

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM:

THE HON'BLE MR. JUSTICE N.KIRUBAKARAN

C.M.A.No.1780 of 2008

and

M.P.No.1 of 2015

R.Pachaiyappan

... Appellant/Petitioner

Vs

1. A.M.Ponnuranga Mudhaliyar

2. United India Insurance Co. Ltd.,  
Motor Third Party Claims Office,  
No.38, Anna Salai,  
Chennai - 600 002.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against order dated 11.10.2006 made in M.C.O.P.No.579 of 2004 on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, Fast Track Court No.IV, Poonamallee.

For Appellant : Mr.K.Sivakumar

For R-2 : Mr.M.B.Raghavan

J U D G M E N T

The appeal has been preferred by the claimant aggrieved over the quantum of Rs.5,22,000/- as compensation for the injury sustained by the claimant in the accident occurred on 23.02.2004.

2. Heard Mr.K.Sivakumar, learned counsel appearing for the appellant and Mr.M.B.Raghavan, learned counsel appearing for the second respondent / Insurance Company.

3. The only question to be decided is with regard to the quantum of compensation awarded by the Tribunal as no appeal has been

preferred by the Insurance Company against the negligence aspect. Therefore, it has attained finality.

4. In the accident, the claimant sustained severe crush injury in both lower lumbar stenosis with bilateral non viable legs right more than left. Ex.P.3-Discharge Summary would read as follows:-

"ON EXAMINATION:

GCS - 15/15 BP - 90 systolic.

Local examination : Right leg-Degloving injury from 8 cm above the heel with avulsion of the entire foot skin and sole and crush injury of the foot. M angled foot. No sensations or vascularity. Gross contamination present. left leg : Digloving injury from mid calf till the foot involving the entire foot with skin degloved and avulsed. No sensation abrasion over the left shoulder tip.

SURGERY / PROCEDURE DONE:

Right leg below knee amputation and wound debridment and external fixation left leg on 24.02.2004."

From the above, it is clear that due to degloving injury, the claimant's right leg was amputated below the knee and the left leg also got severely damaged. Plastic surgery was done for the claimant's left leg. Ex.P.5 is the Wound Certificate given by the Vellore Hospital, and Ex.P.4 is the Discharge Summary given by the Royapettah Hospital. As spoken by P.W.2-Doctor, the claimant sustained 80% disability. One leg was amputated and the other leg was severely damaged and plastic surgery was done for that and the claimant is unable to walk and he has to depend upon some third party even for his normal work. Therefore, there is a loss of 100% earning power as he cannot do any other work. Hence, the loss of earning power is determined as 100%, even though the claimant sustained 80% permanent disability. The disability determined by the Tribunal at 80% is confirmed. However, as stated above, the loss of earning power is 100%.

5. The claimant was working as a Mason. However, there was no positive evidence to prove his income. Ex.P.7 is the membership card given by the T.N.B.Construction Welfare Association. Ex.P.6, the Transfer certificate issued by the Government High School, Thimiri, would show that the date of birth of the claimant is 10.05.1976. In the absence of any proof regarding income, the Tribunal took a sum of

Rs.4,500/- as monthly income and deducted 1/3 towards personal expenses and determined a sum of Rs.3,000/- as loss of income. The approach of the Tribunal is erroneous and deduction of 1/3 towards personal expenses does not arise, as the claimant is surviving. A sum of Rs.4,500/- determined by the Tribunal towards monthly income is very low. In 2004, it is impossible to get a Mason that too for a monthly salary of Rs.4,500/-.

6. In Kala Devi & others Vs. Bhagavan Das Chauhan and others reported in 2014 (2) TANMAC 628, the Hon'ble Supreme Court determined the monthly income as Rs.9,000/- for a driver, who died in the accident which occurred on 05.12.2003. Whereas in this case, the accident had occurred on 23.02.2004 within a short period as that of the accident which occurred in the case which is the subject matter of the aforesaid judgments. Therefore, this Court is inclined to follow the aforesaid judgment and determines the monthly income as Rs.9,000/- including future prospects.

