

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2016

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

C.M.A.No.2212 of 2016

P.Raman

.. Appellant/Claimant

Vs

1.E.Ramadoss

2.The Manager,
Oriental Insurance Co. Ltd.,
No.216, Prakasam Salai, Oriental House,
HUB, II-Floor, Broadway, Chennai - 104... Respondents/
Respondent

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 27.02.2013, made in MCOP.No.76 of 2010, on the file of the Sub-Court, Motor Accident Claims Tribunal, Thiruttani.

For Appellant : Mr.K.R.Ponnusamy for
M/s.Anand and Suryas

For R2 : Mrs.R.Sreevidhya

JUDGMENT

This appeal is preferred by the appellant/claimant against the award dated 27.02.2013, made in MCOP.No.76 of 2010, on the file of the Sub-Court, Motor Accident Claims Tribunal, Thiruttani, in and by which, the Tribunal has awarded a sum of Rs.2,35,000/- for the multiple injuries sustained by him.

2. On 05.08.2008 at about 8 p.m., while the claimant was standing on the left side of the K.K.Chatram to Tiruvalangaud road, near Kuramavelsapuram village, a two-wheeler bearing Registration No.TN-20-AH-4353 driven by the first respondent herein and insured with the second respondent Insurance Company in a rash and negligent manner, dashed against the claimant, as a result, he sustained multiple injuries all over his body. Immediately after the accident, he was admitted in the Government Hospital, Tiruvallur, for the first aid, and for better treatment, he was again admitted in the Government

General Hospital, Chennai. Subsequently, he filed a claim petition claiming a sum of Rs.5,00,000/- as compensation.

3. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the first respondent / rider of the two-wheeler and awarded a sum of Rs.2,35,000/- with interest at 7.5% per annum. Aggrieved by that award, the claimant has filed the present appeal.

4. Learned counsel appearing for the appellant/claimant submitted that at the time of accident, the claimant was aged 24 years old and he was working as Tractor Driver. After the accident on the fateful day, he was admitted in the Government General Hospital, Chennai, for about 36 days as inpatient i.e. from 06.03.2008 to 23.08.2008 and again from 24.03.2009 to 10.04.2009. He suffered left Zygoma fracture and lateral wall of left orbit, fracture roof of left orbit, left fronto temporal cerebral hemorrhage, SDG Left, left FTP decompressive and Craniotomy. Due to the said injuries, he contended, his one side of the body was disabled / paralyzed and that his brain also got affected. The Doctor, who examined him, assessed the disability at 90%. Thus, he submitted, it is a fit case for application of multiplier method, instead of adopting the percentage method as done by the Tribunal. On this score, he prayed for enhancement of the compensation awarded by the Tribunal.

5. Per contra, learned counsel appearing for the second respondent Insurance Company submitted that the Tribunal has considered all the materials available on record and has rightly awarded a just and reasonable compensation, therefore, he pleaded, the award passed by the Tribunal may be confirmed.

6. Heard the learned counsel appearing on either side and perused the materials available on record.

7. Given the facts and circumstances of the case, the only issue, that has to be decided in this case, is whether it is a fit case for applying multiplier method or percentage method for computing the loss of earning capacity of the claimant? According to the claimant, he suffered fracture on the left eye brow and also blood clot at his brain and he had undergone surgery in his head for craniotomy and due to his continuous treatment, he often gets giddiness and thus, he is not able to drive the vehicle as done before. Exs.P2 to P8 (discharge summaries, outpatient note book, scan bill and report, OP Chit and Photos with CD) reveal the same. P.W.2-Doctor, who examined the claimant, assessed the disability at 90% and to that effect, he has also produced the disability certificate, marked as Ex.P9.

8. On going through the medical records and other available materials, this Court found it difficult to know the exact meaning of the medical terms mentioned in the various documents produced before this Court. Therefore, to verify the same, this Court, by order dated 23.11.2006, directed the Doctor attached to this Court to explain such documents. Accordingly, Mrs.V.Vidhya, Medical Officer, attached to this Court appeared today and deposed that one side of the claimant's body has been paralyzed. Thus, from the deposition of the Doctor, it is clear that the claimant will not be able to do any work as done before. Therefore, in my view, it is a fit case for application of multiplier method.

9. Though it is stated that the claimant was working as Tractor Driver and was earning a sum of Rs.300 per day, there was no documents produced to substantiate the same. Therefore, this Court hereby fixes a sum of Rs.6000/- as the notional monthly income of the claimant. He was 26 years old at the time accident. As per the judgment of the Hon'ble Apex Court in Sarla Verma and others v. Delhi Transport Corporation and another [2009 (2) TNMAC 1 (SC)], the right multiplier would be '17'. The Tribunal has assessed the disability at 80%, though the doctor assessed the disability at 90%, in view of variation from doctor to doctor. Therefore, taking note of the fact that one side of the claimant's body got paralyzed, this Court hereby fixes 80% of disability and accordingly, by adding 50% of his income towards future prospects, the loss of earning capacity of the claimant is worked out below, instead of compensation towards injuries and future loss of earning awarded by the Tribunal.

Salary of the claimant = Rs.6,000/- p.m.
50% of the salary to be added as
future prospects = Rs.6000+3000
= Rs.9000/- p.m.
Loss of earning capacity after
multiplier of 17 is applied
(Rs.9000 x 12 x 17 x 80%) = Rs.14,68,800/-

10. As stated above, the claimant was admitted in the hospital for about 36 days as inpatient for the head injury and also various other multiple injuries and therefore, taking note of the further fact that his one side of the body got paralyzed, this Court hereby awards a sum of Rs.10000/- towards transportation, Rs.10000/- towards extra nourishment and Rs.30000/- towards pain and suffering, instated of Rs.5,000/-, Rs.5000/- and Rs.15000/- respectively awarded by the Tribunal.

11. Though the claimant claimed a sum of Rs.5,00,000/- as total compensation, by following the principles of just and reasonable compensation, this Court, in toto, hereby awards a sum of Rs.15,18,800/- as total compensation to the claimant. The second respondent Insurance Company is directed to deposit the entire award amount along with interest at 7.5% per annum from the date of claim petition till the date of realization, less the amount already deposited if any, to the credit of M.C.O.P.No.76 of 2010, on the file of the Motor Accident Claims Tribunal, Sub-Court, Thiruttani, within a period of four weeks from the date of receipt of a copy of this judgment, failing which, they will have to pay interest at 12% p.a. On such deposit, the claimant is permitted to withdraw 50% of the above said amount and for the remaining 50% amount, it is made clear that the same shall continue to be in the deposit in any nationalized bank for three years and thereafter, it is open to him to withdraw the same. The claimant is also permitted to withdraw the accrued interest once in every month. The claimant is directed to pay the additional Court fee for the enhanced award amount.

12. In fine, for the reasons stated above, the Civil Miscellaneous Appeal is allowed. No Costs. Consequently, M.P.No.1 of 2014 is allowed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Sub Judge Motor Accidents Claims Tribunal,
Sub-Court, Thiruttani.

+1 cc to M/s.Anand & Suryas Advocate sr 68809
+1 cc to Mrs.R.Sreevidhya Advocate sr 68724

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