

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUDHAKAR
and
THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

C.M.A.No.738 of 2015
and M.P.No.1 of 2015

R.Bharathiraja Appellant/Petitioner

vs.

1.Shahid Basha

2.Cholamandalam MS General
Insurance Co.Ltd.,
2nd Floor, Dare House,
No.2, N.S.C.Bose Road
Chennai-600 001

...Respondents/Respondents

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 06.12.2014 made in M.C.O.P.No.142 of 2013 on the file of Motor Accident Claims Tribunal, Subordinate Judge, Ranipet, Vellore.

For Appellant : Mr.K.V.Ananthakrishnan

For Respondents: Mr.N.Vijayaraghavan for R2.

JUDGMENT

(Judgment of the Court was delivered by R.SUDHAKAR,J.)

The claimant is on appeal seeking enhancement of the award dated 06.12.2014 passed in M.C.O.P.No.142 of 2013 on the file of the Motor Accidents Claims Tribunal (Subordinate Court), Ranipet.

2. It is a case of injury. On 21.01.2013 at about 8.30 p.m., when the claimant/appellant was proceeding on Madras to Bangalore Trunk Road, at Walajapet, by riding the two-wheeler bearing Reg.No.TN 23 AX 7165, an autorickshaw bearing Reg.No.TN 73 B 2234 came in a rash and negligent manner and dashed against the two wheeler. In the said impact, the claimant/appellant sustained grievous injuries all over the body and he lost sensation below hip.

Thereafter, the claimant/appellant was taken to the Government Hospital, Walajah and thereafter, he was admitted in the MIOT Hospital, Chennai. In this connection, Walajapet Police have registered a case in Crime No.87/2013 under Section 279 and 337 of IPC. According to the claimant/appellant, he was 34 years old at the time of accident and was working as a Builder and was earning a sum of Rs.50,000/- per month. He had filed a claim for compensation for a sum of Rs.33,00,000/-.

3. In support of the claim, the injured claimant was examined as P.W.1 and the doctor who treated him viz., Dr.R.Shanmugasundaram was examined as P.W.2. Exhibits P-1 to Ex.P-13 were marked, the details of which are as follows:-

Ex.No.	Details
P1	Certified xerox copy of F.I.R.
P2	Xerox copy of Accident Register Extract issued by the Government Hospital, Walajapet.
P3	Certified xerox copy of Observation Mahazar.
P4	Certified xerox copy of M.V.I. Report of Two wheeler -TN 23 AX 7165.
P5	Certified xerox copy of M.V.I.Report of Auto - TN 73 B 2234.
P6	Certified xerox copy of Final Report
P7	25.06.2013/Certified xerox copy of judgment in STC 29/2013 on the file of Judicial Magistrate No.II, Walajapet.
P8	15.02.2013/Discharge Summary
P9	06.03.2013/Discharge Summary
P10	08.06.2013/Discharge Summary
P11series	Medical Bills for Rs.6,52,946/-.
P12series	Travel Bills for Rs.13,400/-
P13	26.08.2014/Disability certificate issued by P.W.2. Dr.Shanmugasundaram.

On behalf of the Insurance Company/2nd respondent, no witness was examined and no exhibit was marked before the Tribunal.

4. The Tribunal based on the oral evidence deposed by the injured claimant and the doctor who treated the injured, the F.I.R. and also taking note of the fact that the injured claimant/appellant was having valid driving licence to drive the two wheeler came to conclusion that the driver of the autorickshaw was rash and negligent and was responsible for the accident and consequently liability was fixed on the 2nd respondent/Insurance Company, to compensate the claimant.