7. The claimant was aged about 27 years as per Ex.P.6-Transfer Certificate issued by the Government High School, Thimiri. For the age of 27, the appropriate multiplier would be 17. The Tribunal, however, adopted 10 multiplier only. Therefore, applying multiplier 17, the loss of income is determined as follows:-

$$\text{Rs.9000} \times 12 \times 17 = \text{Rs.18,36,000/-}.$$

The Tribunal awarded only a sum of Rs.50,000/- towards pain and sufferings which is on the lower side. The Honourable Apex Court, in V. Mekala V. M.Malathi reported in 2014 (2) TN MAC page 6 (SC), awarded a sum of Rs.2,00,000/- towards pain and sufferings for a 16 years old student, who got injured in the accident and sustaining 70% disability; Rs.2,00,000/- towards pain and sufferings; Rs.2,00,000/- towards loss of amenities; Rs.3,00,000/- towards loss of marital prospects; Rs.25,000/- towards cost of litigation and Rs.50,000/- towards purchase of crutches.

8. Following the said judgment, this Court awards a sum of Rs.1,00,000/- towards pain and sufferings; Rs.1,00,000/- towards loss of amenities; Rs.50,000/- towards extra nourishment; Rs.50,000/- towards transportation charges; Rs.20,000/- towards medical expenses; Rs.20,000/- towards artificial wounds; Rs.1,00,000/- towards attendant charges and Rs.25,000/- towards cost of litigation. The aforesaid amounts are necessary as the claimant is unable to walk and even for walking, he has to depend upon others as one leg was amputated and one leg was severely damaged.

9. At the time of accident, the claimant was unmarried. With the above disability, no lady would come forward to marry the injured. Out of compulsion remaining as a bachelor is very horrible and it also violates the basic human rights and therefore, this Court awards a sum of Rs.3,00,000/- towards loss of marital prospects. Living with such disability is much worser than death. Taking into account the pathetic condition of the claimant, the amount of Rs.5,22,000/- awarded by the Tribunal is enhanced to Rs.26,01,000/- and break-up is as follows :-

|                |                           |   |                 |
|----------------|---------------------------|---|-----------------|
| [i]            | Loss of Income            | : | Rs.18,36,000/-  |
| [ii]           | Pain & Sufferings         | : | Rs. 1,00,000/-  |
| [iii]          | Loss of Amenities         | : | Rs. 1,00,000/-  |
| [iv]           | Extra Nourishment         | : | Rs. 50,000/-    |
| [v]            | Transport Charges         | : | Rs. 50,000/-    |
| [vi]           | Medical Expenses          | : | Rs. 20,000/-    |
| [vii]          | Artificial Wounds         | : | Rs. 20,000/-    |
| [viii]         | Attendant Charges         | : | Rs. 1,00,000/-  |
| [ix]           | Cost of litigation        | : | Rs. 25,000/-    |
| [x]            | Loss of Marital Prospects | : | Rs. 3,00,000/-  |
|                |                           |   | Rs.26,01,000/-  |
| Rounded off to |                           |   | Rs.26,00,000/-, |

The rate of interest awarded by the Tribunal at 7.5% stands confirmed.

10. In the result, the appeal is allowed enhancing the compensation from Rs.5,22,000/- to Rs.26,00,000/-.

11. The second respondent / Insurance company is directed to deposit the entire amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the appellant / claimant is permitted to withdraw only a sum of Rs.6,00,000/- alone. The balance amount shall be invested in Indian Bank, Thimiri Branch, in a fixed deposit for a period of five years initially and thereafter it shall be renewed further two or three periods. Every two months once, the appellant / claimant is permitted to withdraw the interest.

12. The additional Court fee shall be paid by the appellant / claimant for the enhanced amount.

13. No costs. The connected Miscellaneous Petition is closed.

Sd/-  
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Jrl

To

The Additional District and Sessions Judge,  
Fast Track Court No.IV,  
Motor Accidents Claims Tribunal,  
Poonamallee.

+1cc to M/s.J.Mahalingam, Advocate, S.R.No.32250

+1cc to Mr.N.Vijaya Raghavan, Advocate, S.R.No.31689

C.M.A.No.1780 of 2008

UG(CO)  
CA(06/08/2015)



WEB COPY