

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 28.11.2016

Judgment Pronounced on : 21.12.2016

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.696 of 2009

Manohar .. Appellant/Claimant

Vs.

1.Kuppan

2.Velu

3.The Divisional Manager,
The New India Assurance Company Ltd.,
No.1, Officers Line,
Vellore.

4.The Divisional Manager,
The United India Insurance Company Ltd.,
Vellore. .. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the order and judgment dated 21.06.2006 in MCOP.No.523 of 2003 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Thiruvannamalai.

For Appellant : Mr.T.Terry Chella Raja

For Respondents : Mr.M.Krishnamoorthy [for R3]
R1 & R2 [Given up]
R4 - No appearance

JUDGMENT

The claimant who suffered amputation of his right leg in a road accident has moved this Court in this appeal seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal, (Additional Sub Court), Thiruvannamalai, in MCOP.No.523 of 2003.

2. The appellant is stated to be a cleaner by avocation. On 21.07.2000, while he was travelling as a cleaner in a lorry bearing registration No.TN-H-2347, belonging to the first respondent along Tirukovilur - Thiruvannamalai road, it met with an accident when another lorry bearing registration No.TN25-B-2004 belonging to the second respondent collided on it. In this accident, the appellant suffered major injuries

which resulted in the amputation of his right leg, below his knee. He also suffered fracture of right humerus bone (in the upper arm). P.W.2, the doctor Vide Ext.P-6 disability certificate has assessed the disability caused by amputation of right lower limb at 70% and another 20% towards disability to the right hand of the claimant. For the injury suffered, the appellant claimed a total compensation of Rs.5,00,000/-, which included claim of special damage for loss of earning capacity. Including loss of earning capacity and general heads of compensation, the Tribunal, however, awarded a total sum of Rs.1,63,000/-. Since two vehicles were involved in the accident, the Tribunal apportioned contributory negligence at 75% to the lorry in which the appellant was a cleaner and 25% on the lorry of the second respondent.

3. The learned counsel for the appellant submitted that while the Tribunal has determined the functional disability at 60%, and applied 17 as multiplier on a notional annual income of Rs.15,000/- (that appears to reflect that the Tribunal has fallen back on II Schedule to M.V.Act, 1994) in fitness of things it ought to have fixed it at 100%, for, with the loss of lower limb the appellant literally would not be in a position to get any other employment nor could he engage in alternative avocation of any kind. As to his monthly income, while the claimant contended that his monthly income was 3,000/- at the relevant time, the Tribunal's choice of a notional annual income at Rs.15,000/-, is not only inadequately low but also not appropriate since the claim was made not under Sec.163-A but under Sec.166 of the M.V.Act, 1994. The appellant was a young man aged 25 years at that relevant time and his future career prospects for increase in earning was literally stultified due to his injuries in the accident. Here, the Tribunal has yet again opted for 17 as a multiplier, when it should have preferred 18 for the multiplier. Another aspect where the award appears unrealistic is that the Tribunal has overlooked the fact that the appellant was treated as an inpatient for 68 days and that he underwent two surgeries, and in spite of that the Tribunal has awarded a consolidated sum of Rs.10,000/- on the heads of pain and suffering and transportation. It further literally ignored other heads of general damages such as loss of amenities, future medical expenses as the appellant would have to go for an artificial leg, extra nourishment, attendant charges etc., Taken wholly, the entire award requires a relook and there is a compelling necessity to enhance compensation on all the heads, contended the counsel. In aid of his submissions, he relied on the authorities of the Hon'ble Supreme Court in Jakir Hussein Vs. Sabir and Others [2015 (1) TNMAC 321 (SC)] and this Court in Shunmugam Vs. Bharathi and another [2015(2) TNMAC 563].

4. Per contra, the learned counsel for the third respondent contended that there can be little merit in the contention of the appellant that there would be 100% loss of earning capacity as it is inconceivable that someone who might have lost his leg should unnecessarily be without any avocation. Secondly, on the heads of general damages the Court has to assess the quantum of compensation awarded on a case by case basis and may not rely on the authorities as a formula. Thirdly, for an accident that has happened in the year 2000 and in a case where claim petition was preferred in the year 2001, if at this distant day any enhancement is granted, the Insurance Company would face the liability to pay the interest for close to 16 years.

5. Of the arguments of the respondent, the last one appear hardly convincing and least impressive. In law a Tribunal is called upon to determine a fair and just compensation, and where one is aggrieved by the process of such determination he has a statutory right of appeal, and it would then be the duty of the appellate Court to re-appraise itself of the correctness of the award and to interfere with it if circumstances demand one. If ultimately the award is interefered with, it implies that prima facie the Tribunal might have been in error, and in a circumstance such as this to deny enhancement of compensation because pendente lite interest is to be paid will tantamount to shifting the blame on an innocent litigant, which is unjust and unfair to him.

