

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.07.2021

Pronounced on : 30.07.2021

CORAM:

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.No.1124 of 2020

V.Manoharan

.. Appellant/ Petitioner

Vs.

1.R.Sathya Narayanan

2.National Insurance Company Limited

Motor III Party Claims Office,
No.751 Anna Salai,
Chennai-600 002.

.. Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 09.12.2019 made in M.C.O.P.No.3563 of 2013 on the file of the Motor Accident Claims Tribunal, V Judge, Court of Small Causes, Chennai.

For Appellant : M/s.Gayathri PK

For R2 : Mr.J.Michael Visuvasam

JUDGMENT

The matter is heard through "Video Conferencing".

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 09.12.2019 made in M.C.O.P.No.3563 of 2013 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai.

2.The appellant is the claimant in M.C.O.P.No.3563 of 2013 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes, Chennai. He filed the above said claim petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 05.05.2013.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the tavera car belonging to the 1st respondent and directed the 2nd respondent, insurer of the tavera car to pay a sum of Rs.3,24,300/- 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.It is submitted on the side of the appellant that the appellant was doing fishing before the accident and due to the injuries sustained by him in the accident, he could not continue the job of fishing and started selling fish and his avocation has been affected due to the accident. It is further submitted that the Tribunal failed to consider the same and did not award compensation by applying multiplier method and prayed for awarding compensation by applying multiplier method.

6.Per Contra, the learned counsel appearing for the 2nd respondent would vehemently contend that the Tribunal has awarded more compensation than a reasonable compensation. The appellant has not produced any documentary evidence to prove his avocation and resisted the submission made by the counsel for the appellant that being a fisherman, he will not possess any documentary evidence to prove his avocation or income. It is contended by the learned counsel for the 2nd respondent that there would be association for fisherman and definitely a fisherman would be issued Identity Card. But, without producing any documentary evidence, the appellant cannot seek for applying multiplier method. It is also contended that without any evidence for loss of earning capacity the multiplier method shall not be adopted.

7.The learned counsel for the 2nd respondent would also point out that the claimant himself in his claim petition stated that the avocation of the claimant has been mentioned as "fish seller" only and for the sake of getting more compensation it is alleged on the side of the appellant as though the claimant was doing fisherman work and only due to the accident, he changed his avocation of selling fish.

8.The learned counsel for the appellant would submit that in the accident, the appellant sustained (i) head injury (ii) fracture of ribs of both sides with emphysema (iii) multiple injuries all over the body (iv) bilateral basal contusion. The injuries are very grievous that it may lead to death if the appellant was not taken to hospital in time. Therefore, considering the nature of injuries sustained by the claimant, the learned counsel for the appellant contended that the Tribunal ought to have applied multiplier method.

9. Whereas the learned counsel for the 2nd respondent/Insurance Company objected the arguments put forth by the appellant counsel and contended that the claimant sustained only rib fracture for which no medical treatment is needed. It is further contended that as regards the lung ailment is concerned, the fluid was drained out and no further treatment is absolutely necessary and in fact, no further treatment was taken. There is nothing incapacitated the appellant from doing his business of selling fishes.

10. The learned counsel further contended that the Medical Board has assessed 40% disablement without any basis and no reasons were mentioned for arriving such disablement.

11. The learned counsel for the respondent would further submit that under 168 of MV Act, the Tribunal has awarded compensation which is more than reasonable and award passed under various heads needs no interference.

12. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials available on record.

13. A perusal of the award, this Court finds that the Tribunal has dealt with all the aspects in perspective manner and taking note of the fact that the claimant has not produced any documentary evidence in regard to his avocation and also taking note of the fact that the medical board fixed the disability at only 40%, the Tribunal has rightly adopted the percentage method by calculating at Rs.3,000/- per percentage of disability. This Court does not find any infirmity in adopting percentage method. In fact, the disability sustained by the appellant would no way cause any impediment for the appellant in continuing his avocation of selling fish. Therefore, there is no merit in the contentions raised on behalf of the appellant with regard to application of multiplier method. As regards the compensation awarded under various heads, this Court finds that the Tribunal has sufficiently awarded under each and every head which need no interference and the same are confirmed.

14. In the result, this Civil Miscellaneous Appeal is dismissed and the compensation awarded by the Tribunal at Rs.3,24,300/- is hereby confirmed together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.3563 of 2013 on the file of the Motor Accident Claims Tribunal, IV Judge, Court of Small Causes,

Chennai. On such deposit, the appellant is permitted to withdraw the 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(CS IV)

//True Copy//

Sub Assistant Registrar

gbi

To

1.The V Judge,
Court of Small Causes,
Motor Accident Claims Tribunal,
Chennai.

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

+1 cc to Mr.T.Balachandran, Advocate Sr.NO.37057

+1 cc to Mr.J.Michel viswsam, Advocate Sr.NO.36840

C.M.A.No.1124 of 2020

GSM co

A.SK(08.11.2021)