IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.12.2020

Judgment Delivered on : 11.01.2021

CORAM

THE HON'BLE MR. JUSTICE **SATHI KUMAR SUKUMARA KURUP**

C.M.A.No.3417 of 2011

R.Vijaya Shankar
S/o. Ramachandran ... Appellant

Vs.

1. R.Kumar

2. The New India Assurance Co., Ltd.
   No.45, 2nd Line Beach,
   Moore Street,
   Chennai – 600 001. ...Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 20.12.2010 in MCOP.No.1943 of 2006 on the file of the Motor Accidents Claims Tribunal /II Judge, Court of Small Causes, Chennai.

For Appellant : Mr.A.N.Viswanatha Rao
For Respondents : Mr.R.Sivakumar for R2.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated 20.12.2010 passed in MCOP.No.1943 of 2006 by the Motor Accidents Claims Tribunal /II Judge, Court of Small Causes, Chennai.

2. The case in brief is as follows:

On 15.11.2005, the Petitioner/Appellant herein was riding the motorcycle bearing Reg.No.TN-22-S-8114 at Kamarajar Salai, Chennai and proceeding from North to south direction. At that time, a Qualis Car bearing Reg.No.TN-1-J-1085 proceeding from east to west direction, driven in a rash and negligent manner, hit the petitioner's/appellant's vehicle, as a result of which, he sustained grievous injuries all over the body. The first respondent is the owner and the second respondent is the insurer of the car and both are jointly liable to pay compensation to the Petitioner/Appellant.

3. It is the submission of the learned counsel for the appellant that the appellant herein was the petitioner before the Tribunal. He was aged 42 years at the time of accident. He had suffered fracture over the thigh bone and over the shoulder for which he had undergone treatment at various hospitals. P.W.2, Doctor, who had examined the appellant had given disability certificate assessing 54% disability. The Tribunal, without any evidence, had suo motu taken the partial permanent disability suffered by the Appellant/Petitioner as 40% and calculating @ Rs.2000/- for each percentage of disability and thereby, on that basis, the Appellant/Petitioner was granted Rs.80,000/- as compensation for the partial permanent disability. Therefore, the learned counsel for the appellant would submit that the compensation awarded by the Tribunal has to be enhanced.

4. The learned counsel for the Insurance Company has submitted that the compensation awarded is correct amount as per the then prevailing cost of living. Therefore, this appeal has to be dismissed.

5. The issue that arises for consideration is whether the appellant is entitled for enhancement of compensation.

6. On a perusal of the award, it is found that the Tribunal has awarded the following amounts under various heads:

Permanent disability	::	Rs.80000/-
Loss of Income	::	Rs.36000/-
Transportation Charges	::	Rs.1000/-
Extra Nourishment	::	Rs.2000/-
Damages to Clothes and Articles	::	Rs.1000/-
Medical Expenses	::	Rs.96,500/-
Pain and Suffering	::	Rs.20,000/-

This amount is meagre.

7. Under the head "loss of income", it was (has to be) treated as loss of income during treatment period. Therefore, only for the said period, Rs.36,000/- had been allotted. Regarding the permanent disability,

Tribunal has awarded compensation of Rs.80,000/-, (i.e., Rs.2000/- per percentage of disability). As per Ex.P16, the disability is given as 50% which is considered as partial permanent disability. Without adducing any reason, the Tribunal has reduced the permanent disability as 40% whereas the Doctor has opined as 54% disability. This Court have gone through the entire award. In the discussion, the learned Tribunal has stated that from Doctor to Doctor, the opinion varies, which is acceptable, but it is found that the learned Tribunal has not stated the reason for not accepting 54% disability certified by the Doctor.

8. Though it is the contention of the learned counsel for the 2nd respondent/Insurance Company that the permanent partial disability certificate was issued by P.W.2 in the year 2010, after 5 years from the date of accident and therefore, it cannot be accepted and the learned Tribunal had rightly reduced the disability to 40%, however, the said submission cannot be accepted in the absence of any precedent from the Hon'ble Supreme Court or the Hon'ble High Court regarding reduction of percentage of the disability certified by the Doctor who had not treated the

victim. Therefore, it would be appropriate to calculate the loss of income for 54% disability by adopting multiplier method. Accordingly, taking the salary or notional income of the appellant fixed by the Tribunal at Rs.12,000/-, loss of income due to partial permanent disability is arrived at as follows:

Income fixed	**::**	**Rs.12,000/-**
Less: 1/3rd towards		
Personal expenses	**::**	**Rs.12,000/- x 1/3**
	::	**Rs.4,000/-**
Monthly Contribution to the family	**::**	**(Rs.12,000 – Rs.4000/-)**
Annual Contribution	**::**	**Rs.8,000 x 12**
	::	**Rs.96,000/-**

Taking the multiplier as 14 for the age group 41 to 45 years and disability at 54%, loss of income will be,

Loss of Income due to partial permanent disabilty	**::**	**Rs.96,000 x 54/100 x 14**
	::	**Rs.7,25,760/-**

9. The amounts awarded towards "Transportation Charges" and Extra Nourishment" are enhanced to Rs.5000/- and Rs.20,000/- respectively. Therefore, the total compensation payable to the claimant/appellant works out to,

Loss of Income due to disability	::	Rs.7,25,760/-
Loss of Income during treatment period	::	Rs. 36,000/-
Extra Nourishment	::	Rs. 20,000/-
Transport charges	::	Rs. 5,000/-
Medical Expenses	::	Rs. 96,500/-
Pain and Sufferings	::	Rs. 20,000/-
Damages to clothing	::	Rs. 1,000/-
Total	**::**	**Rs.9,04,260/-**

10. Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of

M.C.O.P.No.1943 of 2006, on the file of the Motor Accident Claims Tribunal, II Judge, Court of Small Causes, Chennai, with accrued interest at the rate of 7.5% per annum from the date the appeal was numbered(the claimant/appellant is not entitled to claim the interest for the period in which the memorundum of Appeal were returned for compliance of defects) till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in *(The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433*, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw a sum of Rs.9,04,260/- with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

11.01.2021

dh
Index: Yes/No
Speaking Order/Non-Speaking order

To

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

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

SATHI KUMAR SUKUMARA KURUP.J.,

dh

C.M.A.No.3417 of 2011

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