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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.2653 of 2019

K. Gopal

.. Appellant /Petitioner

Vs.

1.A.Prakasam

2.Royal Sundaram Allianz Insurance Co. Ltd.,
No.1, Club House Road,
Subramaniam Buildings,
II Floor, Anna Salai,
Chennai 600 002.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 30.11.2018, made in M.C.O.P. No.48 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

For Appellant : Mr.F.Terry Chella Raja
for M/s. M.Malar

For Respondents : Mr.K.Poomalai (For R2)

J U D G M E N T

The matter is heard through "Video Conferencing".

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated 30.11.2018, made in M.C.O.P. No.48 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai.

2.The appellant filed M.C.O.P. No.48 of 2013, on the file of the V Court of Small Causes, (Motor Accident Claims Tribunal) Chennai, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 28.07.2012.



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3. According to the appellant, on the date of accident at about 19.30 hours, when he was standing in front of Narayanasamy Welding Shop at O.M.R. Main Road, Kannagapattu, Thiruporur, Kancheepuram District, the driver of a Lorry bearing Registration No. TN-32-T-5991, belonging to the 1st respondent, drove the same in a rash and negligent manner and dashed against the appellant and caused the accident. The accident occurred due to rash and negligent driving by the driver of the Lorry belonging to the 1st respondent. In the accident the appellant suffered multiple injuries and fracture. For the injuries suffered by him, he has filed the claim petition, claiming compensation against the respondents as owner and insurer of the said Lorry.

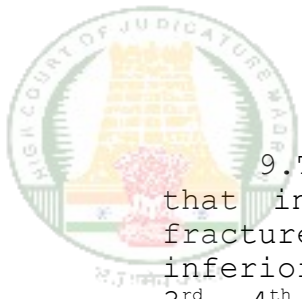
4. The 1st respondent remained exparte before the Tribunal.

5. The 2nd respondent - Insurance Company filed counter statement and denied all the averments made by the appellant. According to the 2nd respondent, the Lorry belonging to the 1st respondent was plied without valid Fitness Certificate and the same expired on 03.07.2012, whereas the accident occurred on 28.07.2012 and driver of the Lorry belonging to 1st respondent did not possess valid driving license to drive the vehicle at the time of accident. Hence, for violation of policy conditions, the 2nd respondent is not liable to indemnify the 1st respondent for the injured in the accident. The accident did not occur due to rash and negligent driving by the driver of the Lorry. In any event, the appellant has to prove his age, income and avocation, injuries sustained in the accident, treatment taken for the same, to claim compensation. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1, Dr. Mathiazhagan was examined as P.W.2 and 9 documents were marked as Exs.P1 to P9. The 2nd respondent examined their Official as R.W.1 and marked 4 documents as Exs.R1 to R4.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Lorry belonging to the 1st respondent and directed the 2nd respondent as insurer of the vehicle to pay a sum of Rs.8,37,500/- as compensation to the appellant at the first instance and recover the same from the 1st respondent.

8. Not being satisfied with the amounts awarded by the Tribunal in the award dated 30.11.2018, made in M.C.O.P. No.48 of 2013, the appellant has come out with the present appeal.



9. The learned counsel appearing for the appellant contended that in the accident, the appellant sustained injuries like fracture of C1 Anterior and Posterior arch, fracture of scapula inferior border, fracture of lateral end clavicle undisplaced 3rd, 4th, 5th and 6th ribs fracture hemopneumothorax, basifrontal contusion and fracture of ulna left and other multiple injuries all over the body. He has taken treatment as in-patient in Chettinadu Super Speciality Hospital, Kelambakkam, Kancheepuram from 29.07.2012 to 23.08.2012 and continued his treatment as out-patient in the same Hospital. At the time of accident, the appellant was working as a Mason and was earning a sum of Rs.500/- per day. The Tribunal erroneously fixed a meagre sum of Rs.10,000/- per month as notional income and granted only 10% enhancement towards future prospects. P.W.2 Doctor examined the appellant and assessed that the appellant suffered 65% partial permanent disability. The Tribunal rightly adopted multiplier method, but erroneously granted compensation only for 40% of disability. The Tribunal failed to award any amount towards future medical expenses, loss of income, mental agony, disability, damages and loss of expectation of life. The amounts awarded by the Tribunal towards pain and suffering, transportation, extra nourishment, loss of earning, loss of amenities, attendant charges and medical expenses are meagre and prayed for enhancement of the compensation.

10. The learned counsel appearing for the 2nd respondent-Insurance Company made submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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

12. From the materials on record, it is seen that it is the contention of the appellant that in the accident, he suffered injuries mentioned in the claim petition and the grounds of appeal. To prove the nature of injuries, he examined P.W.2 Doctor. P.W.2 Doctor deposed that he examined the appellant and certified that the appellant suffered 65% disability. In the cross examination, he has stated that he has not filed any report taking X-ray and not filed any worksheet with regard to assessment of disability following medical guidelines. P.W.2 Doctor also deposed that he has not assessed the disability for the whole body or loss of earning capacity and the injuries sustained by the appellant is not a scheduled injury. From the award of the Tribunal, it is seen that P.W.2 Doctor has admitted in cross examination that he has not assessed the disability of appellant for whole body and for loss of earning capacity. The Tribunal considering the evidence of P.W.2 Doctor, did not



accept 65% disability assessed by P.W.2 Doctor and reduced the percentage of disability to 40%. In the absence of any materials with regard to loss of earning capacity, the Tribunal erroneously adopted multiplier method for awarding compensation. The appellant is entitled to compensation only by adopting percentage method. A sum of Rs.6,09,840/- awarded by the Tribunal for loss of earning is excessive. The appellant is not entitled to compensation of Rs.6,09,840/- granted by the Tribunal for loss of earning power. In view of the same, the appellant is not entitled to any enhancement in the present appeal.

13. In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.8,37,500/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit is confirmed. The 2nd respondent-Insurance Company is directed to deposit the award amount, along with interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.48 of 2013 at the first instance and recover the same from the 1st respondent. On such deposit, the appellant is permitted to withdraw the award amount, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

gsa

To

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

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

+1cc to Mr. Malar, Advocate, S.R.No. 328
+1cc to Mr. Vasudevan, Advocate, S.R.No. 796

C.M.A.No.2653 of 2019

MG(CO)
GN(27/08/2021)