IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE M.S.RAMESH

C.M.A. No.2279 of 2010

M.Kumaraguru .. Appellant/Petitioner

Versus

1.N.Sundaramurthy
2.S.Selvaraj
3.The Oriental Insurance Company
No.1 & 2, 2nd Floor,
Hosur Road, Opp. Wilson Garden,
Bangalore-560 027. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decreetal order dated 11.05.2009 made in M.C.O.P.No.22 of 2004 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Vellore.

For Appellant : Mr.A.K.Rajaraman for M.R.Sathishkumar

For Respondents: No appearance

J U D G M E N T

[Judgment of the Court was delivered by M.S.RAMESH,J]

This Civil Miscellaneous Appeal is against the award dated 11.05.2009 passed in M.C.O.P.No.22 of 2004 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Vellore, wherein the Tribunal had partly allowed the claim.

2. The relevant facts of the case are as follows:

On 21.08.2003, when the appellant/claimant, driving his scooter bearing Registration No.TN-23- B 5500, was returning to his residence at about 10.00 p.m., when Mahindra Jeep bearing Registration No.KA-04-N-7624 driven by the first respondent in a negligent manner, dashed against the two cyclists and later hit against the appellant/claimant and dragged him about 100 feet along with his scooter. Due to the accident, the appellant/claimant sustained grievous injuries in his right leg and right ankle with compound fractures and injuries all over the body. He was taken to Christian Medical College and

Hospital, Vellore and admitted in casualty. He was bed ridden for more than 18 months and had difficulty in walking, sitting or squatting. The said Mahindra Jeep was insured with the third respondent/Insurance Company. According to the appellant/claimant, he was working as Manager in Hotel Vasantham, No.70, Officers Line, Vellore and drawing a monthly salary at Rs.7,500/-.

3.The appellant/claimant filed a claim petition in MCOP No.22 of 2004 under Section 166 of the Motor Vehicles Act, 1988 before the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Vellore, claiming a sum of Rs.20 lakhs, as compensation for the grievous injuries sustained by him in his right leg and right ankle, together with interest at the rate of 7.5% p.a. from the date of claim petition.

4.Before the Tribunal, the appellant/claimant was examined as PW1 and the following documents were marked through him:

Ex.P1 - the copy of the First Information Report
Ex.P2 - the copy of the Insurance Policy
Ex.P3 - the Copy of the Registration Certificate
Ex.P4 - the Wound Certificate dated 07.10.2003
Ex.P5 - the Wound Certificate dated 14.11.2003
Ex.P6 to Ex.P9 - discharge summary dated 25.09.2003, 25.11.2003, 19.12.2003 and 08.09.2004
Ex.P10 - Series of Medical bills (CMC Hospital)
Ex.P11 - Bills in regard to extra nourishment
Ex.P12 - Bills in respect of transport expenses
Ex.P13 - Medical bills
Ex.P14 - X-ray (CMC)
Ex.P15 - X-ray
Ex.P16 - a copy of Judgment in STC 1580-03
Ex.Ps 17 to 20 - Copy of IT Form 2D
Ex.P21 - Disability Certificate
Ex.P22 - Acceptance of Regional Provident Fund Office
Ex.P23 - Letter of Regional Provident Fund Office.
Ex.P24 - Final Report
Ex.P25 - MV Report

PW-2- doctor, who treated PW1 and PW3-Motor Vehicle Inspector, were also examined on behalf of the appellant/claimant.

5.On the side of the respondents, RW1-Bhuvaneswaran, who is an employee of the third respondent/Insurance Company was examined and Ex.R1 was marked.

6.On consideration of the oral and documentary evidences, the Tribunal had come to the conclusion that the monthly income of the claimant was Rs.5,500/- and derived the total compensation from the following heads:

Sl.No.	Heads under which compensation awarded	Amount in Rs.
1	Loss of earnings (Rs.5,500/- x 6)	33,000/-
2	Transport to Hospital	2,000/-
3	Extra nourishment	1,500/-
4	Permanent disability	70,000/-
5	Pain and Suffering	15,000/-
6	Medical Expenses	1,13,550/-
	Total	2,35,050/-

7.Heard both the learned counsel appearing for the appellant as well as the learned counsel for the respondents.

8.Some of the admitted facts of the case are that the Mahindra Jeep bearing Registration No.KA-04-N-7624 belonged to the second respondent and that it was insured with the third respondent.

9. The Tribunal had come to the conclusion that the accident occurred due to the negligence of the driver of the Mahindra Jeep. The first respondent had not denied the fact that he was responsible for the accident and also he had admitted his guilt and paid the fine before the Criminal Court. The liability of the Insurance Company is not under question in this appeal and that leaves us with the issue of re-examination on the quantum of compensation fixed by the Tribunal.

