

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09-03-2016

CORAM:

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

C.M.A.NO.719 OF 2014

C. Seshasayanam Appellants/Petitioner
Vs.
1. Mr. Jambukeshwaran
2. R. Elumalai
3. M/s. Iffco Tokio General Insurance Co. Ltd
No.28 (Old No.195) 1st & 2nd Floor
North Usman Road, T.Nagar
Chennai - 600 017
... Respondents/Respondents

Civil Miscellaneous Appeal under filed Section 173 of Motor Vehicles Act, 1988 against the judgment and decree dated 27-06-2012 made in M.C.O.P.No.466 of 2007 on the file of Motor Accidents Claims Tribunal (Sub Judge) at Thiruvallur.

For appellants :: Mr. V. Venkatesan

For respondents :: Mr. N. Vijayaraghavan for R3
RR1 and 2 - Ex parte

JUDGMENT

(Judgment of the Court was delivered by S. VAIDYANATHAN ,J.)

The appellant, who was grievously injured in an accident that held on 23-05-2006, while he was riding the Motor Cycle (Hero Honda) bearing Registration No.TN-20-M-6528 from Kakkalur to Tiruvallur at about 6.15p.m., was dashed by a pulsar motor cycle bearing Registration No.TN-20-AA-8136, which was driven in a very rash and negligent manner has come forward with a prayer for enhancement of compensation challenging the judgment and decree dated 27-06-2012 made in M.C.O.P.No.466 of 2007 on the file of Motor Accidents Claims Tribunal (Sub Judge) at Thiruvallur.

2. Before the Tribunal, the first and second respondents remained ex parte and the third respondent/Insurance Company filed counter alleging negligence solely on the part of the rider of the pulsar vehicle, who did not hold proper and valid driving license at the time of accident; the third respondent/Insurance Company also denied the age, income and occupation of the petitioner. On the side of the appellant, P.Ws.1 to 4 have been examined and Exs-P1 to P15 have been marked.

3. The Tribunal has fixed the liability on the Insurer of the offending vehicle Bajaj Pulsar to compensate the appellant on the basis of the evidence given by P.W.1, which was not denied by the second respondent in cross and also Ex-P1, the attested true copy of the FIR. On a perusal of Exs-P4, the discharge summary given by Sri Ramachandra Medical Centre, P5, Ayurvedic treatment, P7, OP records issued at the Apollo Center of Excellence and also the Disability Certificate, Ex-P12, the Tribunal fixed the disability at 60%, taking into consideration of the Workman Compensation Act, which recognizes that the total disability with regard to whole body should be worked between 50 to 60% disability and fixed the monthly income at Rs.4500/- per month and the pecuniary loss at Rs.5,18,400/- (Rupees Five lakhs Eighteen thousand and four hundred only). The medicals bills under Exs-P6 and P8 were awarded as such. On the heads of attender's help, pain and sufferings and loss of amenities, the Tribunal awarded Rs.10,000/-, Rs.20,000/- and Rs.1,00,000/- respectively.

4. Heard the learned counsel for the appellant and the learned counsel for the respondents.

5. The learned counsel for the appellant has submitted that Ex-P4, the discharge summary issued by Sri Ramachandra Medical Centre would reveal that the appellant was admitted as inpatient from 23-05-2006 to 27-07-2006 for the complaints of severe head injury, fracture of the skull wall, brain stem injury, septicemia, epileptics and undergone intensive treatment; Ex-P5 gives the treatment particulars under Ayurveda; Ex-P7 gives the outpatient particulars of the appellant at the Apollo Center of Excellence wherein he got treatment from 28-06-2007 to 16-12-2012 and from all these exhibits it is crystal clear that the appellant due to the head injuries suffered by him had been paralysed and having difficulty in standing and walking and has jerking movements all over the body particularly in his left side limbs with weakness in both legs and had depression and fear.

(i) The learned counsel would further submit that the Doctor who had clinically examined the appellant has assessed the disability at 80% and would contend that the Tribunal

clearly held that the appellant is having jerking movements all over his body and his left limbs are affected much but has fixed the disability only at 60%, which should be 80% as fixed by the Doctor. The learned counsel for the appellant also contended that the Tribunal awarded no compensation on the heads of pain and suffering, transport to Hospital, extra nourishment, future medical expenses and prays for enhancement of the claim.

