

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.06.2015

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.736 of 2015

Paul @ Balu

... Appellant/Claimant

vs.

1.M.Kumar

2.The New India Assurance Company Limited
Motor Third Party Hub,
No.45, Moore Street,
Chennai - 600 001.

... Respondents / Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree dated 31.10.2014 made in MACTOP No.1916 of 2013 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Mr.K.Padmanabhan
for R2.

JUDGMENT

The appeal has been preferred by the claimant against the award of Rs.11,11,800/- as compensation for amputation of his left leg below the knee in the accident occurred on 09.11.2012.

2. Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant/claimant and Mr.K.Padmanabhan, learned counsel appearing for the second respondent/insurance company.

3. In the accident occurred on 09.11.2012, while working as a loadmen in the lorry belonging to the first respondent, the claimant sustained crush injury in the left foot. He was first admitted in the CMC Hospital, Chengalpet from 09.11.2012 to 13.11.2012 where the wound debridement treatment and 'K' wire fixation were done. Subsequently, he was admitted in SRM Hospital, Kattangulathur and he has been taking continuous treatment from 13.11.2012 to 21.12.2012 where the left leg was amputated below the knee, as evident from Ex.P8 - photographs and Ex.P9 - disability certificate issued by PW2, doctor. Ex.P2 is

the discharge summary wherein the age of the claimant is mentioned as 30 years. Therefore, taking the age of the claimant as 30 years, the appropriate multiplier 17 was adopted and based on PW2, doctor's evidence and medical records, 60% was determined as disability. Rs.7,000/- was taken as the monthly income in the absence of any positive proof and loss of income was determined at Rs.8,56,800/-.

4. As rightly pointed out by Mr.Terry Chellaraja, learned counsel for the appellant/claimant, in the judgment of the Hon'ble Supreme Court in Jakir Hussein vs Sabir & Ors reported in 2015 (1) TN MAC 321 for deformation of right hand in the accident sustained by the driver, the Hon'ble Supreme Court took 100% as the loss of income. This court, instead of taking 100% as the loss of income, takes loss of earning capacity as 60% as deposed by PW2, doctor.

5. There is no proof of evidence produced with regard to the income earned by the appellant/claimant. The claimant claimed a sum of Rs.10,000/- as monthly income. In the above cited judgment, for the injury sustained by the driver in the accident occurred on 12.11.2008, the Hon'ble Supreme Court taking monthly income at Rs.10,000/- and adding 50% towards future prospects, determined the monthly income at Rs.15,000/-. Following the judgments of Sarla Verma's case (2009 (2) TN MAC 1 (SC), Santosh Devi V. National Insurnace Company Limited and Others reported in 2012 ACJ 1428 and Jakir Hussein vs Sabir & Ors reported in 2015 (1) TN MAC 321, this court determines the monthly income at Rs.10,000/- and adding 50% towards future prospects, the monthly income would be Rs.15,000/-.

6. The tribunal rightly adopted multiplier 17 as the age of the appellant/claimant was 30 years and thus, the loss the earning capacity is arrived as follows -

$$\text{Rs.10,000} + 50\% = \text{Rs.15,000} \times 12 \times 17 \times 60/100 = \text{Rs.18,36,000/-}$$

7. Rs.75,000/- awarded by the tribunal towards pain & sufferings is reasonable and the same is confirmed. Rs.30,000/- awarded towards medical expenses is based on Ex.P7 - medical bills and hence the same is confirmed. Rs.20,000/- awarded towards attender charges is hereby enhanced to Rs.30,000/- as the appellant was hospitalised for 43 days in two different hospitals. Similarly, Rs.49,000/- awarded towards loss of income for 7 months is enhanced to Rs.70,000/-. Rs.15,000/- awarded towards extra nourishment is enhanced to Rs.25,000/-. However, Rs.50,000/- towards loss of amenities is confirmed. Rs.15,000/- towards transportation is enhanced to Rs.20,000/-. Rs.1,000/- awarded towards damage to clothese is confirmed. Thus, the award of Rs.11,11,800/- is hereby enhanced to Rs.21,37,000/-, rounded off to Rs.21,30,000/-, break-up as follows -

(1) Loss of earning power	Rs.18,36,000/-
(2) Pain & Sufferings	Rs. 75,000/-
(3) Medical expenses	Rs. 30,000/-
(4) Attender charges	Rs. 30,000/-
(5) Loss of income for 7 months	Rs. 70,000/-
(6) Extra nourishment	Rs. 25,000/-
(7) Loss of amenities	Rs. 50,000/-
(8) Transportation	Rs. 20,000/-
(9) Damage to clothes	Rs. 1,000/-

Total Rs.21,37,000/-
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Rounded off to Rs.21,30,000/-.

8. The rate of interest awarded by the tribunal @ 7.5% per annum shall remain unaltered.

9. In the result, the Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.11,11,800/- to Rs.21,30,000/- alongwith interest @ 7.5% per annum from the date of petition till the date of deposit. No costs.

10. The 2nd respondent/insurance company is directed to deposit the entire compensation awarded by this Court alongwith interest and costs, within a period of four weeks from the date of receipt of a copy of this order. On such, the appellant/claimant is permitted to withdraw only 50% of the award amount alongwith proportionate interest and costs. The tribunal is directed to deposit the balance 50% of the award amount alongwith proportionate interest and cost in a interest bearing fixed deposit in Indian Bank, High Court Branch, Chennai initially for a period of ten years and renewed subsequently. The claimant is permitted to withdraw the accrued interest on the fixed deposit, once in two months.

सत्यमेव जयते

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

rgr

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To

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

1 cc to Ms.M. Malar, Advocate, Sr. 30540

C.M.A.No.736 of 2015

KGK(CO)
kk 22/7



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