

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 30.11.2016

Judgment Pronounced on: 21.12.2016

CORAM:

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

C.M.A.No.2772 of 2009

G. Jacob Anderson ... Appellant/Petitioner

Vs.

1. S.Paneerselvam

2. The New India Assurance Company Ltd.,
C-33, Second Avenue,
Near 11th Main Road,
Anna Nagar, Chennai-600 040.... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 31.12.2008, made in M.C.O.P.No.1990 of 2003 on the file of Motor Accident Claims Tribunal, (Additional District and Sessions Court, Fast Track Court No.IV), Chennai.

For Appellant : Mr.S.Mahimai Raj

For R1 : Exparte

For R2 : M/s.Elveera Ravindran

JUDGMENT

The claimant, who suffered injury in a road accident, has come forward with this appeal seeking enhancement of compensation.

2. On 16.03.2002, the appellant/claimant was riding his motorcycle along MTH road, Korattur, Chennai, and he was hit by a tanker lorry bearing no.TN-04 7079 driven by the first respondent, which resulted in a fracture to the left leg and injury to his left foot. He is stated to have undergone three surgeries and had been in hospital as in-patient for 16 days. Claiming compensation for the injuries suffered, the appellant approached the Tribunal with a claim of Rs.15,00,000/-. It was contended before the Tribunal that the claimant was aged around 29 years, that he was a small scale industrialist and was engaged in lathe works and that he was earning a monthly income of Rs.10,000/-. To prove the extent

of his disability the appellant had examined P.W.2, an orthopaedician, who through his Certificate in Ex.P-12 and backing it up with his oral testimony assessed the disability of the claimant at 40%. After considering the evidentiary material before it, the Tribunal arrived at the total compensation amount at Rs.1,55,000/- While, the medical evidence was to the effect that the appellant has suffered 40% disability, the Tribunal thought it fit to fix it at 20%, and awarded sum Rs.30,000/- as compenstion for the partial permanent disability.

3. The learned counsel for the appellant argued that given the fact that the appellant was running a small scale industrial unit involving lathe works, the nature of injury suffered by him has disabled him absolutely that it rendered him incapable of pursuing any avocation and that he has become jobless and has become dependent on his mother, a superannuated Tahsildar. The essential contention before this Court is that even though medical evidence has reflected that the appellant had suffered 40% disability, the nature of the injuries suffered is such that he must be considered to have suffered 100% functional disability and therefore, the Tribunal should have adopted multiplier technique for quantifying the compensation payable on the head of loss of earning capacity of the appellant. Alternatively, even if 40% of disability that the physician has determined is presumed as a proper assessment, in the absence of any contra medical evidence, the Tribunal ought not to have reduced it arbitrarily. And, to determine compensation at Rs.1,500/- per percentage of disability has no justification in law since such arbitrary and random picking of a certain sum can never be termed just and fair. Further, if the ratio of the Supreme Court in Rajkumar Vs. Ajay Kumar and another [2011 ACJ 1] is reckoned, the future prospectus for increasing income of the appellant has to be necessarily factored in. It is an undisputed and perhaps indisputable fact that the appellant was an inpatient for 16 days and in fitness of things, the Tribunal should have granted compensation for loss of earning during the period of his treatment. Further on general heads of compensation too, the compensation awarded bears little connect to reality. To fortify his submission, the learned counsel relied on authorities (i) Sunil Kumar Vs. Ram Singh Gaud and Others [2008 2 MLJ 865 (SC)] (ii) United India Insurance Company Ltd., through its Divisional Manager, Dindigul Vs. Rosammal and Others [2009 1 MLJ 519] and (iii) New India Assurance Co. Ltd., Vs. C.K.Ramesh and Others [2009 8 MLJ 797].

4. Per contra, the learned counsel for the second respondent/Insurance Company argued that the appellant is said to have suffered a fracture to his left feet and he has not demonstrated through his evidence how it has resulted in functional disability viz a viz the avocation in which he is said to have engaged in. The nature of injury that the appellant had suffered may not warrant an assessment at 40%

disability and the Tribunal which had the opportunity to witness the claimant had justly fixed it at 20%. Again to contend that the injury had rendered the claimant jobless too is exaggerated for Ext.P-6 shows that the license for running the small scale unit had expired on 19-01-2002, at least couple of months before the accident and necessarily neither the accident and nor the injury could be blamed for the claimant quitting his business.

