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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.3389 of 2014

E.Karuppusamy ... Appellant/Petitioner

..Vs..

1.A.Nataraj
2.N.Ravikumar
3.The Branch Manager,
M/s.Universal Sompo General
Insurance Company Ltd,
655-652,3rd Floor, Tristar Building,
Avinashi Road, Coimbatore. ...Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 23.06.2014 made in M.C.O.P.No.21 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Coimbatore.

For Appellant : Mr.Suganthan
For M/s. N.Manokaran

For Respondents: Mr.R.Vijaya Kamala – R3
Notice served – R2-NA
Batta with petn due - R1

JUDGMENT

Dissatisfied with the judgment and decree, dated 23.06.2014 in MCOP.No. 21 of 2012 passed by the tribunal awarding compensation of Rs.1,55,000/- along with interest at the rate of 7.5% per annum, the claimant are before this Court for enhancement of compensation.

2. It is the case of the claimant/appellant herein that on 31.10.2010, the claimant was riding his motor cycle bearing Reg.No. TN37-BH-5888, on the Coimbatore to Siruvani Main Road, while proceeding from east to west direction, at that time the rider of two wheeler bearing Reg.No. TN37-BJ-0589 came from the

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opposite side in a rash and negligent manner and dashed against the claimants vehilce, due to which the claimant was thrown out and sustained grievous injuries. The accident had occurred only due to the rash and negligent riding on the part of the rider of the two wheeler bearing Reg.No. TN37-BJ-0589, hence the claimant has filed claim petition, claiming compensation for a sum of Rs.10,00,000/- for the injuries sustained by him in the said road accident.

3. The tribunal based on the evidence and documents, has fixed the negligence on the part of the drider of the two wheeler bearing Reg.No. TN37-BJ-0589, and directed the insurance company to pay a sum of Rs.3,11,000/- as total compensation to the claimant and for the 50% contributory negligence Rs.1,55,500/- granted to the claimant. Challenging the same, the claimant is before this Court for enhancement of compensation.

4. Heard the learned counsel appearing for the appellant, the learned counsel appearing for the respondents and perused the materials available on record.

5. On the side of the claimants, four witnesses P.W.1 to P.W.4 were examined and twenty two documents Ex.P1 to P30 were marked. On the side of the respondents, three witnesses RW1 to RW3 were examined and six documents Ex.R1 to R6 were marked.

6. The learned counsel for the appellant/claimant submitted that the doctor/PW2 was examined, he deposed that the claimant had sustained 45% disability and the same was accepted by the tribunal. The tribunal has awarded total compensation of Rs.3,11,000/- fixing liability as against the 2nd respondent herein and directed the 2nd and 3rd respondent/insurance company to pay the compensation at 50 -50%ration.

7. The learned counsel for the appellant/claimant submitted that the policy was entered between the 2nd and 3rd respondents and if there is any violation in policy conditions, being insurer of the vehilce, the 3rd respondent/insurance company has to pay the compensation and the same shall be recovered from the owner of the vehicle/2nd respondent herein. The learned counsel for the appellant/claimant has also argued that in view of the injuries, the appellant is entitled for enhancement of compensation.

8. According to the learned counsel for the appellant, the tribunal ought to have adopted multiplier method for the disability sustained by the appellant at 45%, but the tribunal unreasonably fixed a sum of Rs.3000/- for each percentage of disability and awarded compensation.

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9. The learned counsel for the 3rd respondent would submit that the tribunal has rightly fixed the contributory negligence as against the 1st and 2nd respondent and further submitted that the tribunal had considered the disability sustained by the appellant at 45% as assessed by the doctor/PW2. Further, the appellant/claimant has not placed any documents to prove that only due to the said disability, he lost his earning capacity, therefore, the contention of the learned counsel for the appellant is liable to be rejected.

10. On a perusal of the records, it is clear that due to the negligence on the part of the 1st respondent/rider of the 2nd respondent's offending vehicle, the accident had occurred. The tribunal rightly discussed the negligence on the part of the 1st respondent and fixed the liability as against the 2nd & 3rd respondents to pay the compensation. Therefore, this Court finds no force on the contention of the appellant to fix the entire negligence on the part of the 3rd respondent/Insurance Company.

11. As per the Judgment of the Hon'ble Supreme Court in the Nanjappa's case, if any violation in policy conditions, being insurer of the vehicle, the insurance company shall pay the compensation determined by the tribunal at the first instance and shall recover the same from the owner of the vehicle. In view of the above, this Court finds it proper to direct the Insurance Company to the compensation at the first instances and recover the same from the 2nd respondent/owner of the vehicle.

12. With regard to the contention of the appellant that he suffered loss of earning capacity, it is seen that only PW2 had deposed that the appellant/claimant suffered partial permanent disability and there is no evidence placed to claim permanent disability and loss of earning capacity in future. At this juncture, it is relevant to refer the decision of the Hon'ble Supreme Court in Raj Kumar 's case for considering the claim made by the claimant for permanent disability. The relevant paragraph is extracted below;

> "19. We may now summarise the principles discussed above:
>
> (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
>
> (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the

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basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

13. Considering the facts and circumstances of the case and the decisions of the Hon'ble Supreme Court cited supra, in the absence documents and evidence to prove the permanent disability, this Court is of the opinion that the appellant/claimant fails to satisfy this Court for his claim. This Court finds no merits on the submission made by claimant for his entitlement of enhancement of compensation.

14. In the result the Civil Miscellenous Appeal is partly allowed to the extent as follows;

i. The award dated 23.06.2014 passed by the tribunal in M.C.O.P.No.21 of 2012 is confirmed.

ii. The 3rd respondent/insurance company shall deposit the entire compensation amount awarded by the tribunal along with interest, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the compensation, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal.

iii. The 3rd respondent/insurance company is permitted to recover the compensation amount from the 2nd respondent/owner of the vehicle, by filing appropriate application before the tribunal, in the manner known to law.

iv. No costs.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. The Special Sub Court,
   Motor Accidents Claims Tribunal,
   Coimbatore.

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

+1cc to M/s.R.Vijayakamala, Advocate, S.R.No.13963
+1cc to Mr.N.Manokaran, Advocate, S.R.No.13526

CMA.No.3389 of 2014

AD(CO)
CB(24/09/2021)