10.Before analysing the quantum, it would be appropriate to look into the nature of injuries sustained by the appellant.

> "Immediately, after the accident, the claimant got himself admitted in Christian Medical College & Hospital (CMC) at Vellore. In Ex.P4-Wound Certificate, it is seen that the claimant sustained lacerated injury on the right; leg and fracture of bone in the right he sustained the following injuries:
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> 1. Type III B compound both bone fracture right leg with 1 cm puncture around on anterior aspect proximal 1/3 leg.
>
> 2. Closed lateral malleclus fracture right ankle
>
> 3. 6 cm skin loss posterior aspect of right ankle.

The claimant was against admitted in C.M.C. Hospital on 22.08.2003 and taken treatment till 15.09.2003. There was lacerated would over the little finger and also right wrist There was 6 cm skin loss over the posterior aspect of the heel and abnormal mobility and crepitus mid shaft right tibia and fibula with puncture would measuring 1 cm over the site of the fracture. Ex.P.6 contains the course of treatment given for the claimant. During the course of treatment, skin grafting was done over distal lower 3rd chest.The claimant was against admitted in C.M.C. Hospital, Vellore on 20.11.2003 and taken treatment till 25.11.2003.Ex.P.7 contains the nature of treatment. The claimant was again admitted in C.M.C. Hospital on 16.11.2003 and discharged on 19.11.2003. Again, the claimant had taken treatment in C.M.C. Hospital, Vellore for about 4 days from 04.09.2004 to 08.09.2004. We have also taken cognizance of the restricted knee movement as evidenced in Ex.P.9.

11.It is not in dispute that the appellant had undergone three surgeries as evidenced by Exs.P4, P5 and P6. The Tribunal, while relying on the said evidences, had come to the conclusion that the appellant's right leg was reduced by 3 cm and on consideration of the long duration of his medical treatment, had accepted PW2's evidence that the appellant's permanent disability is 55%.

12.With regard to the quantum of compensation, the Tribunal had fixed the appellant's income as Rs.5,500/- p.m. as against his claim of Rs.7,500/- p.m. In this regard, we have perused Exs.P17 to P20, which are the Income Tax Returns of the appellant for the years 1999-2000 to 2002-2003. While perusing the statement of accounts has reflected under Exs.P17 to P20, the income of the appellant is shown under the heads of salary together with income from 'catering contractor and money lending'. Curiously, the Tribunal while accepting Exs.P17 to P20, had come to the conclusion that the annual income of the appellant is Rs.66,000/- (i.e. Rs.5,500/- p.m.,) based on Ex.P23, which is a letter issued from the Office of the Regional Provident Fund Commissioner, communicating the payment from the appellant's Provident Fund Account to his Savings Bank Account. We are unable to comprehend as to how the Tribunal expects the appellant's place of employment to be incorporated in his Ex.P23. Hence, the appellant's original claim that he was earning Rs.7,500/- p.m. towards his monthly income through his employment has to be accepted and the Tribunal's finding that the appellant's total income was only through catering contracts has to be disregarded. Consequently, the appellant's loss of income for six months is enhanced from Rs.33,000/- to

Rs.45,000/-.

13.Though we have found that the appellant's income is also from his salary, we do not intend to disturb the Tribunal's finding that the appellant was also deriving income from catering contracts. We reiterate that Ex.P17 to P20 evidences two sources of income, viz., 'salary' and ' income from catering and money lending'. Taking into account, the appellant's permanent physical disability at 55%, his future prospects of continuing as a Supervisor at the Hotel and to effectively conduct the business of catering contracts must have been diminished. The Tribunal in its award, has not taken into account the loss is his future earning capacity, which loss could be correlated to the compensation awarded under the head 'permanent disability'.

14. With regard to permanent disablement suffered by the appellant, the learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court in the case of JAKIR HUSSEIN V. SABIR & OTHERS reported in 2015 AIR SC W 1496 has held as follows:

> "15.Further, with respect to permanent disablement suffered by the appellant, Mr.K.Parameshwar, the learned amicus curiae, has rightly submitted that the appellant was examined by Dr.P.K.Upadhyay in order to prove his medical condition and the percentage of permanent disability. The doctor who has treated him stated that the appellant has one long injury from his arm up to the wrist. Due to this injury, the doctor has stated that the appellant had great difficulty to move his shoulder, wrist and elbow and pus was coming out of the injury even two years after the accident and the treatment taken by him. The doctor further stated in his evidence that the appellant got delayed joined fracture in the humerus bone of his right hand with wiring and nailing and that he had suffered 55% disability and cannot drive any motor vehicle in future due to the same. He was once again operated upon during the pendency of the appeal before the High Court and he was hospitalised for 10 days. The appellant was present in person in the High Court and it was observed and noticed by the High Court that the right hand of the appellant was completely crushed and deformed. 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 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., the total loss of future earnings of the appellant will be at Rs.54,000/- x 16 = Rs.8,64,000/-."

