IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2016

(Judgment Reserved on 22.11.2016)

CORAM:

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A.No.1690 of 2009

Dhamodharan .. Appellant

Vs.

1. T.Arunkumar

2.United India Insurance Co. Ltd.,
66-68, Gandhi Road,
Kancheepuram. .. Respondents
[1st respondent herein is given up]

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accidents Claims Tribunal / Additional District Court, Fast Track Court No.II, Kancheepuram in MACT.OP.No.59 of 2003 dated 13.08.2008.

For Appellant : Mr.B.Jayaraman

For Respondents : Mrs.R.Rathna Thara[for R2]
R1 - Given up

J U D G M E N T

The Claimant, who is not satisfied with the award of compensation passed by the Tribunal for the injury that he had sustained in a road accident on 01.05.2002, has preferred this appeal.

2. The material facts that are relevant are that the claimant was working as a cleaner in M/s Sri Vijayalakshmi Bus Company, Arakkonam. On 01.05.2002 at 8.00 a.m., when he was beneath the bus bearing Registration No.TN-01-N-0911 and was applying grease, the driver of the bus inadvertently started the bus as a result of which the rear wheel of the bus ran over the legs of the petitioner, causing multiple fractures. He was taken to the hospital where he took treatment as inpatient for little over a month (from 01.05.2002 to 01.06.2002). On various heads of pecuniary and general damages, the appellant made a claim of Rs.5,00,000/- whereas the Tribunal has granted Rs.50,000/- a bare 10% of the claim as compensation. The table below shows the compensation sought and awarded under various heads:

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Heads	Amount Claimed (Rs.)	Amount Awarded (Rs.)
Extra Nourishment & Medical Expenses	50,000	500 + (Extra nourishment) 17,000 (medical expenses)
Compensation for pain and suffering	25,000	1,000
Compensation for continuing permanent disability	1,50,000	-
Compensation for loss of earning power	3,50,000	-
Partial Permanent Disability	-	30,000
Mental Agony	-	1,000
Transportation	-	500
Total :	5,75,000 (Restricted to Rs.5,00,000	50,000

3. The learned counsel for the appellant argued that given the nature of fractures that the appellant had suffered the compensation awarded by the Tribunal was unreasonably and unconscionably low. His contentions are that:

- Loss of income as a head of pecuniary damage was not considered and no compensation was awarded;
- The nature of injuries suffered by the appellant includes fracture of left tibia and fibula, right ankle besides damage to left hip, left knee and left leg has shortened by one inch. The damage suffered to his pelvic area is such that the doctor (P.W.2) has opined that it would be difficult for the appellant to sit, squat and walk, and assessed the disability at 30%. The Tribunal however, appeared to have over simplified the process of assessing compensation and granted Rs.30,000/- on this head, calculating it at Rs.1,000/- per percentage of disability. The appellant being a cleaner of the vehicle and aged 23 years, has lost substantial prospects of improving the quality of life when he was physically impaired for which he could hardly be blamed. In fitness of things, the Tribunal should have held that the injury suffered by the appellant has functionally disabled him, and should have resorted to multiplier method for computing the compensation payable.

Reliance was placed on the authorities of the Hon'ble Supreme Court in Rajesh Vs Ajaykumar & another [2011 ACJ 1 (SC)], Smt. Sarla Varma Vs DTC Ltd., [2009 (2) TN MAC 1 (SC)] & Santosh Devi Vs National Insurance Ltd. & Others [2012(2) TN MAC 1(SC)].

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4. Per contra, the learned counsel for the insurance company contended that compensation law is founded on the doctrine of justness and fairness and there is nothing in the Award where it can be accused of deviating from this doctrine. At the outset, it needs to be stated that the very accident appears suspicious since for an accident that was said to have taken place on 01.5.2002, FIR was registered only on 16-05-2002 based on a complaint preferred by none other than the appellant's brother. Again, if discharge summary Ext.P-3 is perused it is seen recorded in it that the appellant had suffered injuries due to an accident involving a two wheeler and a four wheeler. At that time, the appellant should have been conscious and it should have been his statement to the doctor. This aspect is strengthened by the fact that for an injury stated to have been suffered in an accident near Arakkonam, the appellant had taken treatment in General Hospital, Chennai. It is least conceivable that someone would abandon the medical facility locally available to travel to Chennai, which requires couple of hours of travel, contended the counsel. He relied on the authority in Oriental Insurance Co., Ltd., Vs Vellaichamy & another [2015 (1) TNMAC 457]