6. Turning to merits, neither the accident, nor the nature of injuries suffered by the appellant, nor the duration of his hospitalistion, nor the factum of two surgeries that the appellant was required to undergo, nor amputaion of the leg, nor the disability forced on the appellant are disputed. What is in dispute is the evaluation of the extent of disability and monetary value of that impairment in relation to disability as determined by the Tribunal.

7. P.W.2, the doctor who evaluated the extent of disability of the appellant, has assessed it at 70% for his amputated right leg and 20% for his hand. The Tribunal however, appears to have randomly picked a certain 60% as permanent disability when a threatening possibility of functional disability ruining the life of the appellant ought to have weighed with it. The appellant is a cleaner and his entire avocation depends on his limbs, and with an impaired upper limb and an amputated lower limb, functional disability that he needed to endure is complete. In my assessment fixing permanent disability of the appellant at 80% would be just, fair and appropriate. [Refer: Rajkumar Vs Ajaykumar & another (2011 ACJ 1)].

8. Turning to income, it would be only appropriate to hold that he would have earned Rs.2,500/- p.m. Adopting 18 as the relevant multiplier, the total compensation for loss of earning power of the appellant thus will be (Rs.2,500 x 12 x 18 x 80%) Rs. 4,32,000/-.

9. On the heads of general damages, I find a need to interfere with the award, as I find the compensation awarded is unconscionably low. The refixed amounts are as under:

Heads	Amount (Rs.)
Loss of earning power	4,32,000.00
Pain and suffering	50,000.00
For Permanent disability	70,000.00
For Transport	2,000.00
For Nourishment	4,000.00
For future and medical expenses (for replacement of artificial limb)	25,000.00
Total :	5,83,000.00

This amount is apportioned in the ratio of 75% : 25%, the former as against the owner and insurer of the lorry in which the appellant travelled (respondents 1 and 3) and the latter against the owner and insurer of the other lorry (respondents 2 & 4).

10. To conclude the appeal is allowed and the compensation payable is enhanced to Rs.5,83,000/-, and the appellant is directed to pay the balance court fee due on it. The parties found liable are directed to deposit the aforesaid amount less any amount already deposited with interest at 7.5% p.a. within six weeks from the date on which copy of this order is made ready, upon which the appellant is permitted to withdraw the same forthwith. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

ds

To:

1.The Motor Accidents Claims Tribunal
Additional Sub Court,

<https://hcservices.ecourts.gov.in/hcservices/>
Tiruvannamalai.

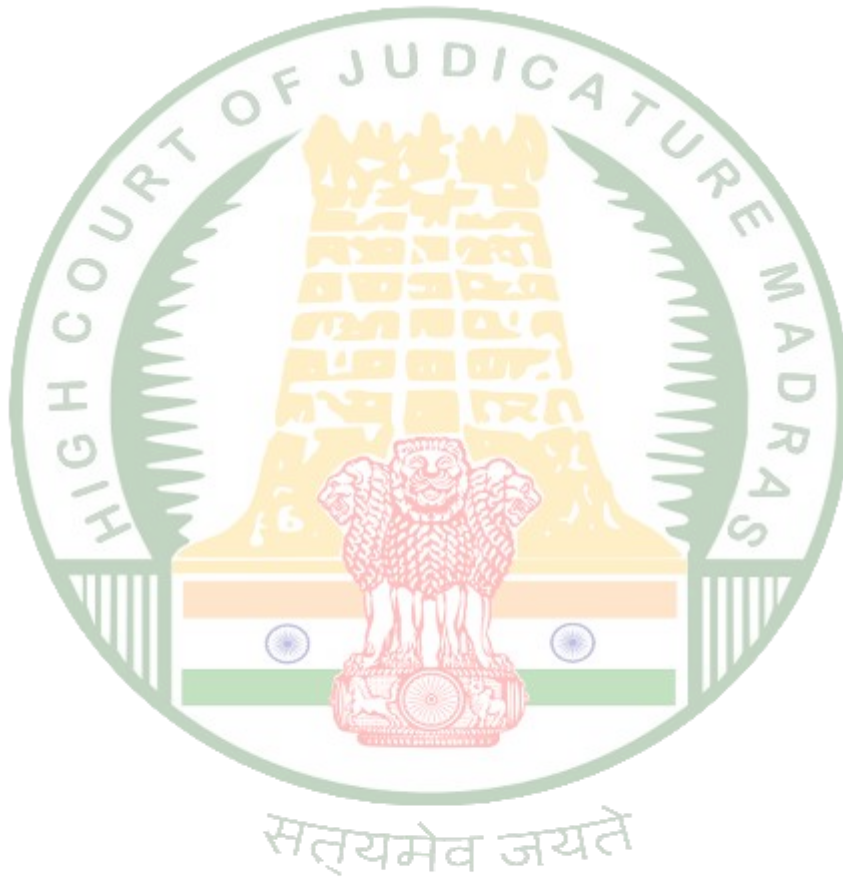
2.The Record Keeper
VR Section
High Court, Madras.

+1cc to M.Malar,Advocate sr.74677

+1cc to Mr.M.Krishnamoorthy,Advocate sr.74635

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