5. Based on the oral and documentary evidence, the Tribunal granted the following amounts as compensation with interest at 7.5% per annum:-

Sl.No.	Head	Amount granted by the Tribunal
1	Loss of earning	Rs.25,000/-
2	Transport to Hospital	Rs.13,400/-
3	Extra Nourishment	Rs. 5,000/-
4	Attender charges	Rs. 5,000/-
5	Damages to clothing and articles	Rs. 1,000/-
6	Loss of amenities	Rs. 25,000/-
7	Medical expenses	Rs.6,50,000/-
8	Pain and suffering	Rs. 25,000/-
9	Compensation for continuing permanent disability	Rs.2,25,000/-
	Total	Rs.9.74,000/- rounded to Rs.9,75,000/-

6. As far as on the quantum of compensation awarded by the Tribunal, the appellant/claimant averred that he suffered serious injuries; he was 34 years old at the time of accident and was working as a Builder and was earning Rs.50,000/- per month. However, on these aspects, there was no proof filed before the Tribunal. As far as the injuries are concerned, as per the Exhibits filed before it, the Tribunal pointed out that the claimant sustained L2 Fracture Dislocation with Paraplegia and suffered with Diabetes Mellitus and Follicular Occlusion Syndrome; the claimant took treatment as inpatient for about 2 to 3 months; he was suffering with numbness in both lower limb and not able to move or use both lower limbs; he underwent surgical treatment IVC filter placement on 24.01.2013 and again underwent Postero stabilization D10-L4 on 05.02.2013. It is also pointed out that the claimant has filed Ex.P.11/Medical Bills for Rs.6,52,946/-. It is further seen that the doctor/P.W.2 examined the claimant clinically and assessed disability at 90% and the doctor also described the nature and extent of injury as follows:-

"Total Paraplegia: Loss of sensation and functions of both lower limbs due to burst fracture dislocation of L2. Surgery of spinal stabilization did not help him. He cannot stand or move independently even to attend his daily chores of nature call etc., Rehabilitation and exercises did not help. "

However, the Tribunal, fixed the disability at 75% and the loss of income was fixed as Rs.25,000/- per month. Further, by following the decision in 2013(2) TN MAC 583 [NATIONAL INSURANCE COMPANY LIMITED REP. BY ITS BRANCH MANAGER, ERODE VS. G.RAMESH AND ANOTHER],

the Tribunal calculated at the rate of Rs.3,000/- per percentage of disability, awarded a sum of Rs.2,25,000/- under the head compensation for continuing permanent disability.

7. Shri.K.V.Ananthakrishnan, learned counsel for the appellant also filed additional typed set of documents, which shows that after the award dated 06.12.2014, in view of the road traffic accident, the claimant suffered serious medical complications and on 02.02.2016, due to severe complications consequent to the injuries, the claimant was admitted in C.M.C.Hospital, Vellore, where the operation was done as stated under:

"Right above knee amputation done under general anaesthesia on 02.02.2016. "

The Operative findings is "Necrotic tissue with foul smelling pus tracking along the medial and posterior compartments of thigh with underlying necrotic muscle. " In the discharge summary, preliminary report, dated 07.02.2016, the diagnosis and History are as follows:-

Diagnosis: RIGHT LOWER LIMB NECROSTISING FASCIITIS
RIFHT ISCHIAL INFECTED ULCER
T11 COMPLETE TRAUMATIC PARAPLEGIA-ASIA-A
DIABETES MELLITUS TYPE II.

History: Mr.Raja, a known case of Paraplegia following RTA came with complaints of Fever on and off for the past one month with associated vomiting for three days. He alsohad swelling of the right lower limb over the last three days associated with pain and bleb formation.

He was a known case of Diabetes Mellitus and he was on regular treatment for the same. "

8. The learned counsel for the appellant submitted that the history of the case recorded shows that the nature of ailment caused to the appellant/claimant was due to road traffic accident; by efflux of time, as per the discharge summary, now he is totally immobile, the disability which was taken at 75% by the Tribunal, has now become almost 90%. The learned counsel further submitted that the disability, now could be taken as 90% as originally diagnosed by the doctor.

9. The respondents were put on notice in this appeal. The appellant counsel has not chosen to file formal application before this court or Tribunal to take additional typed set of papers on file. However, the learned counsel appearing for the 2nd respondent/Insurance Company, not seriously disputed the medical records now produced before this court.

