IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2904 of 2017

Ravichandran .. Appellant/Claimant

Vs.

1.Annadurai
2.The Divisional Manager,
United India Insurance Company Limited,
No.104 -A, Ranga Building,
Peramanur Main Road,
Near Four Roads, Salem. .. Respondents/Respondents

(1st respondent remained exparte before the Tribunal)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 12.04.2017 made in M.C.O.P.No.502 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.A.R.Suresh

For Respondents : M/s.I.Malar for R2

R1: Exparte before the Tribunal

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the Tribunal in the award dated 12.04.2017 made in M.C.O.P.No.502 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal.

2.The appellant is the claimant in M.C.O.P.No.502 of 2014 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Namakkal. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2014.

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 lorry belonging to the first respondent, insured with the second respondent and directed the respondents to pay a sum of Rs.4,39,800/- 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.Learned counsel appearing for the appellant contended that the appellant is owning two lorries and was working as a driver and was earning a sum of Rs.20,000/- per month. The appellant has produced Income Tax returns declaring his annual income at Rs.1,95,600/-. The Tribunal has fixed only a meagre sum of Rs.10,000/- per month as notional income of the appellant. Due to the injuries, the appellant is unable to do the work as he was doing earlier. P.W.2-Doctor has assessed the disability sustained by the appellant as 40%. But the appellant has suffered 100% loss of earning capacity. The Tribunal ought to have granted compensation towards loss of income by adopting multiplier method. The amounts awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation.

6.Per contra, Ms.I.Malar, learned counsel appearing for the second respondent -Insurance Company contended that the appellant has not proved that he lost his total earning capacity, not renewed the license and not continued his work as a driver. The Tribunal considering the materials available on record, awarded compensation under the different heads which are not meagre 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 second respondent-Insurance Company and perused the entire materials on record.

8.It is the contention of the appellant that the appellant suffered 100% earning power and the Tribunal ought to have awarded compensation by adopting multiplier method. The appellant has marked the disability certificate as Ex.P22. Further P.W.2/Doctor also deposed to that effect. From the disability certificate/Ex.P22 and evidence of P.W.2/Doctor, it is clear that the appellant suffered 40% of disability and he can walk only with walking stick. In view of the above, the appellant is entitled to compensation by adopting the multiplier method. The appellant has not proved that he suffered 100% loss of earning capacity. Hence, the appellant is entitled to get compensation for 40% disability by applying multiplier method. The appellant has produced Ex.P20/Income Tax returns for the year 2012-13 which shows the declared annual income as Rs.1,95,600/-. The Tribunal fixed a meagre sum of Rs.10,000/- per month as notional income of the appellant. Considering the Income Tax returns/Ex.P20, the notional income of the appellant is fixed at Rs.16,000/- per month and the appellant is entitled to get compensation for loss of earning capacity by adopting multiplier method. The appellant was aged 48 years at the time of accident. As per the judgment of the Hon'ble Apex Court reported in National Insurance Company v. Pranay Sethi reported in 2017(2)TNMAC 609 (SC), the age of the appellant is to be taken into account for adopting multiplier. The multiplier applicable is '13'. Applying the multiplier '13', the compensation awarded by the Tribunal towards disability is modified to Rs.9,98,400/- [Rs.16,000/- x 12 x 13 x 40/100]. In addition to that, the Tribunal has awarded Rs.30,000/- towards loss of income and Rs.1,20,000/- towards permanent disability and the same are hereby set aside. The Tribunal has not awarded any amount towards loss of amenities and loss of damage to clothes. Hence, a sum of Rs.30,000/- and Rs.2,000/- are awarded towards loss of amenities and loss of damage to clothes. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are 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.	Loss of income	30,000/-	-	Set aside
2.	Transportation	15,000/-	15,000/-	confirmed
3.	Extra nourishment	20,000/-	20,000/-	confirmed
4.	Medical expenses	2,04,800/-	2,04,800/-	confirmed
5.	Disability	1,20,000/-	9,98,400/-	enhanced
6.	Pain and sufferings	50,000/-	50,000/-	confirmed
7.	Loss of amenities	-	30,000/-	granted
8.	Loss of damage to clothes	-	2,000/-	Granted
	Total	4,39,800/-	13,20,200/-	Enhanced by Rs.8,80,400/-

9.In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.4,39,800/- is enhanced to Rs.13,20,200/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The respondents are 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 by making necessary applications before the Tribunal. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkr
To

1.TheChief Judicial Magistrate,
Motor Accident Claims Tribunal,
Namakkal.

2.The Section Officer,
VR Section,
High Court, Madras.

+1cc to Mr.A.R.Suresh, Advocate, sr no.13393
+1cc to Mr.T.Ravichandran, Advocate, sr no.12919

RSI(CO)
RMP(06/11/2020)