

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM :

THE HONOURABLE MS.JUSTICE K.B.K.VASUKI

CMA.No.153 of 2009

Arunkumar

...Appellant/Petitioner

Vs

1.Pappathi

2.United India Insurance Company Limited
50-A, Palli Vasal Street,
Perambalur District.

...Respondents/Respondents

Prayer:-

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988 to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Sub Judge, Namakkal made in MCOP.1616 of 2002 dated 30.03.2007.

For Appellant : M/s.A.L.Gandhimathi.

For respondents : M/s.S.Arunkumar for R2.
R1 served - No appearance.

JUDGMENT

The injured claimant is the appellant herein.

2. The appeal is filed against the award of compensation of Rs.6,00,000/- payable with interest at 7.5% against the claim of Rs.15,00,000/- made in the claim petition.

3.The injured in his claim petition claimed the compensation under the following heads :

1. Transportation	:	Rs. 30,000/-
2. Extra Nourishment	:	Rs. 40,000/-
3. Medical Expenses	:	Rs. 5,00,000/-
4. Pain and sufferings	:	Rs. 4,00,000/-
5. Continuing Permanent Disability:		Rs. 10,00,000/-
6. Loss of earning capacity	:	Rs. 10,00,000/-

		Rs. 29,70,000/-

restricted to Rs.15,00,000/-.

4.The Tribunal has on the basis of the oral and documentary evidence assessed the disability at 70% and fixed the monthly income of the injured at Rs.3,000/-p.m. and determined the loss of future income by adopting multiplier method besides awarding compensation under other heads and the compensation awarded by the Tribunal under various heads is as follows :-

1. Loss of Income	:	Rs.2,70,000/-
2. Medical Bills	:	Rs.2,60,000/-
3. Pain and sufferings	:	Rs. 30,000/-
4. Extra Nourishment	:	Rs. 15,000/-
5. Transportation	:	Rs. 25,000/-

Total	:	Rs.6,00,000/-

5.The learned counsel for the appellant in this appeal questioned the correctness of the quantum of compensation awarded by the Tribunal mainly on the ground that the same is too low and inadequate and without duly considering the evidence and without appreciating the nature of the permanent disability and the extent of the functional disability and the loss of earning capacity, having regard to the nature of the avocation of the claimant.

6.On the other hand, the learned counsel for the Insurance Company would seriously defend that the compensation awarded is just and reasonable.

7.Heard the rival submissions made on both sides and perused the records.

8.The claimant in order to prove the nature of the injuries sustained by him and nature and period of treatment undergone by

him and the permanent disability suffered by him due to the injuries and the impact of the same on his day to day activities and his present physical condition and as to how the same has affected his personal life, past and future career and his earning capacity and his loss of income examined himself and the Doctors as PW1 to PW4 and produced Ex.A2/wound certificate, Ex.A5-Medical Bills, Ex.A12 and A13/Medical records relating to the treatment given in K.G.Hospital, Coimbatore, Ex.P16/X-Ray report, Ex.P17-Scan Report, Exs.P15, 18 and 19/Disability certificates issued by PW2 to PW4 Doctors and Ex.P20/Photo. It is seen from the documents as above referred that the claimant sustained multiple bone fracture on the head portion and lost his 100% eye sight in the Left eye and he was originally admitted in Aravinth Nursing Home for first aid and thereafter admitted in K.G.Hospital and was in ICU as inpatient for more than two months and he underwent operation twice for open skull surgery (hematoma with right frontal surgery) and due to the fracture of the bone in upper jaw, he lost his five teeth and as a result of the same, he has been suffering from 80% neuro permanent disability. The same is also confirmed by PW2 to PW4 three specialist Doctors (i.e.) Eye surgeon, neuro surgeon and Ortho surgeon. The petitioner as PW1 in the witness box narrated in detail that because of the injuries sustained by him, he stopped his studies and he is unable to use his right hand for writing and he is not able to walk but only able to limp on the right leg and due to contusion on the left side head, he has speech impairment and he is not able to stand continuously and he gets pain while using his left leg. It is further spoken by him that but for the accident he would have studied engineering and became an Engineer and would have had better future. The same is also supported by PW2/neuro surgeon, that the claimant is because of his disability, likely to get frequent head ache, loss of memory, giddiness and assessed his disability at 80%. It is in the evidence of PW3/Eye Doctor that the disability of the claimant by reason of loss of vision is 50%. PW4/Ortho Doctor assessed the total disability at 90% and the Doctors accordingly issued their disability certificates. There is absolutely no contra evidence adduced on the side of insurance company to doubt the correctness of the medical evidence adduced on the claimant side.

