

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 17.11.2016

Judgment Pronounced on: 21.12.2016

CORAM:

THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.994 of 2009

G.Selvam

... Appellant/Petitioner

Vs.

1. M/s.M.M. Traders

No.12, Muthiyal Street,
Alandur,
Chennai.

[1st respondent remained ex parte]

2. Cholamandalam MS General Insurance Co. Ltd.,

"Dare House", II Floor,
New No.2, NSC Bose Road,
Chennai - 600 001.

... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, praying against the judgment and decree dated 18.11.2008 made in MACT.OP.No.4122 of 2004, on the file of the VI Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

For Appellant : Mr.R.Kalaiarasan

For Respondents : Mrs.R.Sree Vidya [for R2]
R1 - Ex parte

JUDGMENT

This Civil Miscellaneous Appeal arises out of MACT.OP.4122 of 2004 on the file of VI Court of Small Causes, Chennai by the claimant before the Tribunal seeking enhancement of compensation awarded in the road accident.

2. Heard R.Kalaiarasan, the learned counsel appearing for the appellant and Ms.R.Sree Vidya, the learned counsel appearing for the second respondent.

3.On 06.03.2004, at about 10.00 a.m. appellant/petitioner, an auto rickshaw driver by avocation was on his way from Anna Salai to Airport and while he was

crossing the GST Road, the auto rickshaw that he was then driving met with a road accident when a three wheeler van bearing registration No.TN22-P-3832 dashed against it. In the said accident, the auto rickshaw appears to have capsized and the claimant had suffered multiple fractures in his pelvic area, besides fracture of right knee and to the right leg. He was treated as an inpatient in Government Royapettah Hospital, Chennai, and had undergone atleast three surgeries for treating his fracture.

4. In all, he claimed compensation of Rs.10,00,000/- but was awarded a sum of Rs.1,15,942/- (rounded off to Rs.1,15,950/-). The break-up of the award under various heads is tabulated below :

Heads	Amount claimed (Rs.)	Amount awarded (Rs.)
Loss of earning from 06.03.2004 to 05.03.2005	90,000.00	36,000.00
Transport to Hospital	25,000.00	1,607.00
Extra nourishment	25,000.00	5,000.00
Damage to clothing and articles	2,000.00	500.00
Medical Expenses	10,000.00	4,835.00
Compensation for attendants	20,000.00	3,000.00
Compensation for Mental Agony	1,00,000.00	15,000.00 (clubbed both heads)
Compensation for pain and suffering	1,50,000.00	
Compensation for continuing permanent disability (if any)	2,00,000.00	50,000.00
Compensation for loss of earning power	3,78,000.00	Nil
Total :	10,00,000.00	1,15,942 (Rounded off to Rs.1,15,950/-)

5. In the matter of assessing compensation, the Tribunal has relied on the evidence of PW.2, the doctor, who assessed the claimant's disability at 50% as partial permanent disability and Ex.P12, the certificate issued by him. The claimant quantified his income as Rs.300/- per day and hence Rs.9,000/- per month. As there was no documentary evidence to substantiate it, the Tribunal fixed the income at Rs.4,500/- per month.

6. The learned counsel for the appellant submitted that the appellant/petitioner has suffered major injuries in pelvic area and also shortening of his right leg by 3 cms., and when the doctor has opined that it would be difficult for the appellant to squat, it would be nigh difficult for him to drive an auto rickshaw to earn his livelihood. Hence, the loss of income must be assessed not as a component of his percentage of disability, but as an aspect of total functional disability. On the head "mental agony" and "pain and suffering" an amount of Rs.15,000/- awarded by the Tribunal is too paltry and the Tribunal has not taken into account that the claimant was forced to undergo as many as three corrective surgeries, and that his suffering had spread over more than eight months.

7. The learned counsel for the 2nd respondent/Insurance Company argued that there was no evidence to even support the claimant's contention that he was an auto rickshaw driver, nor has he proved to have a valid licence. Therefore, the nominal income fixed by the Tribunal is reasonable and the methodology adopted by the Tribunal to arrive at the loss of income should not be interfered with.

8. On a perusal of records, I find that even though the Insurance Company in the course of cross-examination of PW1, the claimant, has suggested that he was not an auto rickshaw driver, which the claimant had denied, it has not travelled beyond that effort to establish its counter point. It is now too late in the date for the repondents to challenge the avocation of the claimant.

9. The merit of the contention of the appellant essentially is hinged on the medical evidence. It is not in dispute that the appellant suffered fractures to his pelvic area in the accident. The Tribunal does not disbelieve that the appellant has suffered 50% disability. However, while dealing with the compensation for loss of future earning capacity, the Tribunal has held that there was no substance to indicate that the entire earning capacity of the appellant was lost in the accident and that he was not entitled for any compensation under this head. This reasoning I find it on the side of unreasonableness. When the fact remains that the appellant was an auto rickshaw driver and that he had also suffered major injuries to his pelvic area and had also suffered 50% disability in that area, besides shortening of his leg by 3 cms, it is only reasonable to visualise that this appellant may not be able to pursue his avocation in which he was engaged in prior to the accident. It may be that his entire earning capacity may not have been lost to him but that should not imply that he should be denied compensation for the functional disability that he has suffered due to the accident. After all, it was not a condition that he had invited, but was forced on him. In Rajkumar Vs. Ajay Kumar

and another [(2011) ACJ 1], the Hon'ble Supreme Court has expatiated on the concept of functional disability and the mode of determining compensation, which ratio finds functional utility here in determining compensation for the claimant. I hold that the appellant's functional disability must be determined atleast at 60%. As against claimant's contention that he was earning Rs.300 per day, the Tribunal has fixed Rs.4,500/- p.m. The appellant was stated to be thirty years at the time of accident and hence the appropriate multiplier will be 17. On these parameters the loss of earning power is thus determined at (4500 x 12 x 60% x 17) Rs.5,50,800/-. The claimant would also be entitled to compensation at Rs.50,000/- for pain and suffering. Transport to hospital is fixed at Rs.2,000/-. As to the other aspects this Court does not find any material to interfere with the award. The total compensation that the claimant becomes entitled to receive is Rs.7,17,135/- which is rounded off to Rs.7,17,200/-.

11. Therefore, the appellant/claimant is entitled for compensation at Rs.7,17,200/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The respondents are directed to deposit the same within four weeks from the date of receipt of a copy of this order whereupon the claimant is permitted to withdraw the same forthwith. The claimant shall pay necessary court fee on the enhanced compensation. The appeal is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

The Motor Accident Claims Tribunal,
VI Small Causes Court,
Chennai.

+1cc to Mr.N.M.Muthurajan, Advocate, S.R.No.74567
+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.76171

C.M.A.No.994 of 2009

EV(CO)
CA(13/04/2017)