



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.3370 of 2019
and C.M.P.No.19677 of 2019

M.Abinash

.. Appellant/Petitioner

Vs.

1.M/s. Sri AAA Bus Service,
Ashok Leyland Bus,
No.106/51, Avalkara Street,
Kosapet, Vellore District,
Tamilnadu.

(R1 remained exparte before the Tribunal.)

2.United India Insurance Co. Ltd.,
Rep. By its Branch Manager,
Office at No.46/51,
TKM Complex, Katpadi Road,
Thottapalayam,
Vellore, Tamil Nadu.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 03.04.2019, made in M.C.O.P. No.227 of 2015, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal) Vellore.

For Appellant : Mr.P.Satheesh Kumar

For Respondents: Mr.J.Chandran (For R2)

J U D G M E N T

This appeal has been filed for enhancement of compensation granted by the award dated 03.04.2019, made in M.C.O.P. No.227 of 2015, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal) Vellore.



2.The appellant-claimant filed M.C.O.P. No.227 of 2015, on the file of the Chief Judicial Magistrate Court, (Motor Accident Claims Tribunal) Vellore, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 09.02.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Bus belonging to the 1st respondent and directed the 2nd respondent, as insurer of the vehicle to pay a sum of Rs.4,80,800/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 03.04.2019, made in M.C.O.P. No.227 of 2015, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained grievous injuries and has taken treatment as in-patient at Hospital for a period of 5 days. At the time of accident, the appellant was working as a Lorry Driver and was earning a sum of Rs.15,000/- per month. The Tribunal erroneously fixed a meagre amount of Rs.4,000/- per month as notional income. The appellant was aged 21 years at the time of accident. Instead of applying multiplier '18', the Tribunal erroneously applied the multiplier '17'. The appellant produced Ex.P11 series - medical bills to the tune of Rs.3,12,744/-. The Tribunal erroneously rejected Ex.P11, on the ground that the medical bills are after the date of filing the claim petition. The learned counsel further submitted that the appellant filed Ex.P13 - transportation receipts to the tune of Rs.41,555/-. The Tribunal failed to grant any amount towards transportation and prayed for enhancement of the compensation.

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

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

8.It is the case of the appellant that in the accident that occurred on 09.02.2015, he sustained multiple injuries all over his face and body. His right thigh both bones, knee bone, right hand fingers 2nd, 3rd, 5th Metacarpal bones got fractured. According to the appellant, he has taken treatment as in-patient at Government Hospital, Vellore for a period of 5 days. At the time of accident, he was working as a Lorry Driver and was



earning a sum of Rs.15,000/- per month. He filed the claim petition claiming compensation of Rs.5,00,000/- for the injuries sustained by him in the accident. The appellant was referred to the Medical Board, Vellore. The Medical Board, Government Vellore Medical College Hospital, examined the appellant and certified that the appellant suffered 55% (temporary) disability due to malunion of right femur. During trial, the appellant produced Ex.P10 - discharge summary dated 16.05.2018 for the treatment taken from 27.03.2018 to 17.05.2018 and contended that subsequent to filing of the claim petition, he was treated as in-patient in Manisundaram Medical Mission Hospital and underwent surgery. The appellant also produced Ex.P11 - medical bills of the year 2018. The learned counsel appearing for the appellant contended that the appellant was a Driver and due to the injuries and disability suffered, he could not do his work as he was doing earlier. From Ex.C1 - disability certificate, it is seen that the Medical Board, Government Vellore Medical College Hospital certified that the appellant suffered 55% (temporary) disability due to malunion of right femur, but did not suffer any functional disability or lost his earning power.

9.As far as Ex.P10-discharge summary of Manisundaram Medical Mission Hospital is concerned, it is dated 16.05.2018, for the period of treatment taken from 27.03.2018 to 17.05.2018. From Ex.P10, it is seen that appellant was treated for fracture malunion right shaft of femur 1.5 years old. The accident is of the year 2015. From the exhibits filed by the appellant, there is nothing on record to show that he had continued his treatment for the injuries suffered in the accident which occurred in the year 2015 and taken treatment in the year 2018, only for the injury suffered by him in the accident that occurred on 09.02.2015. The appellant has not filed any document to show that he took treatment continuously from the year 2015. The appellant has also not amended the claim petition that he continued treatment and underwent surgeries in the year 2018. The learned counsel appearing for the appellant contended that the appellant was taking continuous treatment from Puttur, as well as at Manisundaram Medical Mission Hospital. From the materials before the Tribunal or before this Court, it is seen that the appellant has not filed any document to show that he has taken treatment from the year 2015 to 2018, continuously. Further, the appellant has not examined any Doctor to prove that he suffered functional disability and lost his earning capacity. The appellant also not filed his driving license to prove that he was a Driver. Without there being any evidence that the appellant suffered functional disability and lost his earning capacity, the Tribunal erroneously adopted multiplier method for 55% (temporary) disability and granted compensation excessively. The Tribunal has not converted the disability to the whole body



also.. The Tribunal considering the documents filed by the appellant, rejected Ex.P11 series - medical bills and Ex.P13 series - transport receipts, by giving valid reason. The appellant is not entitled to any enhancement as the Tribunal has already granted excessive amounts. In view of the excess amount granted for the disability in the absence of any evidence with regard to functional disability and loss of earning capacity, the appellant is not entitled to any enhancement and the appeal is liable to be dismissed.

10.In the result, the appeal is dismissed and the amount awarded by the Tribunal at Rs.4,80,800/- 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 is directed to deposit the award amount, along with interest and costs, 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.227 of 2015. 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. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(I)

//True Copy//

Sub Assistant Registrar

gsa

To

1.The Chief Judicial Magistrate,
(Motor Accident Claims Tribunal),
Vellore.

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

+1cc to Mr.J.Chandran, Advocate, S.R.No.7141

C.M.A.No.3370 of 2019

KV(CO)
CB(27/09/2021)