IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2020

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.644 of 2015

K.Arumugam ...Appellant/Claimant

Vs.

1.M.Shanmuga Sundaram

2.Reliance General Insurance Company Limited,
No.628, Anna Salai,
Chennai. ..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment & Decree dated 22.09.2014 made in MCOP.No.4132 of 2012 on the file of the Motor Accident Claims Tribunal and III Court of Small Causes, Chennai.

For Petitioner : Mr.T.Ferry Chellaraja
For Respondents : Mr.S.Arunkumar for R2
R1-not ready in notice.

J U D G M E N T

The appeal on hand is filed against the Judgment and Decree dated 22.09.2014 made in MCOP.No.4132/2012 on the file of the Motor Accident Claim Tribunal and III Court of Small Causes, Chennai.

2. Admittedly, the accident occurred on 09.09.2006 at about 10.30 a.m., while the claimant was driving the auto bearing Registration No.TN-09-Q-0481 at Tailors Road, proceeding from south to north direction near Halls road. The claimant sustained injury of right leg fracture, both knee, left elbow, head injuries and multiple injuries all over the body. The accident occurred on account of the fact that a van colluded with auto.

3. The learned counsel appearing on behalf of the appellant mainly contended that the appellant/claimant is a driver and sustained leg injury which affects his income and therefore, the award of compensation is inadequate. The learned counsel sterroneously contended that in a case of driver, if the injury is caused in leg, then the compensation

should be awarded by applying multiplier method and such an approach was not adopted by the Tribunal. Thus, the appellant is constrained to move the present appeal. He is mainly relied on the evidence of P.W.2, wherein it was found that the disability is too high and the permanent disability is assessed as 40% and the Tribunal has reduced the disability from 40% to 30%, which is improper. This apart, the calculation of compensation is also erroneous and the Tribunal has not considered the overall facts and circumstances as well as the nature of injury and the partial permanent disability sustained by the appellant/claimant. Thus, the compensation is to be enhanced in all heads by applying multiplier method as the appellant/claimant was aged about 34 years, at the time of accident.

4. The learned counsel appearing on behalf of the second respondent/Insurance Company disputed the said ground by stating that there is no loss of income. As far as the appellant is concerned, he is performing his duties and responsibilities of a driver and now he is working. The Tribunal considered the fact that the partial permanent disability is 30%, which would not affect the nature of the job of the appellant as a driver. Admittedly, the appellant had taken treatment for four days as in-patient in Government Hospital and thereafter, he discharged from the Hospital. There is no proof to establish that he had taken treatment subsequently, after he discharged from the hospital. Therefore, it is to be considered that he was not suffering from any permanent disability and continuing the job of driver and earning salary. The learned counsel appearing on behalf of the second respondent has stated that the appellant/claimant has not established that he is entitled for compensation by applying multiplier, in view of the fact that injuries sustained did not cause any permanent disability.

5. This Court is of the considered opinion that the Tribunal considered the documents and evidences. From the evidence of P.W.1, the Tribunal ascertained that the claimant sustained injury only on accident and took treatment at Kilpauk Government Hospital as in-patient and out-patient. Ex.P3, discharge summary shows that he sustained fracture of left tibial spine, small abrasion in both knees, contusion of left side forehead, tenderness in proximal 1/3rd of tibia was treated as inpatient from 09.09.2006 to 12.09.2006 thereby POP applied. P.W.2, Dr.Saravana Bhavanantham assessed the disability of 40% for the injuries sustained by the petitioner and deposed that the fracture is now malunited, muscle weakness of extensor group of traumatic joint stiffness at left knee joint flexion is reduced by 30 degrees from extended position and the petitioner finds difficult to climb staircase, standing on the affected leg and difficult to squat and to sit cross legged. However, the Tribunal found that

P.W.2 has not given treatment to the petitioner and this is not a schedule injury. Under these circumstances, the disability of P.W.2 as fixed by the Doctor was considered as too high and the same was reduced as 30%. The Tribunal recorded that the petitioner was aged about 47 years at the time of trial and therefore, Rs.2,000/- per percentage was awarded.

6. As per the deposition of P.W.1/claimant, he was a driver and earning a sum of Rs.10,000/-, at the time of accident. However, the Tribunal found that there was no supporting evidence to that effect. Therefore, the Tribunal has fixed a sum of Rs.2,000/- per percentage and accordingly, granted Rs.60,000/- towards disability at 30%.

7. Loss of income awarded is Rs.20,000/-. This Court is of the considered opinion that the loss of income should have enhanced, in view of the fact that the appellant sustained leg injury and his monthly income was Rs.10,000/-. However, the award of Rs.20,000/- towards loss of income is lesser amount. Therefore, this Court is inclined to enhance the said amount from Rs.20,000/- to Rs.60,000/-. Taking into consideration the fracture sustained by the claimant would have affected his monthly income atleast for a period of six months. Considering the nature of the leg injury as well as the job of the claimant, the enhancement is granted under the head of loss of income and in all other respects, the compensation awarded by the Tribunal is confirmed. This being the factum, the judgment and decree dated 22.09.2014 passed in M.C.O.P.No.4132 of 2012 is modified and the enhancement of compensation is granted only under the head of loss of income from Rs.20,000/- to Rs.60,000/- and all other compensation granted under various heads stands confirmed. Accordingly, the total compensation is enhanced from Rs.1,15,500/- to Rs.1,55,500/-.

8. The appellant/claimant is entitled for enhanced compensation at the rate of 7.5% per annum with interest. The second respondent/Insurance Company is directed to deposit the enhanced compensation with interest within a period of six weeks from the date of receipt of a copy of this judgment and on such deposit, the appellant/claimant is permitted to withdraw the same by filing an appropriate application before the Tribunal and the payments are to be made through RTGS.

9. Accordingly, the Civil Miscellaneous Appeal stands allowed in part. No costs.

Sd/-
Assistant Registrar(CS-III-MDU)

//True Copy//

Sub Assistant Registrar

ssb

To

The III Judge, Court of Small Causes,
The Motor Accident Claim Tribunal,
Chennai.

Copy to:
The Section Officer,
VR Section Officer,
High Court, Madras-104.

+1cc to Mr.S.Arun Kumar, Advocate SR.18813
+1cc to M/s.M.Malar, Advocate SR.18824

C.M.A.No.644 of 2015

SV(CO)
CB(22/12/2020)