5. The submissions of the respondent suspecting the accident is least convincing. True, in Ext.P-3 discharge summary the nature of accident is stated as one involving a two wheeler and a four wheeler. But, is the appellant the author of this document? Secondly, if it is a false claim what was the insurance company doing all these years except attempting to tilt the needle of suspicion on an inadequately educated coolie who the appellant before the court is? Thirdly, and significantly the insurance company has not filed any appeal challenging the finding of the Tribunal as to the cause of the accident and its own liability. As to the other aspects of its objection, more particularly the appellant's choice of place for obtaining medical treatment is concerned, I am only inclined to state that a poor citizen in this country is also entitled to better care which he could afford, and it is better for the rest of the citizenry including institutions such as insurance companies to respect his decision. After all, the poor man before this Court, a coolie and no more, did not invite a situation such as the one he painfully endures. It is plain indignation and abuse of human dignity if one were to take exception to this especially when the counter point was not proved.

6. As to the quantum of compensation, I find what was awarded is excessively low. The enormity of the situation brought about by the disparity in computation of compensation was neutralized and parity was introduced when the Supreme Court stepped in with its path breaking decisions in Sarala Varma, Rajkumar Vs Ajay Kumar and Santosh Devi cases. It may be that these cases were decided after the impugned award involved in

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this was passed. However, even on the date when award was passed the Tribunal was under an obligation to determine compensation on the head of loss of earning capacity if a fair appraisal of the materials before it warranted it. Unlike Vellaichamy case that the respondent's counsel has relied on where the injured was an Advocate and the nature of injury that he had suffered was found not to have affected his earning capacity, in the case at hand, the victim of the road accident was a young man of 23 years at the relevant time and attempting a career as a cleaner in a lorry, has suffered pelvic injuries, shortening of leg has seriously impaired his ability to walk, sit and squat normally, and has visited the court for redressing violation of his rights. It would have been appreciable if the Tribunal had been more sensitive to the gravity of the situation that it witnessed and resorted to multiplier method rather than reducing the agony of the appellant to nothing with its quick resort to easy arithmetical exercise of 30% x 1,000/- per percentage technique.

7. I am satisfied that given the nature of appellant's avocation, and given also the fact that he is not adequately educated, it is not difficult to believe that his livelihood depends essentially on the well being of his physique, his limbs in particular. Hence, notwithstanding the 30% disability that the doctor has assessed, I consider that the functional disability that his injuries had inflicted on him needs to be assessed at least at 75%. The accident has taken place in 2002 when it is safe to consider that he would have earned at least Rs.2,500/- per month. 18 being the appropriate multiplier, if applied, (2500x12x18x75%) the loss of earning capacity is Rs.4,05,000/-. On the head pain and suffering an amount of Rs.50,000/- is awarded. For loss of earning I approximate it at Rs.2,500/- p.m. for four months and the pecuniary loss payable on this head is Rs.10,000/-. For extra nourishment Rs.5,000/- is awarded. Compensation thus payable on various heads is tabulated below:

Heads	Amount (Rs.)
Loss of earning capacity	4,05,000
Loss of earning for four months	10,000
Extra nourishment	5,000
Medical Expenses	17,000
Pain and suffering	50,000
Partial permanent disability	30,000
Mental Agony	1,000
Transportation	500
Total :	5,18,500

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8. The 2nd respondent/ Insurance Company is directed to pay Rs.5,18,500/- with interest @ 7.5% per annum within six weeks from the date of receipt of a copy of this order and on such deposit the claimant is entitled to withdraw it forthwith. The claimant is directed to pay the court fee for the enhanced amount. The appeal is allowed without cost.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

arr/ds

To:

The Motor Accidents Claims Tribunal /
Additional District Judge, Fast Track Court No.II,
Kancheepuram

Copy To:
The Section Officer ,
VR Section, High Court, Madras.

+1cc to M/s.Rathina Thara, Advocate sr.74558

+1cc to Mr.Jayaraman, Advocate sr.76018

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