5. A consideration of the award indicates that the Tribunal has not rushed to pass it as it has carefully evaluated the evidence to arrive at the nature and extent of disability. I do not find any evidentiary support to hold that the nature of injury that the appellant has suffered has rendered him functionally disabled as to affect his earning capacity either. However, on two heads there could be a marginal enhancement. I consider that disability must be assessed at Rs.2,000/- instead of Rs.1,500/- and hence the compensation for the injury suffered is determined at Rs.40,000/-. On the head of pain and suffering too the compensation has to be at Rs.20,000/- instead of Rs.10,000/-. The Tribunal has not granted any amount for loss of income during the period when the appellant could not have worked. The injury was to his left foot and hence it could be presumed that his mobility would have been affected for at least two months. If his monthly income is notionally fixed at Rs.3,000/- p.m. then he should be compensated for loss of earning at Rs.6,000/-. In effect appellant is eligible for an enhanced compensation of Rs.26,000/- and no more.

6. This appeal is therefore partially allowed and the compensation amount is enhanced from Rs.1,55,000/- to Rs.1,81,000/- and the respondents are directed to deposit the entire award amount with interest at 7.5% per annum, less if any already deposited within four weeks from the date of receipt of copy of this order whereupon the appellant would be permitted to withdraw the same forthwith. The appellant is directed to pay additional court fee on the enhanced portion of the award. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

kmi

To:

1. The Additional District and Sessions Court,
Fast Track Court No.IV), Chennai.

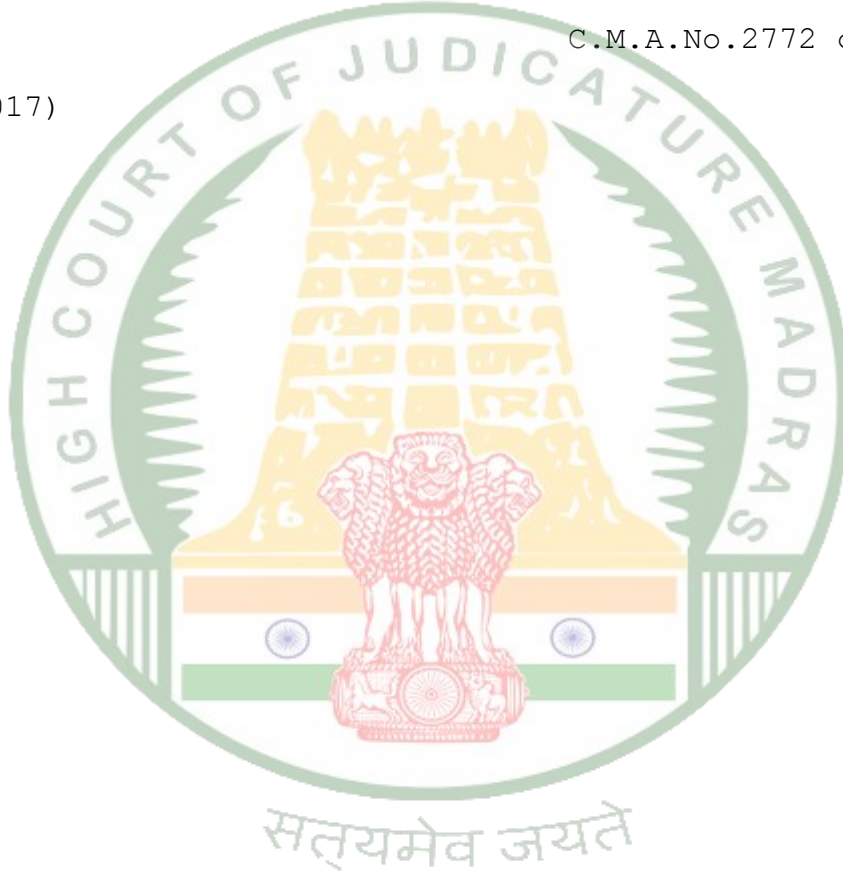
2. The Record Keeper,
V.R.Section,
High Court, Madras.

+1cc to M/s.S.Mahimairaj,Advocate sr.76146

+1cc to M/s.S.Elveera Ravindean,Advocate sr.74600

C.M.A.No.2772 of 2009

mp(co)
ss(10/4/2017)



WEB COPY