M.Ahmed Abdullah ... Appellant/Petitioner

Vs.

1.Vairamuthu

2.United India Insurance Co. Ltd.
Motor Third Party Claim Cell
No.134, Greams road
Chennai-06. ... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.06.2014 made in M.C.O.P.No.3641 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 27.06.2014 made in M.C.O.P.No.3641 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai.

2.The appellant is claimant in M.C.O.P.No.3641 of 2012 on the file of Motor Accident Claims Tribunal, Small Causes Court No.II, Chennai. He filed the said claim petition claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.06.2012.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent riding by the rider of the motorcycle belonging to the 1st respondent and directed the 2nd respondent/Insurance Company being insurer of the said offending motorcycle to pay a sum of Rs.9,27,000/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5.The learned counsel appearing for the appellant/claimant contended that the appellant was earning a sum of Rs.15,000/- per month by selling bags. The Tribunal without considering the same, fixed only a meagre sum of Rs.10,000/- as monthly income of the appellant. The Tribunal failed to grant any enhancement towards future prospects. The appellant suffered permanent disability and there is loss of earning capacity. To prove the same, he examined P.W.2/Dr.T.S.Kalkura and P.W.3/Dr.R.Rajappa, who have assessed the disability of the appellant as 35% & 40% respectively and marked Exs.P18 & P20/disability certificates. The Tribunal without considering the same, reduced the disability to 30% and as per I Schedule of the Workmen's Compensation Act, the appellant suffered loss of vision in one eye, which amounts to 100% loss of earning capacity. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation. In support of his contention, he relied on the following judgment of this Court reported in 2013 (1) TNMAC 845 (New India Assurance Company Limited vs. N.Santhanam);

> “10. The claimant has lost total vision of the left eye. He has been hospitalized thrice and artificial eye had also been implanted. Doctor-P.W.2 has assessed the disability towards loss of vision at 40% while P.W.3-Doctor has assessed the disability owing to the loss of tooth and facial disfigurement at 30%. Though cited before us for a different purpose, we would touch upon the decision in Dhian Chand Singla v. Joga Singh and Others, 2011 (3) T.A.C. 70 (P&H) for therein, we find reference to decision of the House of Lords in Vale v. William Huns and Sons Limited, 1912 A.C. 496. The House of Lords held:
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> "... that the incapacity of work included inability to work or in other words, there is incapacity for work when a man has a physical defect which makes his working un-saleable in any market reasonably accessible to him. Applying the same logic, a person who has suffered an injury may not come by immediate loss if he is retained in the same employment and does not lose his job, but in his own saleability elsewhere as a fresh recruit to a new employer, he may come by a serious handicap. That shall be a justification

enough to provide for compensation in such types of cases."

Even though there is no specific proof that the claimant has lost employment, the loss of vision in one eye certainly would affect his ability as fresh recruit to a new employer. It can only be hoped that the facial disfigurement suffered by him would not add to his woes in this regard. The tribunal has reasoned that the claimant would be able to carry on his avocation with one eye but his efficacy would be compromised owing to excess strain suffered by the remaining eye. Such reasoning and placement of loss of earning power at Rs.3,750/- per month is justified. However, we consider it necessary that the claimant separately be afforded compensation towards disfigurement to the face suffered by him as also for loss of amenity of the left eye. As the claimant was aged 30 years, the correct multiplier would be 17. The tribunal has not afforded any compensation towards loss of amenity which this court assesses at Rs.1,00,000/-. The grant towards pain and suffering may be enhanced to Rs.50,000/- and that towards temporary loss of income to Rs.50,000/-. We find reasonable the award under other heads. Compensation payable would be as follows:

Loss of earnings (Rs.3,750*12*17)	:	Rs. 7,65,000/-
Pain and suffering	:	Rs. 1,00,000/-
Medical bills	:	Rs. 33,669/-
Extra Nourishment	:	Rs. 5,000/-
Transport to hospital	:	Rs. 2,000/-
Damages to clothes	:	Rs. 1,000/-
Temporary loss of income	:	Rs. 50,000/-
Loss of amenity	:	Rs. 1,00,000/-
		Rs.10,56,669/-
		rounded off to Rs.10,56,700/-

6.Per contra, the learned counsel appearing for the 2nd respondent/Insurance Company contended that there is no loss of eye vision. Even if this Court held that there is loss of earning capacity even the disability suffered by the appellant is only 30%, the Tribunal considering the provisions of the Workmen's Compensation Act, fixed the disability of the appellant as 30% and awarded compensation towards disability & loss of earning capacity separately and granted compensation under different heads, which are excessive. The appellant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent and perused all the materials available on record.

