

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.12.2016
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
C.M.A.No.742 of 2014

B.Sudhakar

... Appellant /
Petitioner

versus

1. N.V.Krishna Prasad

2. The New India Assurance Co. Ltd.,
No.52, Vinay Complex,
Opp. to National College,
Basavangudi, Bangalore - 4.

(R1 remained ex parte before
the Tribunal)

... Respondents /
Respondents

Prayer : This Appeal filed under Section 173 of Motor Vehicles Act, against the order dated 26.03.2009 passed in M.C.O.P.No.778 of 2005, on the file of the Motor Accidents Claims Tribunal (Additional District Judge), FTC No.I, Salem.

For Appellant : Mr.M.Manojin
for Mr.L.Chandrakumar
For R-2 : Mr.P.R.Purushothaman
for Mr.P.G.Padmanabhan

JUDGMENT

The petitioner B.Sudhakar, aged about 23 years, a Carpenter by profession, earning a sum of Rs.7,500/- p.m., met with an accident on 24.04.2005 and sustained injuries, in respect of which, he filed a claim petition before the Motor Accidents Claims Tribunal (Additional District Judge), Fast Track Court No.I, Salem, claiming a sum of Rs.5,00,000/- as compensation.

2. The Tribunal, after considering the oral and documentary evidence, has awarded the compensation of Rs.60,865/-, payable along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break-up details of the compensation read as under:

Disability (Rs.2,000/- x 30%) -	Rs.60,000/-
Medical Expenses -	Rs. 865/-
Total -	<u>Rs.60,865/-</u>

3. The learned counsel appearing for the appellant would contend that it is a case of fracture of hip bone leading to displacement of the bone, which consequently affected the earning capacity of the appellant and those aspect has not been properly considered by the Claims Tribunal. It is also pointed out that in respect of such injuries leading to mal-union of bone, medical expenses should have been awarded roughly at Rs.1,00,000/-, but, the Tribunal has awarded only a sum of Rs.865/- for want of medical records. Hence, the learned counsel for the appellant seeks enhancement of compensation.

4. The learned counsel appearing for the second respondent/Insurance Company would contend that when the Tribunal is deprived of the opportunity of perusing the documents, there is no way out for the Tribunal to fix the compensation for Medical Expenses and based upon the documents produced before the Tribunal, a sum of Rs.865/- has been awarded. Hence, there is no scope for increase towards the award of medical expenses and therefore, the compensation awarded by the Tribunal is justifiable.

5. A perusal of the records would go to show that the medical expenses that is shown as Rs.865/- had been towards payment of x-ray charges and it does not include the whole expenditure on account of the treatment.

5.1. When a person, either on account of ignorance or on account of pain or due to any other reason, did not maintain medical records and when the injury is proved as a matter of record, then, whether the medical expenses can be declined, merely on the ground that the records are not maintained. Is not possible to have a rough calculation of the probable medical expenditure that could have been incurred, having regard to the nature of treatment, period of treatment, the facility available in the hospital and the extent of cure.

5.2. Section 114 of the Evidence Act, 1872, adumbrates that the Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

5.3. As contemplated under Section 114 of the Evidence Act,

1872, having regard to the human conduct, the Court may presume that immediately after the accident, the injured would have been taken to the hospital, that he would have been treated, the nature of the treatment in accordance with the nature of the injury and that the injured should have spent money towards medical expenses.

5.4. The Court may require proof with regard to the exact amount of money spent towards medical expenses. In the event of the injured not been able to produce the records, some amount of guess work is inevitable, but, it can be done rationale, having regard to the minimum amount of money required towards medical expenses to get the injury healed or repaired. In the absence of evidence regarding the nature of treatment, this Court is constrained to award only Rs.10,000/- towards medical expenses.

6. A perusal of the wound certificate would go to show that the injury suffered is a compound fracture of scapula on right side with displacement of pubic symphysis. The Doctor has certified the disability at 30%.

6.1. Whether the percentage of physical disability should be the same as that of the functional disability? It need not be the same. It may be more or may be less also.

6.2. But, in this case, having regard to the young age of the claimant, that is the possibility of disability getting reduced, therefore, it is enough if the percentage of disability is taken as the functional disability.

6.3. It is appropriate to quote the decision of the Honourable Supreme Court in the case of Raj Kumar vs. Ajay Kumar and others (Civil Appeal No.8981 of 2010, dated 18th October 2010). The relevant portion reads as under:

"11. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that the percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation." The crucial factor which has to be taken into consideration, thus, is to assess as to whether the permanent disability has any

adverse effect on the earning capacity of the injured. In this sense, the MACT approached the issue in right direction by taking into consideration the aforesaid test”

6.4. In the light of the above decision, the compensation is restructured as follows:

Pain and sufferings	-	Rs. 25,000/-
Transport expenses	-	Rs. 10,000/-
Extra nourishment	-	Rs. 10,000/-
Attended charges	-	Rs. 10,000/-
Medical expenses	-	Rs. 10,000/-
Loss of enjoyment of amenities	-	Rs. 20,000/-
Loss of earning capacity (Rs.3,000/- x 12 x 17 x 30%)	-	Rs.1,83,600/-
Total	-	<u>Rs.2,68,600/-</u>

7. This Civil Miscellaneous Appeal is allowed, enhancing the quantum of compensation from Rs.60,865/- to Rs.2,68,600/-.

7.1. The enhanced amount will carry interest at 7.5% p.a. from the date of petition till the date of deposit, (less the interest for the default period).

7.2. It is represented by the Insurance Company that the compensation as ordered by the claims Tribunal has already been deposited by the Insurance company.

7.3. The Insurance Company is directed to deposit the enhanced amount less the amount already deposited, along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit, (less the interest amount for the default period), within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the claimant/appellant is permitted to withdraw the amount. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal
(Additional District Judge), FTC No.I,
Salem.

2. The New India Assurance Co. Ltd.,
No.52, Vinay Complex,
Opp. to National College,
Basavangudi, Bangalore - 4.

3. The Section Officer
VR Section
High Court Madras

+1 cc to M/s.P.A.Padmanabhan Advocate sr 7370
+1 cc to M/s.L.Chandrakumar Advocate sr 73711

C.M.A.No.742 of 2014

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