



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.1411 of 2017

K.Sasikumar

...Appellant / Petitioner

Vs.

1.E.Karunanithi
S/o.Ekambaram

2.M/s.Reliance General Insurance Co.Ltd.,
Legal Department,
Reliance House, 6th Floor,
No.6, Haddows Road,
Nungambakkam,
Chennai-600 034.

...Respondents / Respondents

Prayer : Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree dated 03.11.2016 made in M.C.O.P.No.1566 of 2014 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

For Appellant : Ms.A.Subadra
for M/s.M.Malar

For Respondents : Mrs.Bhuvana Sundari for R2
Ex parte for R1

JUDGMENT

Heard the learned counsel for the appellant and the learned counsel for the 2nd respondent.

2. This Civil Miscellaneous Appeal is filed for enhancement of compensation by the claimant, who sustained injury in the road accident, which occurred on 17.02.2014, while he was driven his Auto bearing registration No.TN 21 AV 4484 colluded with a lorry bearing registration No.TN 28 AV 7278 near Pallandam Koot Road, Kanchipuram. Though, the respondent filed counter stating that the said accident occurred due to negligence of the auto driver, the Tribunal, considering the FIR



registered against the lorry driver, held that the 1st respondent who is the owner of the lorry and its insurer are liable to pay compensation. While holding so, the award of Rs.2,75,300/- was ordered to be paid by the 2nd respondent Insurance Company to the claimant.

3. The said award is now sought to be enhanced in the appeal on the ground that the claimant sustained fractured ribs and crushed left thigh muscle. This has caused functional disability to him. Though the doctor has assessed 45% disability, the Tribunal has reduced it to 40% and awarded only Rs.1,20,000/- for the said disability instead of applying multiplier method taking note of the disability in earning Rs.15,000/- per month.

4. Per contra, the learned counsel for the Insurance Company submitted that the injury sustained by the claimant is not a schedule injury. It has not impaired of his earning capacity. Therefore, considering the evidence, the Tribunal has concluded due to the said injury, the claimant had suffered 40% disability and entitled for Rs.3,000/- per percentage of disability. Further, the Tribunal has gone into other details and awarded compensation under all other non conventional heads. Therefore, there is no room for enhancement of compensation.

5. Heard the Learned Counsel for the appellant and the Learned Counsel for the Respondent No.2. Records perused.

6. From the discharge summary given by the Government hospital and Vinayaga hospital, this Court finds that the claimant has sustained the following injuries in the said accident and treated for the same.

"Bilateral hemothorax, left thigh muscle tear and skin loss, left ICD, skin grafting was done for him, hematoma evacuation around SFA SFJ done, also undergone vascular repair of SHQ left thigh, crush injury over the left thigh, multiple rib fracture over the right side and other multiple grievous injuries all over the body."

7. PW.2 though not the doctor who treated the claimant, on clinical examination, he has assessed 45% disability and the disability certificate is marked as Ex.P9. According to his evidence, the claimant has lost his left thigh muscle and cannot walk fast and long distance. The opinion of PW.2-doctor clearly indicates that the injury has not caused any functional disability which will impact the earning capacity of the claimant. Therefore, the Tribunal has rightly held that



admittedly the injuries sustained are not schedule injury and has not caused any impairment in earning capacity of the claimant. Hence, this is not an appropriate case to apply multiplier. While holding so, the Tribunal liberally considered the period of incapacity and awarded Rs.250/- per day for 141 days towards the loss of earning capacity during the treatment period. Likewise, for pain and suffering Rs.40,000/-, for disfigurement a sum of Rs.25,000/- and for physical shock an additional sum of Rs.10,000/- has been awarded.

8. On considering these facts, this Court finds that the award passed by the Tribunal on various heads is fairly just and adequate except the award of Rs.3,000/- per percentage of disability. The date of accident is on 17.02.2014. Therefore, compensation per percentage of disability is enhanced from Rs.3,000/- to Rs.4,000/- Hence, the award of the Tribunal is modified as below:

Head of compensation	Tribunal award in MCOP	Modified in CMA
Loss of income	Rs. 35,250/-	Rs. 35,250/-
Attender charges	Rs.5,250/-	Rs.5,250/-
Transport to hospital	Rs.5,000/-	Rs.5,000/-
Extra nourishment	Rs.20,000/-	Rs.20,000/-
Damage to clothing	Rs.1,000/-	Rs.1,000/-
Medical bills	Rs.13,781/-	Rs.13,781/-
Non pecuniary loss: Pain and Suffering	Rs.40,000/-	Rs.40,000/-
Damages for mental and physical shock	Rs.10,000/-	Rs.10,000/-
Disfigurement	Rs.25,000/-	Rs.25,000/-
Disability 40% @ Rs.4,000/-	Rs.1,20,000/-	Rs.1,60,000/-
Total	Rs.2,75,281/-	Rs.3,15,281/-

9. Rounded of Rs.3,15,300/- with interest at the rate of 7.5% per annum from the date of numbering (19.03.2014) till the date of deposit. The 2nd respondent is directed to deposit the compensation amount within a period of 12 weeks from the date of receipt of copy of this judgment. On such deposit, the claimant is permitted to withdraw the same on appropriate application.



10. In the result, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar

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//True Copy//

Sub Assistant Registrar

rpl

To

The III Judge,
Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

Copy To

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

+1 cc to M/s.M.Malar, Advocate, S.R.No.18082

CMA NO.1411 OF 2017

PA(CO)
RVM(15/11/2021)