10. On the basis of the above said documents, it is evident that the injured suffered serious disability resulting in right above knee amputation and therefore it is appropriate to apply multiplier method to calculate the compensation on the basis of the disability of percentage.

11. Since the facts in the present case justified enhancement of compensation, by following the judgment of the Honourable Apex Court in the case of Syed Sadiq Vs. Deputy Manager, United India Insurance reported in 2014(1) TNMAC 459, now, we refix the income of the injured claimant as Rs.6,500/- per month. Further 50% is added towards future prospects, then, by adopting multiplier 16 and taking disability at 90%, the loss of income and for continuing permanent disability, the award is modified as follows:-
Loss of income = Rs.6,500 x 12 + 50% x 16 x 90% = Rs.16,84,800/-.

12. Taking note of the previous hospital treatment and the present treatment in C.M.C.Hospital, Vellore, in the month of February, 2016, we can safely accept that the injured claimant would have spent substantial amount for transportation. Hence, towards Transport expenses Rs.25,000/- is fixed by this Court as against Rs.13,400/-.

13. The injured claimant is 34 years old and he got right above knee amputated. He is also suffering from diabetes. Hence, Extra Nourishment is very much necessary and thus, Rs.25,000/- is now awarded as against Rs.5,000/-.

14. Taking into consideration that the injured claimant, at the time of accident, took initial treatment for a long period and also took subsequent treatment in various hospital including the last treatment at C.M.C.Hospital, Vellore, which would necessitated the injured claimant to have the benefit of attendants, this court, on account of attender charges, fix Rs.15,000/- as against Rs.5,000/-. Further, on account of Damages to clothing and articles, only a sum of Rs.1,000/- was awarded by the Tribunal, and we are inclined to modify it as Rs.2,000/-.

15. As regards the loss of amenities, since right above knee amputation has been done, the injured claimant needs to have support and replacement of artificial leg or caliper. Therefore, a sum of Rs.1,00,000/- is granted on that head as against Rs.25,000/- granted by the Tribunal.

16. Accordingly, the compensation awarded by the Tribunal stands modified as follows:

Sl.No.	Head	Amount granted by the Tribunal	Amount granted by this Court
1	(1.a) Loss of earning and (1.b) compensation for continuing permanent disability	Rs.25,000/- + Rs.2,25,000/-	Rs.16,84,800/-
2	Transport to Hospital	Rs.13,400/-	Rs. 25,000/-
3	Extra nourishment	Rs. 5,000/-	Rs. 25,000/-

Sl.N o.	Head	Amount granted by the Tribunal	Amount granted by this Court
4	Attender charges	Rs. 5,000/-	Rs. 15,000/-
5	Damages to clothing and articles	Rs. 1,000/-	Rs. 2,000/-
6	Loss of amenities	Rs. 25,000/-	Rs.1,00,000/-
7	Medical expenses	Rs. 6,50,000/-	Rs.6,50,000/-
8	Pain and suffering	Rs. 25,000/-	Rs. 25,000/-
	Total	Rs.9,74,400/- rounded to Rs.9,75,000/-	Rs.25,26,800/-

17. The interest granted at 7.5% per annum is confirmed.

18. Accordingly, the Civil Miscellaneous Appeal is partly allowed as follows:-

- (i) The award of the Tribunal is enhanced to Rs.25,26,800/- from Rs.9,75,000/-
- (ii) The interest granted by the Tribunal at 7.5% per annum is confirmed.
- (iii) The 2nd respondent/insurance company is directed to deposit the enhanced compensation within a period of 8 weeks from the date of receipt of a copy of this order.
- (iv) The claimant is permitted to withdraw the modified enhanced award amount with accrued interest.
- (v) There will be no order as to costs in this appeal.
- (vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

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Sub Asst. Registrar

nvsri

To

The Subordinate Judge, Ranipet,
Motor Accident claims Tribunal.

1 cc to Mr.K.V. Ananthakrishnan, Advocate, Sr. 20409

1 cc to M.s, Gopalan, Advocate, Sr. 20363

C.M.A.No.738 of 2015

CNR (CO)

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