



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020	Pronounced on: 22.10.2020
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Coram::

The HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2765 of 2015

G.Santhi * Corrected as per order in
Memo SR.No.37807/2014, dated 30.04.2015
W/o.V.Gopinath,
No.A-47, D-1, Triplicane Police Quarters,
Chennai - 600 005. ...Appellant/Petitioner

/versus/

1. M/s.Kohinoor Motors,
No.144, Greams Road, Chennai - 600 006.
2. The Oriental Insurance Company Ltd.,
No.115, Broadway,
Chennai - 600 108. ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree in M.C.O.P.No.4074 of 2009 dated 20.12.2013, on the file of the III Judge, Small Causes Court, (Motor Accdient Claims Tribunal), Chennai.

For Appellant : Mr.K.A.Ravindran,
for Mr.A.Shanmugaraj.

For R2 : Mr.P.Kandasamy

For R1 : exparte

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the claimant for enhancement of compensation.

2. The Tribunal has considered the claim petition of the petitioner and awarded a sum of Rs.1,35,900/- for the injury sustained in the road accident occurred on 28.07.2006, while the claimant was crossing Nelson Manickam Road, hit by unregistered motorcycle owned by the 1st respondent herein and insurer under the 2nd respondent.

3. In the said accident, the claimant had sustained fracture on left wrist Scaphoid, contusion left chest and multiple injuries all over the body. Based on the disability certificate (Ex.P.9) issued by the Dr.Saichandran (PW.2), the Tribunal has awarded a sum of Rs.1,35,900/- as compensation in the following heads.

Loss of Income	Rs.9,900/-
Transport to Hospital	Rs.5,000/-
Extra nourishment	Rs.5,000/-
Damage to clothings	Rs.1,000/-
Medical Expenses	Rs.25,000/-
Attender Charges	Rs.5,000/-
Pain and Sufferings	Rs.25,000/-
Permanent disability	Rs.60,000/-
Total	Rs.1,35,900/-

4. In this Appeal, the Learned Counsel appearing for the appellant would submit that the insured is a Tailor by profession. The claim petition was filed under Section 163-A of Motor Vehicle Act, without advertent negligence. The Tribunal, instead of applying the structured formula prescribed in Schedule-II, had on his own, converted the petition into Section 166 of Motor Vehicle Act and had awarded lesser compensation.

5. Relying upon the disability certificate (Ex.P.9) issued by the Doctor (P.W.2), the Learned Counsel appearing for the appellant would submit that the fracture sustained by the insurer has caused 35% functional disability. The claimant being a Tailor by profession, due to the fracture of Left wrist scaphoid with plate implanted, unable to carry on profession. Therefore, adequate compensation should be awarded by applying multiplier.

6. Per contra, the Learned Counsel appearing for the respondent would submit that the injury sustained by the claimant is not a scheduled injury, to apply the structured formula. Since, the accident occurred due to the negligence of the deceased, she filed petition under Section 163-A of the Motor Vehicles Act, to avoid the risk of proving negligence. In any event, the pre-condition to get the benefit of Section 163-A

of Motor Vehicle Act, is not available to the claimant/appellant. She has claimed in her petition that her daily income is Rs.200/- which exceeds the income of Rs.40,000/- p.a limit. The injury sustained are not scheduled, injury which has caused total disability or impairment to her earning capacity.

7. The contention of the claimant is that, the fracture in his wrist has caused 35% functional disability is imaginary and exorbitant claim. In the present case, the records reveals that, immediately after the accident, the injured was taken to the Hospital for treatment. She was given first aid by Dr.Amernath R. Sowlee, for a swelling and tenderness on left foot and Tenderness swelling of left wrist. Suspecting fracture at left scaphoid, x-ray was taken. She was referred to Government Hospital vide letter of Doctor marked as Ex.P.2. In Government Hospital, Kilpauk, the claimant was treated as out-patient then, she was admitted in M.N. Orthopaedic hospital on 01.11.2006 and got discharged on 03.11.2006. At M.N. Hospital, she was fixed Herbert Fixation Screw. For her treatment, medical bills has been produced for Rs.18,155/-. The Tribunal has consolidated and awarded Rs.25,000/- for the medical expense. The disability certificate issued by Dr.Saichandan indicates a permanent partial disability of 35%, due to fixation of Herbert Screw and Non Union Scaphoid Left, which has caused restricted wrist movement and difficulty to hold things.

8. The appreciation of evidence by the Tribunal and the award passed by the Tribunal requires modification. In view of the fact that, a petition under Section 163-A of Motor Vehicle Act and the disability sustained by the claimant though not a scheduled injury, the nature of injury had caused impairment for her to continue her avocation as Tailor. Though, the doctor has assessed the disability as 35%, it is in respect of part of the body and not the whole body disability and not corresponding to functional/earning disability. A fracture in left hand wrist leading to difficulty in holding things, for a tailor, in view of this Court will cause 20% functional disability, in connection with her earning capacity. Accordingly, taking her annual income of Rs.36,000/- and her age as 37 years, the Schedule-II of the Motor Vehicles Act, fixes Rs.5,40,000/- as compensation in case of 100% disability. For 20% disability, the claimant is entitled for Rs.1,08,000/-, besides Pain and Suffering Rs.5,000/-.

9. The award passed by the Tribunal modified by enhancing the loss of earning capacity from Rs.60,000/- to Rs.1,08,000/-. Compensation under rest of the heads is confirmed. In the result, the Civil Miscellaneous Appeal is partly-allowed. The total award passed by the Tribunal is enhanced from Rs.1,35,900/- to Rs.1,83,900/- rounded off to Rs.1,84,000/-. The insurer is directed to deposit the award

amount with 7.5% interest from the date of numbering till the date of deposit. The Insurance Company shall deposit the modified award amount with interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same, on filing proper application. No order as to costs.

Sd/-

Assistant Registrar (CS-II)

//True copy//

Sub Assistant Registrar

bsm

To:

The Motor Accdient Claims Tribunal
The III Judge,
Small Causes Court,
Chennai.

Copy To:

The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.2765 of 2015

NRL (CO)
GMY (26/04/2021)

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