9.The Tribunal has on the basis of such evidence fixed the total functional disability of the claimant at 70%. However, the Tribunal has negatived the claim of the injured that but for the accident and the injuries suffered by him, the claimant would have been an Engineer and would have earned Rs.10,000/-p.m. The Tribunal has taken the probable income of the injured at Rs.5,000/-pm and after deducting 1/3rd of the same towards his expenses, the

Tribunal fixed the income at Rs.2,000/- and considering his age, applied the multiplier method and adopted '16' multiplier and assessed the loss of income at Rs.2,70,000/-. In this regard, the grievance raised herein is about the monthly income fixed which can be in my considered view reasonably fixed at Rs.5,000/- and the same can be taken into account in its entirety for determination of loss of income.

10. At this juncture, the learned counsel for the appellant pleaded to award reasonable compensation for loss of amenities and future medical expenses. It is also pleaded that the compensation awarded under other headings be reasonably enhanced. This court finds considerable bonafide in the claim so made herein.

11. The judgment of the Apex Court reported in 2011 ACJ 1 - Rajkumar V. Ajay Kumar is also cited before this court for determining the compensation under various heads :- The Supreme Court has in para 5 observed as follows :

"5. The heads under which compensation is awarded in personal injury cases are the following :
Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical

evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item (i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant."

12. This Court considering the contention raised herein in the light of the oral and documentary evidence adduced before the Tribunal and by applying the views of the Hon'ble Supreme Court above cited is inclined to enhance the compensation as follows :-

1. Loss of Income	:	Rs. 6,72,000/-
		(5000x12x16x70/100=6,72,000/-)
2. Medical Bills	:	Rs. 2,70,000/-
3. Pain & Sufferings	:	Rs. 50,000/-
4. Extra nourishment		
& Transportation charges	:	Rs. 50,000/-
5. Future Medical Expenses	:	Rs. 50,000/-
6. Attender Charges	:	Rs. 50,000/-
7. Loss of amenities		
& Enjoyment of Life	:	Rs. 1,00,000/-
8. Future marriage prospects	:	Rs. 1,00,000/-
Enhanced Compensation	:	Rs. 13,42,200/-

13. In the result, the award passed by the Tribunal is enhanced from Rs.6,00,000/- to Rs.13,42,000/- with interest at 7.5% p.a. from the date of petition till deposit. The second respondent/Insurance Company is directed to deposit the balance compensation amount with interest and costs, after deducting the amount already deposited within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount by

filing cheque petition. The Civil Miscellaneous Appeal is accordingly allowed. No costs.

Sd/-
Assistant Registrar (CS-IV)

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Sub Assistant Registrar

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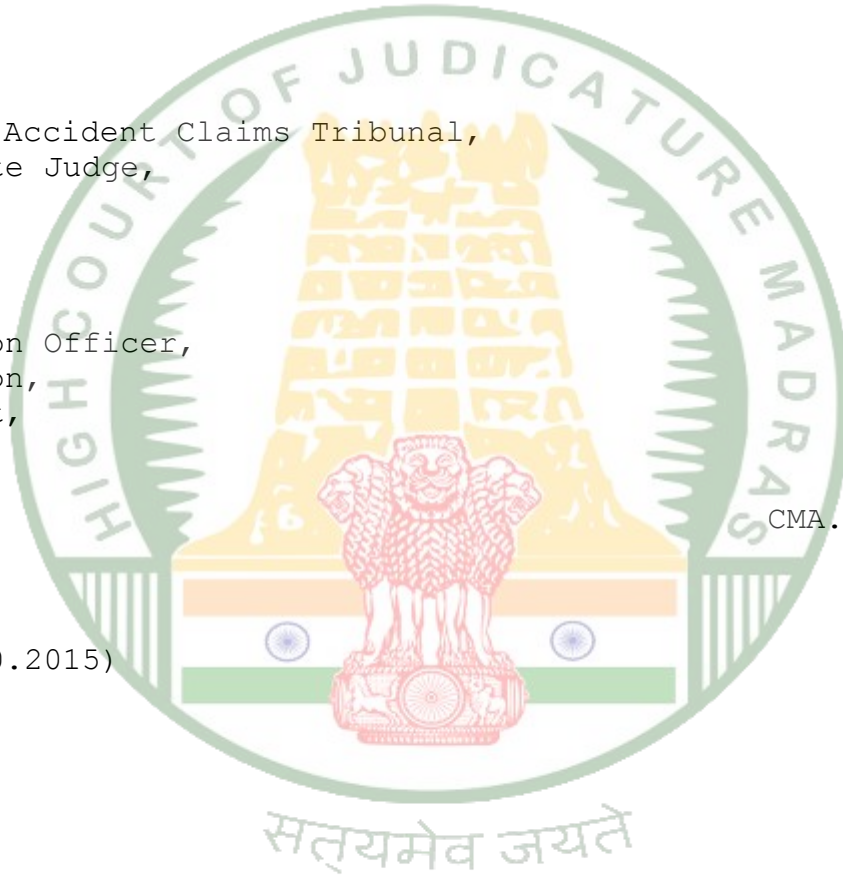
The Motor Accident Claims Tribunal,
Subordinate Judge,
Namakkal.

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