

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:24.3.2015

CORAM:

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

CMA.No.294 of 2015

Royal Sundaram Alliance Insurance Co.Limited,  
Sorrento Building Ist Floor,  
No.6, LB Road, Adyar,  
Chennai-20. .... Appellant / 2nd Respondent

Versus

1.Thilak ....1st Respondent/ Petitioner  
2.P.Ramesh .... 2nd Respondent/ 1st Respondent

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree in M.C.O.P.No.2315 of 2010 dated 16.08.2012 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, III Judge, Chennai.

For Appellant : Mr.M.B.Raghavan

For Respondents : Mr.V.Velu for R1

JUDGMENT

The above appeal has been preferred by the Insurance Company against the award of Rs.9,50,000/- to be paid as compensation to the first respondent, who sustained injuries in the accident occurred on 19.5.2010.

2. Heard Mr.M.B.Raghavan, learned counsel appearing for the appellant and Mr.V.Velu, learned counsel appearing for the first respondent/claimant.

3. The only question to be decided is with regard to quantum of compensation. The claimant sustained crush injury in left arm, elbow and forearm muscles. Based on medical records, P.W.4, Doctor deposed that the claimant sustained 75% disability. PW4 deposed that muscles were harvested from stomach area and skin grafting was done on the upper limb of the claimant. Because of the injury in the left upper limb, he is unable to carry out his job of driving due to flexion contracture and wrist

drop. When the hand is not under the control of claimant, he cannot act like a normal person and cannot do any work like a normal person. Therefore, the Doctor determined disability at 75% and the Tribunal determined the disability at 50%. Not satisfied with the determination made by the Tribunal, this Court directed the claimant to appear before the Medical Officer, High Court Dispensary. On examination of the claimant, the Doctor, opined that the claimant sustained 70% disability. This Court has also seen the claimant, who is present before this Court and the injury is also seen by this Court. Therefore, this Court agrees the assessment made by the Doctor, High Court Dispensary and determines the disability at 70%.

4. The claimant, who is stated to have worked as a Driver, aged about 25 years, was earning Rs.15,000/- per month. Ex.P3 is a copy of the driving licence. However, the Tribunal determined the loss of income at Rs.8,000/- in the absence of any positive evidence. Though Mr.M.B.Ragaghavan, learned counsel appearing for the appellant would submit that the determination of Rs.8000/- is on the higher side, according to Mr.V.Velu, learned counsel appearing for the first respondent, it is on the lower site.

5. The determination Rs.8000/- arrived at by the Tribunal is in consonance with the case of Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd. Reported in 2014 (1) TNMAC 459 (SC), wherein inclusive of future prospects, the Hon'ble Supreme Court determined the monthly income of a vegetable vendor at Rs.9750/- per month. Therefore, the determination of income of Rs.8000/- made by the Tribunal cannot be found fault with and the same is confirmed.

6. As per the Judgement of the Hon'ble Supreme Court reported in Sarla Verma and others v. Delhi Transport Corporation and another reported in 2009 (2) TN MAC 1 (SC), as per the age of injured namely 25 years, the appropriate multiplier is 18 and the same was rightly applied by the Tribunal. Hence, the loss of earning capacity is determined as follows:  
$$\text{Rs.8000/-} \times 12 \times 18 \times 70/100 = 12,09,600/-.$$

7. Rs.24,000/- awarded towards loss of income during the period of treatment, Rs.2000/- awarded towards damage to cloth, Rs.5,000/- awarded towards medical expenses are all reasonable and the same are confirmed. However, taking into consideration the nature of injury and the treatment underwent by the claimant, Rs.5000/- awarded towards transportation is enhanced to Rs.15,000/- and Rs.5000/- awarded towards extra-nourishment is enhanced to Rs.15,000/-. Rs.20,000/- was awarded towards, mental agony and pain and suffering separately. Both are clubbed together and Rs.40,000/- is awarded towards mental agony and pain and

suffering. Rs.5000/- awarded towards attender changes is enhanced to Rs.10,000/-. Totally, a sum of Rs.13,20,600/- is awarded.

8. Accordingly the award of the Tribunal Rs.9,50,000/- is enhanced to Rs.13,20,600/-. For the enhanced amount, the claimants are directed to pay required Court fee with the Registry of this Court within two weeks from the date of the receipt of the copy of the order. Appellant is directed to deposit the entire amount along with interest and costs as per the order of this court within four weeks from the date of the receipt of the copy of the order and the claimant is permitted to withdraw only 50% of the deposited amount and the balance amount shall be deposited in interest bearing fixed deposit in Indian Bank, High Court Branch, Chennai-600 014. The appeal C.M.A.No.294 of 2015 is dismissed. No costs. Consequently the connected M.P.No.1 of 2015 is also dismissed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

vk

To

1. The Motor Accidents Claims Tribunal,  
III Court of Small Causes, III Judge, Chennai.

2. The Royal Sundaram Alliance Insurance Co.Limited,  
Sorrento Building Ist Floor,  
No.6, LB Road, Adyar,  
Chennai-20.

Copy to

The Manager  
Indian Bank  
High Court Branch, Chennai-104

1 cc to M/s.N. Vijayaraghavan, Advocate, sR. 15769  
1 cc to M/s. V. Velu, Advocate, sr. 16580

C.M.A.No.294 of 2015

RSK (CO)  
kk 8/5