IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

CMA.No.1644 of 2020

Periyasamy ...Appellant

Vs

1.Sekar

2.The National Insurance Co. Ltd.,
Div No.10, Flat No.101-106, N-1, BMC House,
Connaught Place, New Delhi – 110 001.
Branch at 73, Perundurai Road, Erode – 638 011.

3.Arulkumar ...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 21.01.2020 made in MACTOP.No.341 of 2017 on the file of the Motor Vehicle Accident Claims Tribunal / Special Sub-ordinate Judge Court, Erode.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mrs.N.B.Sureka for R2

J U D G M E N T

The claimant, who was favoured with an award for a sum of Rs.3,70,000/- for the injuries suffered by him in a motor accident that occurred on 23.03.2016 is on appeal, seeking enhancement.

2.It is the case of the claimant that while he was riding his motor cycle bearing registration No.TN-34-M-1514 in Mallasamudram to Vaiyappamalai Main Road, near Santhaipettai Cemetry, the Omni Van bearing Registration No.TN-28-AQ-5460 driven in a rash and negligent manner by its driver hit against the petitioner's motor cycle and as a reesult, the petitioner sustained grevious injuries. It is stated that the petitioner suffered fracture in the right femur bone and crash injuries in the right leg. He was initially treated in the Government Hospital and admitted in Ganga Medical Centre and Hospital, Coimbatore, where he was inpatient for 15 days. The claimant was aged about 34 years at the time of the accident. He was running a Pork Stall and was earning about Rs.25,000/- per month. The petitioner assessed the compensation payable to him at Rs.10,00,000/-. The owner and the driver of the offending vehicle remained exparte.

3.The Insurance Company, which was arrayed as a 2nd respondent resisted the claim contending that it was the claimant, who had contributed to the accident. It was also contended that the driver of the vehicle bearing Registration No.TN-28-AQ-5460 did not possess valid driving license. The Insurance Company termed the quantum of compensation claimed as excessive. At trial, the claimant was examined as PW1 and Exs.P1 to P7 were marked through him. One Sundarrajan, Sub-Inspector of Police, Mallasamudram Police Station was examined as PW2 and Exs.P8 to P13 were marked through him. One Kumar, working at Ganga Hospital was examined as P.W.3 and Exs.P14 and P15 were marked through him. On the side of the respondent, one Manimozhi, Assistant in RTO Office, Namakkal North was examined as RW1 and Exs.R1 and R2 were marked through him. One Mohan of the National Insurance Company was examined as RW2 and Exs.R3 to R5 were marked. The disability certificate issued by the Medical Board was marked as Ex.C1. From Ex.C1, it is seen that the Medical Board has assessed the disability at 10%.

4.I have heard Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant and Mr.N.B.Surekha, learned counsel appearing for the Insurance Company.

5.Mr.T.S.Arthanareeswaran, learned counsel appearing for the Appellant would vehemently contend that the Tribunal should have adopted multiplier method in assessing the compensation for permanent disability. He would also fault the Tribunal for not awarding any amount towards future meidcal expenses and awarding only Rs.63,000/- for loss of earning.

6.Contending contra, Mrs.N.B.Surekha, learned counsel appearing for the Insurance Company would submit that though the claimant was inpatient for only about 17 days, the Tribunal has awarded a sum of Rs.80,000/- towards pain and suffering and Rs.1,65,000/- for medical expenses. According to her, though no amount towards future medical expenses was granted, the fact that large amount granted towards pain and suffering would cover the future medical expenses also. I have considered the rival submissions.

7.Since there is no evidence on any functional disability and the Medical Board has fixed the disability at 10% only, I am of the opinion, that there is no need to interfere with the conclusion of the Tribunal that multiplier method cannot be adopted to fix the compensation for permanent disability. The Tribunal has awarded Rs.30,000/- towards permanent disability, which was fixed at 10% at the rate of Rs.3,000/- per percentage. Considering the date of the accident and the age of the claimant, I am of the opinion that the award of Rs.4,000/- per percentage of disability would be just and proper as decided by this Court in M.Chinnathambi Vs. S.Deepa and Another reported in 2020 (1) TN MAC 617. Therefore, the award granted under the head of permanent disability and loss of earning power is increased to Rs.40,000/- instead of Rs.30,000/-. The Tribunal has awarded Rs.63,000/- towards loss of earning. The Tribunal has only taken the period of hospitalization to fix the loss of earning at Rs.63,000/-. The Tribunal has fixed only Rs.9,000/- as income and assessed loss of earning for a period of the 7 months. Since the fracture was in the femur bone, the period adopted by the Tribunal is proper but the income fixed by the Tribunal appears to be on the lower side. I am of the opinion that the loss of income should be fixed at Rs.12,000/- per month. Therefore, the award under the head of loss of earning is enhanced to Rs.84,000/- instead of Rs.63,000/-. It is seen that there are crush injuries and in the right leg exfix rod has been used to stablize the fracture. It would require future treatment. Hence, I deem it fit to award a sum of Rs.10,000/- towards future medical expenses. Thus, this appeal is partly allowed, the award of the Tribunal is modified as follows:-

S.No.	Heads	Amount
1	Loss of Earnings	Rs.84,000/-
2	Transportation Expenses	Rs.12,000/-
3	Extra Nourishment	Rs.9,000/-
4	Attender Charges	Rs.9,000/-
5	Future Medical Expenses	Rs.10,000/-
6	Damages to Clothes and Articles	Rs.2,000/-
7	Medical Expenses	Rs.1,65,000/-
8	Pain and Suffering	Rs.80,000/-

9	Permanent Disability and Loss of Earning Power	Rs.40,000/-
	Total	Rs.4,11,000/-
	Rounded off to	Rs.4,10,000/-

8.In fine, this appeal is partly allowed, the compensation granted by the Tribunal is enhanced to Rs.4,10,000/-. The Insurance Company is directed to deposit the enhanced compensation with appropriate interest as granted by the Tribunal to the credit of MCOP No.341 of 2017 within a period of 8 weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant would be entitled to withdraw the entire amount deposited. No costs. It is seen that the Tribunal has granted liberty to the Insurer to pay the compensation and recover the same from the owner of the Van. The same is sustained. The Insurance Company would be at liberty to recover the enhanced compensation also from the owner of the offending vehicle namely, the 1st respondent.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

kkn
To:-

The Motor Accident Claims Tribunal,
Special Sub-ordinate Judge Court,
Erode.

+1cc to M/s.N.B.Surekha, Advocate Sr.61423

CMA.No.1644 of 2020

srg 20/01/2022