8.It is the contention of the appellant that he suffered fracture of maxillary sinus, zygomatic and loss of vision in the left eye. The appellant examined Dr.T.S.Kalkura, as P.W.2, who has assessed the disability of the appellant as 35% in respect of fractures and marked Ex.P18/disability certificate. He examined Dr.R.Rajappa, Ophthalmologist as P.W.3, who has assessed the disability of the appellant as 40% in respect of loss of vision in left eye and marked Ex.P20/disability certificate. The Tribunal considering the disability certificate for the loss of vision in one eye, fixed the disability of the appellant as 30% as per the I Schedule of the Workmen's Compensation Act and adopted multiplier method to award compensation towards permanent disability. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have fixed the disability of the appellant as 100% and ought to have awarded compensation towards loss of earning capacity, is not acceptable. The appellant has contended that he was earning a sum of Rs.15,000/- per month by selling bags. The appellant failed to substantiate the said contention. In the absence of any material evidence to prove the avocation and income of the appellant, the Tribunal fixed a sum of Rs.10,000/- as monthly income of the appellant. But the appellant has not produced any document to prove that due to loss of vision in one eye, he could not do the work as he was doing earlier. In the judgment relied on by the learned counsel appearing for the appellant, this Court awarded compensation for 100% disability considering facts of said case. In the present case, the appellant is not entitled to compensation for 100% disability, but entitled to compensation only for 30% disability. Therefore, the judgment relied on by the learned counsel appearing for the appellant is not applicable to the facts of this case.

8(i).The Tribunal in addition to the compensation awarded towards permanent disability by adopting multiplier method, awarded a sum of Rs.50,000/- towards disability for 25% at the rate of Rs.2,000/- per percentage of disability and Rs.60,000/- (Rs.10,000/- X 6) towards loss of income for 6 months by fixing a sum of Rs.10,000/- as monthly income of the appellant. P.W.2/Doctor has assessed the disability of the appellant as 35% partial permanent disability. The Tribunal reduced the disability to 25% on the ground that the percentage of disability assessed by P.W.2/Doctor is on the higher side. The respondents did not let in any oral and documentary evidence to disprove the disability assessed by P.W.2/Doctor and the disability certificate marked as Ex.P18. The reason assigned by the Tribunal for reducing the percentage of disability is not proper. The appellant is entitled to compensation for 35% disability as there is no contra evidence. The accident is of the year 2012 and hence, a sum of Rs.3,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,05,000/- (Rs.3,000/- X 35%). 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.	Loss of income for six months	60,000	60,000	Confirmed
2.	Transportation	10,000	10,000	Confirmed
3.	Extra nourishment	15,000	15,000	Confirmed
4.	Damage to clothes	1,000	1,000	Confirmed
5.	Medical expenses	1,00,000	1,00,000	Confirmed
6.	Future medical expenses	25,000	25,000	Confirmed
7.	Mental agony	25,000	25,000	Confirmed
8.	Loss of amenities	25,000	25,000	Confirmed
9.	Pain and suffering	40,000	40,000	Confirmed
10.	Disability of 25%	50,000	1,05,000	Enhanced

11.	Permanent disability	5,76,000	5,76,000	Confirmed
	Total	9,27,000	9,82,000	Enhanced by Rs.55,000/-

9.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,27,000/- is hereby enhanced to Rs.9,82,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced 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 appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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

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

+1cc to Mr.M.Krishnamoorthy, Advocate Sr.13675
+1cc to Mr.K.Varadhakamaraj, Advocate Sr.13534

C.M.A.No.1707 of 2015

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