6. The learned counsel for the third respondent submitted that the Tribunal was just and reasonable in awarding the compensation, which is in fact higher by fixing the salary at Rs.4500/- when no salary register has been produced by P.W.3 and would pray for dismissal of the appeal.

7. We have carefully examined the facts of the case and material evidence on record in the light of the rival legal contentions urged before us by both the learned counsel on behalf of the parties to find out as to whether the appellant is entitled for further enhancement of compensation? On the side of the appellant to show his disability, Exs-P4, P5 has been produced which shows severe head injury and his treatment details; Further, the expert opinion of P.W.2, Dr. J.R.R. Thiagarajan, Civil Surgeon shows that there is 80% permanent disability and the disability certificate is marked as Ex-P12; The appellant who was working as a Sales Representative was terminated from service and he has jerking movements all over the body, having weakness in both legs and is also suffering due to epileptics. In such circumstances, the appellant cannot continue his job as Sales Representative. It would be relevant to extract the following portion of the judgment reported in ILC-2015-SC-MAC-Feb-3 (Jakir Hussein Vs. Sabir & Others):

"In view of the doctor's evidence in this case, the Tribunal and the High Court have erroneously taken the extent of permanent disability at 30% and 55% respectively for the calculation of amount towards the loss of future earning capacity. No doubt, the doctor has assessed the permanent disability of the appellant at 55%. However, it is important to consider the relevant fact namely that the appellant is a driver and driving the motor vehicle is the only means of livelihood for himself as well as the members of his family. Further, it is very crucial to note that the High Court has clearly observed that his right hand was completely crushed and deformed. In the case of Raj Kumar v. Ajay Kumar (supra), this Court specifically gave the illustration of a driver who has permanent disablement of hand and stated that the loss of future earnings capacity would be virtually 100%. Therefore, clearly when it comes to loss of earning due to permanent disability, the same may be treated as 100% loss caused to the appellant since he will never be able to work as a driver again. The contention of the respondent Insurance

Company that the appellant could take up any other alternative employment is no justification to avoid their vicarious liability. Hence, the loss of earning is determined by us at Rs.54,000/- per annum. Thus, by applying the appropriate multiplier as per the principles laid down by this Court in the case of Sarla Verma & Ors. v. Delhi Transport Corporation & Anr.[2009 (6) SCC 121], the total loss of future earnings of the appellant will be at Rs.54,000 X 16 = Rs.8,64,000/-."

As per the principles laid down by the Supreme Court, this Court finds it fit and proper to fix the disability at 80% and the loss of income is fixed at Rs.6,91,200/- (4500*80/100*12*16). On the head of pain and suffering a sum of Rs.20,000/- awarded by the Tribunal is modified as Rs.50,000/- and on the head of transport to Hospital, extra nourishment and future medical expenses, a sum of Rs.50,000/- is awarded. The award of the Tribunal stands modified as follows:

Heads	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of income	5,18,400	6,91,200
Pain and suffering	20,000	50,000
Medical Expenses	7,05,367	7,05,367
Transport to Hospital	NIL	20000
Extra Nourishment	NIL	20000
Future Medical Expenses	NIL	10000
Attendent charges	10000	10000
Loss of Amenities	1,00,000	1,00,000
Total		16,06,567

8. In the result, the Civil Miscellaneous Appeal is allowed.

(i) The award of the Tribunal is enhanced to Rs. 16,06,567/- (Rupees Sixteen lakhs six thousand five hundred and sixty seven only)

(ii) The interest granted by the Tribunal is decreased to 7.5% per annum.

(iii) Eight weeks' time is granted to deposit the entire award amount as ordered by this Court.

(iv) On such deposit, the claimant is permitted to withdraw the award amount, as apportioned by the Tribunal.

(v) There will be no order as to costs in this appeal.

(vi) Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal (Sub Judge)
Tiruvallur.

Copy to:

The Section Officer,
VR Section,
High Court, Madras.

+2cca to Mr.V.Venkatesan, Advocate Sr.15113
+1cc to Mr.N.VijayaRahavan, Advocate Sr.15415

C.M.A.NO.719 OF 2014

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