

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

CORAM:
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1881 of 2012

K. Sathi Kumar @ Sashi Krishnamurthy

.. Appellant /Claimant

Vs.

1.Wedny Abdullah

2.Abdullah

3.Royal Sundaram Allianz
Insurance Co. Ltd.,
14, Whites Road,
Chennai 600 014.

4.M. Kannan

5.Oriental Insurance Co. Ltd.,
No.272, Anna Salai,
Teynampet, Chennai 600 018.

.. Respondents/Respondents

(R2 set exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.01.2010, made in M.C.O.P. No.2356 of 2003, on the file of the Additional District and Sessions Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr. A.V. Arun

M/s. G.Sugumaran

For Respondents: No appearance (For RR1 & 4)

Mr. E. Rajadurai (For R3)

for M/s. M.B. Gopalan

M/s.S.Sathiamurthi (For R5)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed against the judgment and decree

dated 20.01.2010, made in M.C.O.P. No.2356 of 2003, on the file of the Additional District and Sessions Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal) Chennai.

2.The appellant-claimant filed M.C.O.P. No.2356 of 2003, on the file of the Additional District and Sessions Judge, Fast Track Court No. IV, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.10.2002.

3.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 4th respondent and directed the respondents 4 and 5 who are the driver and insurer of the offending vehicle to jointly and severally pay a sum of Rs.2,34,683/- as compensation to the appellant and dismissed the claim petition as against the respondents 1 to 3.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.01.2010, made in M.C.O.P. No.2356 of 2003, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that the appellant produced Ex.P18-Appointment Order showing his monthly income as Rs.71,250/-. The Tribunal erroneously fixed the monthly income of the appellant as Rs.15,000/-, as mentioned in the claim petition by the appellant. The respondents have not let in any contra evidence to Ex.P18. In the absence of any contra evidence, the Tribunal ought to have accepted Ex.P18 and fixed the monthly income of the appellant as Rs.71,250/- . The appellant examined P.W.2 - Doctor and proved that he suffered 40% disability. A sum of Rs.75,000/- awarded by the Tribunal towards 40% disability & future loss of earning power is meagre. Due to the injuries and disability, the normal life of the appellant is affected and the Tribunal ought to have awarded higher compensation and hence, prayed for enhancement of the compensation.

6.Per contra, Mr.E.Rajadurai, learned counsel appearing for the 3rd respondent contended that the claim petition was dismissed as against the 3rd respondent-Insurance Company and hence, they are not liable to pay any compensation and prayed for dismissal of the appeal as against the 3rd respondent.

7.The learned counsel appearing for the 5th respondent contended that appellant suffered only 40% disability, but the Tribunal excessively awarded a sum of Rs.75,000/- for the 40%

disability suffered by the appellant. The accident is of the year 2002. In view of the same, the appellant is not entitled to any enhancement in the compensation and prayed for dismissal of the appeal.

8. Though notice has been served on respondents 1 and 4 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

9. Heard learned counsel appearing for the appellant as well as the 3rd respondent and 5th respondent and perused the materials available on record.

10. It is the contention of the appellant that in the accident, he sustained multiple injuries and suffered disability. The appellant examined himself as P.W.1 and marked Exs.P2, P9 and P13 - discharge summaries. The appellant examined P.W.2- Doctor who deposed about the nature of injuries and assessed the disability suffered by the appellant as 40%. The Tribunal accepted the same and in the absence of any contra evidence, granted compensation for 40% disability. The appellant has not proved that he suffered functional disability and he resigned his job and he did not continue the work as he was doing earlier. In the absence of any material evidence with regard to loss of earning capacity, the appellant is not entitled to compensation by adopting multiplier method. The accident is of the year 2002. Hence, the Tribunal has awarded a sum of Rs.75,000/- for 40% disability and future loss of earning power, which is in order. According to the appellant, at the time of accident, he was working as Area Manager in E.R.P Enterprises Resources Planning, Wings Infonet Ltd., and was earning a sum of Rs.15,000/- per month. At the time of trial, the appellant produced Ex.P18 - Appointment Order to show that he was appointed as Product Manager in Nexxoft Infotel and his monthly salary was Rs.71,250/-. The contention of the learned counsel appearing for the appellant that the Tribunal ought to have fixed the monthly income of the appellant at Rs.71,250/- as per Ex.P18 and erred in fixing the monthly income at Rs.15,000/- is without merits. From the award of the Tribunal, it is seen that at the time of accident, the appellant was working as Area Manager and was earning a sum of Rs.15,000/- per month. The income of the claimant must be fixed based on the income he was alleged to have been earning at the time of accident. In the claim petition, the appellant has contended that he was working as Area Manager in E.R.P. Enterprises Resources Planning, Wings Infonet Ltd., and was earning a sum of Rs.15,000/- per month at the time of accident. Even though the appellant failed to prove the said contention, but produced Ex.P18, which was subsequent to the date of accident, the Tribunal accepted the contention of

the appellant that he was earning a sum of Rs.15,000/- per month and fixed the same as monthly income of the appellant. The accident is of the year 2002 and the monthly income fixed by the Tribunal is not meagre. The Tribunal considering the nature of injuries and treatment taken, awarded a sum of Rs.45,000/- as compensation for the loss of income for three months. In view of the injuries and disability, the appellant would not have worked atleast for a period of six months. Hence, the appellant is entitled to Rs.90,000/- towards loss of income for a period of six months, at the rate of Rs.15,000/- per month.

11.The appellant has taken treatment as in-patient in Apollo Hospital, Chennai, for a total period of 12 days in three different spells viz., 13.10.2002 to 19.10.2002, 08.10.2003 to 10.10.2003 and 20.06.2007 to 21.06.2007 and underwent surgeries. The Tribunal has not awarded any amount for attendant charges. Hence, a sum of Rs.10,000/- is granted towards attendant charges. The sum of Rs.3,000/- awarded by the Tribunal towards extra nourishment, Rs.3,220/- towards transportation, Rs.20,000/- towards pain and suffering are meagre and hence, the same are enhanced to Rs.10,000/-, Rs.5,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any amount towards loss of clothes and articles. Hence, a sum of Rs.1,000/- is awarded towards damages to clothes and articles. The amounts awarded by the Tribunal towards medical expenses and loss of amenities 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
1.	Medical expenses	78,463/-	78,463/-	Confirmed
2.	Transportation	3,220/-	5,000/-	Enhanced
3.	Pain and suffering	20,000/-	25,000/-	Enhanced
4.	Loss of income	45,000/-	90,000/-	Enhanced
5.	Extra nourishment	3,000/-	10,000/-	Enhanced
6.	Attendant charges	-	10,000/-	Granted

7.	Loss of amenities	10,000/-	10,000/-	Confirmed
8.	Damages to clothes	-	1,000/-	Granted
9.	Disability & future loss of earning power	75,000/-	75,000/-	Confirmed
	Total	2,34,683/-	3,04,463/-	Enhanced by Rs.69,780/-

12. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.2,34,683/- is enhanced to Rs.3,04,463/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 4th and 5th respondents are jointly and severally directed to deposit the enhanced award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.2356 of 2003. On such deposit, the appellant is permitted to withdraw the enhanced award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. The appellant is directed to pay the court fee, if any, on the enhanced amount of Rs.69,780/-. The appeal is dismissed as against the respondents 1 to 3. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Additional District and Sessions Judge,
Fast Track Court No. IV,
(Motor Accident Claims Tribunal),
Chennai.

+1cc to Mr.A.V.Arun, Advocate, S.R.No. 33421

C.M.A.No.1881 of 2012

VBA(CO)

GN(06/05/2021)