



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2021

CORAM

THE HON'BLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.M.A.No.2395 of 2012

S.Anandan

...Appellant / Petitioner

VS

1.D.K.Nagamani

2.Oriental Insurance Co. Ltd.,
D.G-2, No.3, Kheny Building
First Floor, First Cross
Gandhi Nagar, Bangalorre - 560 009.

...Respondents / Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Judgment and Decree dated 12.11.2011 in M.C.O.P.No.224 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.M.J.Vijayaraghavan for R2
R1 - Exparte in Lower Court

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the Judgment and Decree dated 12.11.2011 in M.C.O.P.No.224 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Court of Small Causes) at Chennai.

2. For the sake of convenience, the parties are referred to hereunder according to their litigative status before the Tribunal.

3. The case of the claimant is that on 05.05.2004 when the claimant was accompanying the mail bags of his courier company from Chennai to Bangalore which were being transported



through the first respondent's Container Lorry, the driver of the lorry drove it in a rash and negligent manner and dashed against the another lorry which was proceeding from the opposite side. Therefore, the claimant sustained grievous injuries, multiple fractures in the left region from knee joint to left foot and injuries in other parts of the body. Immediately, the claimant was taken to Government Hospital, Hosur. Thereafter, the petitioner was taken to Bangalore, where he was admitted in a private hospital and treated as an in-patient for 12 days. Thereafter, the petitioner took treatment at MIOT Hospital, Ramapuram as an in-patient from 14.05.2004 to 08.06.2004. Even thereafter, he continued his treatment for 1-1/2 years. Due to the injuries, the claimant lost his job. Hence, the claim petition.

4. Resisting the same, the second respondent filed counter and denied all the allegations. It is alleged that the accident had not occurred due to the rash and negligent driving of the driver of the first respondent's vehicle, but only because of the rash and negligent driving of the driver of the lorry which came in opposite direction and therefore, the second respondent is not at all liable to be held for any compensation.

5. On the side of the claimant, P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P13 were marked. On the side of the respondents no one was examined and no exhibits were marked. On perusal of the evidence available on records and also considering the submission made by the learned counsel appearing on either side, the Tribunal fastened the entire liability on the second respondent and awarded a sum of Rs.2,14,000/- (Rupees Two Lakhs Fourteen Thousand only) as compensation. Aggrieved by the same, the appellant filed the present Civil Miscellaneous Appeal for enhancement of the award amount.

6. The learned counsel appearing for the appellant would submit that the claimant sustained multiple fractures and as such, the Doctor assessed the disability at 50%. Even then, without any reason and without any contra evidence, the Tribunal had taken only 15% as permanent disability. Though the claimant was drawing salary to the tune of Rs.6083/- per month at the time of accident and the Salary Certificate was marked as Ex.P7, the Tribunal had taken only Rs.4500/- as his monthly income. The Tribunal also failed to award any compensation under the head of loss of amenities and attenders charges, since the claimant had taken treatment more than 1-1/2 years. Due to the injuries sustained by him, he could not continue his job and he resigned from the same. The resignation letter is also marked as Ex.P11.

7. Per contra, the learned counsel for the second respondent would submit that the Tribunal ought not to have



WEB C

adopted the multiplier method, when there is no evidence to show that the claimant could not do any other work. He sustained only fracture of both bones in the left leg and it is a partial permanent disability. He further submitted that the P.W.2 / Doctor, during his cross examination, stated that he assessed the disability as per the guidelines. Therefore, the multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power. It depends upon various factors such as nature and extent of disablement, avocation of the injured. There is absolutely no evidence to show that the claimant suffered loss of earning capacity. The claimant was a Delivery Clerk by profession in the Courier Service at the time of accident. He had sustained only fracture of both bones in his left leg. Therefore, the Tribunal rightly reduced the disability to 1/3rd and adopted the multiplier method. As far as the salary of the claimant is concerned, the Tribunal rightly fixed the same at Rs.4500/- per month. Insofar as the other heads are concerned, the Tribunal awarded just compensation and it is quite reasonable.

8. Heard Mr.K.Varadha Kamaraj, learned counsel appearing for the appellant and Mr.M.J.Vijayaraghavan, learned counsel appearing for the second respondent.

9. Due to the accident, the claimant sustained fracture of both bones in the left leg for which plates and screws were fixed. The left leg has a bend at the knee level. He is also limping and he is having difficulty in walking and working in a standing position. Therefore, the P.W.2 / Doctor assessed the disability at 50% and it is a partial permanent disability. In all cases of injury or permanent disablement, multiplier method cannot be mechanically applied to ascertain the future loss of income or earning power. It depends upon various factors such as nature and extent of disablement, avocation of the injured and whether it would affect his employment or earning power etc., and if so, to what extent? The claimant is a Delivery Clerk in a Courier Service. Due to injuries sustained by him, he felt very difficult to doing his work as a Delivery Clerk. Therefore, he also resigned his job. He marked his salary certificate as Ex.P7. It shows that the petitioner has last drawn a monthly salary of Rs.6083/-. But, he failed to examine the employer. The accident took place in the year 2004. Therefore, the Tribunal had taken the salary at Rs.4500/- per month and applied the multiplier of 15. The disability had been taken by the Tribunal to 1/3rd of the disability fixed by the P.W.2 / Doctor with reference to the whole body. Therefore, this Court is of the view that the multiplier method adopted by the Tribunal is quite reasonable. Insofar as the other heads are concerned, the compensation awarded by the Tribunal is liable to be enhanced.



10. Accordingly the compensation awarded by the Tribunal stands modified as under :-

Sl. No	Heads	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of Earning Power / Capacity	Rs.1,21,500/-	Rs.1,21,500/-
2	Permanent Disability	Rs.30,000/-	Rs.30,000/-
3	Loss of Income during Treatment	Rs.27,000/-	Rs.27,000/-
4	Transport Charges	Rs.2500/-	Rs.25,000/-
5	Extra Nourishment	Rs.2000/-	Rs.15,000/-
6	Damage to Clothes and Articles	Rs.1000/-	Rs.1000/-
7	Medical Expenses	Rs.5000/-	Rs.5000/-
8	Pain and Sufferings	Rs.25,000/-	Rs.50,000
9	Loss of Amenities	Nil	Rs.20,000/-
10	Attenders Charges	Nil	Rs.25,000/-
	Total	Rs.2,14,000/-	Rs.3,19,500/-

12. In the result the Civil Miscellaneous Appeal is partly allowed as follows:-

(i) The award passed by the Tribunal is enhanced from Rs.2,14,000/- to Rs.3,19,500/-.

(ii) The award amount will carry interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit.

(iii) The appellant is not entitled to any interest for the delay period, if any, in filing this Civil Miscellaneous Appeal.

(iv) The second respondent is directed to deposit the entire enhanced award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of copy of this Judgment.

(v) On such deposit, the appellant is permitted to withdraw the amount awarded as above by filing proper application before the Tribunal.



WEB COPY

(vi) There shall be no order as to costs.

Sd/-
Assistant Registrar (C0)

// True Copy //

Sub Assistant Registrar

rna

To

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

Copy To

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

+1cc to Mr.K.Varadhakamaraj, Advocate SR.No.25750

C.M.A.No.2395 of 2012

GJ(C0)
RVM(20/09/2021)