15.Applying the ratio held in the aforesaid judgment of the Hon'ble Supreme Court, the appellant would be entitled to for enhancement under the head 'loss of future earnings'. Owing to permanent disability, the Tribunal had awarded a sum of Rs.70,000/- towards functional permanent disability. Considering the loss of future earnings of the appellant, the compensation of the functional permanent disability is enhanced from Rs.70,000/- to Rs.2,05,000/- under the head 'permanent disability'.

16.Insofar as the compensation awarded under the other heads, i.e. Transport charges, extra-nourishment, pain and suffering and medical expenses concerned, the learned counsel for the appellant has not raised any serious objection on the finding of the Tribunal. More over, the reasoning given by the Tribunal under these heads seems to be justifiable and hence no interference is required. Accordingly, the compensation awarded under these heads by the Tribunal remains unaltered.

17.Thus, the total compensation is enhanced from Rs.2,35,050/- to Rs.Rs.3,82,050, which is detailed as follows:

Sl.No.	Heads	Awarded by the Tribunal (in Rs.)	Enhanced in CMA (in Rs.)
1.	Loss of earnings	33,000/-	45,000/-
2.	Transport to Hospital	2,000/-	2,000/-
3.	Extra Nourishment	1,500/-	1,500/-
4.	Personal Disability	70,000/-	2,05,000/-
6.	Pain and Suffering	15,000/-	15,000/-
7	Medical Expenses	1,13,550/-	1,13,550/-
8	Total	2,35,050/-	3,82,050/-

18.The appellant/claimant shall be entitled for interest at the rate of 7.5% p.a. from the date of claim petition on the enhanced amount awarded in this Civil Miscellaneous Appeal.

19.It is brought to our notice that the third respondent/Insurance Company had deposited the entire award amount before the Tribunal to the credit of M.C.O.P.No.22 of 2004 on the file of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Vellore.

20.Now that we have partially enhanced the compensation, it would be out endeavour to ensure that the enhanced compensation reaches the appellant/claimant at the earliest. In a recent Judgment passed by us in CMA.Nos.2464 and 2700 of 2011 dated 26.10.2016, we had adopted the guidelines formulated by a Division Bench of this Court and ordered disbursal of the compensation directly to the claimant's Savings Bank Account through NEFT/RTGS. The relevant portion of our order reads thus:

> 13. With regard to the disbursal of the enhanced compensation amount, this Court, in a Judgment dated 11.03.2016 passed in CMA.No.428 of 2016 (the Divisional Manager, The Oriental Insurance Co., Ltd., Kannur vs. Rajesh and two others) had formulated guidelines / directions to serve the cause of justice, more particularly to innocent and illiterate victims/claimants. We deem it appropriate that the said guidelines also have to be adopted for this case for disbursing the enhanced compensation amount, so as to reach the claimants at the earliest. Paragraph 11 (vii) and (xv) of the above said Judgment dated 11.03.2016, are extracted hereunder:
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> "viii) The Claims Tribunal shall, as a matter of rule, direct the insurance companies or transport

corporations or such other entities held liable to pay the compensation, to deposit the award sum to the credit of the bank account of the Claims Tribunal directly by NEFT or RTGS mode. The Registry will issue appropriate directions in this regard enabling the respective Claims Tribunal or the District Court concerned to open separate account, which will bear a suffix 'MACT' to identify that the account is in relation to motor accident claims.

xv) The Claims Tribunals shall ensure that as and when order is passed for disbursal of compensation amount, it will ensure that such disbursal of compensation shall be made directly to the credit of the bank account of the claimant/victim as the case may be NEFT or RTGS. The bank account details of the claimant/victim(s) shall be stated in the award/order of the Claims Tribunal."

21.In the result,

(i) this Civil Miscellaneous Appeal is partly allowed.

(ii) The award of the Tribunal is enhanced from Rs.2,35,050/- to Rs.3,82,050/-.

iii)The award amount including the enhancement compensation shall carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

iv) The third respondent/Insurance Company is directed to deposit the enhanced award amount within a period of eight weeks from the date of receipt of a copy of this order to the credit of Bank Account of the Claims Tribunal directly by NEFT or RTGS mode. The Claims Tribunal shall ensure that as and when the enhanced amount deposited to the bank account, the same shall be disbursed directly to the credit of the bank account of the appellant/claimant by NEFT or RTGS. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Judge
Motor Accident Claims Tribunal
cum Chief Judicial Magistrate Vellore

2.The Section officer
VR Section High Court Madras

+1 cc to Mr.R.Sathish kumar Advocate sr 62286/16

C.M.A. No.2279 of 2010

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