



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2016

CORAM:

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THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. (MD) No.205 of 2016

and

C.M.P (MD) No.10543 of 2016

Raghavan

... Appellant/ Petitioner /
Claimant

Vs.

1.Koti Venkateswarlu

2.The Divisional Manager,
Oriental Insurance Company Limited,
40-383, Bhupal Complex,
Park Road,
Kurnool - 518 001.
Andhra Pradesh.

3.South India Corporation Limited,
Rani Seethai Hall,
603, Anna Salai,
Chennai - 600 006.

4.The Divisional Manager,
Oriental Insurance Company Limited,
P.I.L.Building, 4th Floor,
4, Esplanade,
Chennai - 600 108.

... Respondents/Respondents

(R.1 & R.3 were set exparte before the Tribunal. Hence, notice may be given up against R.1 & R.3.)

PRAYER: Appeal filed under Section 173(1) of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.11.2015, made in M.C.O.P.No.50 of 2015, by the Motor Accident Claims Tribunal - cum - Chief Judicial Magistrate, Thanjavur at Kumbakonam.

For Appellant : Mr.S.Rajaprabhu

For Respondents : Mr.K.Bhaskaran for R.4

No appearance for R.2

R.1 & R.3 - Exparte.

**JUDGMENT**

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.7,84,713/- (Rupees Seven Lakhs Eighty Four Thousand Seven Hundred and Thirteen only) as compensation for the injuries and consequential amputation of his right leg in the accident occurred on 30.06.2013.

2. The facts of the case are as follows:

2.1. The appellant/claimant, who is a driver, was driving his lorry from Ponneri to Chennai Port via Meengur and at that time, another lorry driven by its driver in a rash and negligent manner came from the opposite direction and dashed against the lorry driven by the appellant/claimant. In the accident, the appellant/claimant sustained injuries in both the legs. Thereafter, he was admitted in the hospital and his right leg was amputated. Therefore, the claim petition.

2.2. The Tribunal based on Ex.P.1 - F.I.R filed against the driver of the offending vehicle and also based on the evidence of P.W.1, came to the conclusion that the driver of the vehicle owned by the first respondent insured with the second respondent alone was responsible for the accident and fixed the liability on him.

2.3. The Tribunal also took note of the fact that there was no rebuttal evidence on the side of the fourth respondent-Insurance Company or on the side of the owner of the offending vehicle. Though the claimant claimed a sum of Rs.3,000/- (Rupees Three Thousand only) as monthly income and a sum of Rs.600/- (Rupees Six Hundred only) as batta per day, the Tribunal determined the monthly income of the claimant at Rs.4,500/- (Rupees Four Thousand and Five Hundred only) and adopted the multiplier 14 and after determining the disability at 80%, arrived at a sum of Rs.6,04,800/- (Rupees Six Lakhs Four Thousand and Eight Hundred only) [Rs.4,500/- X 12 X 14 X 80/100] towards permanent partial disability and including the other amounts, a sum of Rs.7,84,713/- (Rupees Seven Lakhs Eighty Four Thousand Seven Hundred and Thirteen only) has been awarded. The said quantum of compensation is being challenged by the appellant/claimant.

3. Heard Mr.S.Rajaprabhu, learned Counsel for the appellant/claimant and Mr.K.Bhaskaran, learned Counsel for the fourth respondent-Insurance Company.

4. The question of going into the negligence does not arise as there is no appeal filed by the fourth respondent-Insurance

5. Though the appellant/claimant sought for a sum of Rs.3,000/- (Rupees Three Thousand only) and a sum of Rs.600/- (Rupees Six Hundred only) as batta per day, there was no document



available on the side of the appellant/claimant. Therefore, the Tribunal relying upon the judgment in Jakir Hussein v. Sabir and others reported in 2015 (1) TN MAC 321 (SC), determined the monthly income at Rs.4,500/- (Rupees Four Thousand and Five Hundred only).

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6. Though many judgments have been referred to by both the sides regarding the monthly income, the Honourable Supreme Court in Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd. reported in 2014 (1) TNMAC 459 (SC), determined the monthly income at Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month for a vegetable vendor, who sustained injury in the accident occurred on 14.07.2008.

7. Whereas in this case, the accident occurred on 30.06.2013, i.e. after five years and therefore, this Court determines the monthly income at Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) and adds 30% towards future prospects taking into consideration the age of the injured as 41 years and accordingly, the monthly income of the appellant/claimant would be Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only).

8. While determining the monthly income of the appellant/claimant at Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only), this Court also rejects the claim of the appellant/claimant that he was earning about Rs.3,000/- (Rupees Three Thousand only) per month and Rs.600/- (Rupees Six Hundred only) per day towards batta, totalling a sum of Rs.15,000/- (Rupees Fifteen Thousand only) [Rs.3,000/- p.m. + Rs.12,000/- (Rs.600/- X 12)].

9. Moreover, the appellant/claimant is a driver and in view of increase in number of vehicles, the services of the drivers are more in demand now-a-days and therefore, a sum of Rs.9,750/- (Rupees Nine Thousand Seven Hundred and Fifty only) is determined as the monthly income of the appellant/claimant.

10. The Tribunal, based on the evidence of P.W.2 - Doctor and the medical records, viz., Ex.P.9 - Disability Certificate, determined the disability at 80%. Though 80% disability is determined, it would amount to loss of 100% income or loss of avocation as held by the Honourable Supreme Court in Jakir Hussein v. Sabir and others reported in 2015 (1) TN MAC 321 (SC), as well as in S.Suresh v. Oriental Insurance Co. Ltd. and another reported in 2010 (13) Supreme Court Cases 777 and in the judgment of this Court New India Assurance Co. Ltd., v. Sivakumar and another reported in 2010 (1) CTC 327. Therefore, there will be 100% loss of income for the appellant/claimant. Hence, 80% adopted by the

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11. The Tribunal based on Ex.P.6 - driving licence, rightly determined the age of the appellant/claimant as 41 and the same is confirmed. However, the Tribunal adopted the multiplier 14. As per

the judgment of the Honourable Supreme Court in Sarla Verma v. Delhi Transport Corporation reported in 2009 (2) TN MAC 1 (SC), the appropriate multiplier is 15. Hence, the loss of income would be Rs.17,55,000/- [Rs.9,750/- X 12 X 15 X 100%].

12. The Tribunal awarded a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards pain and sufferings and the same is confirmed.

13. The Tribunal also awarded a sum of Rs.85,250/- (Rupees Eighty Five Thousand Two Hundred and Fifty only) towards Artificial Leg and the same is to be replaced in every three years and therefore, this Court enhances the same to a sum of Rs.2,00,000/- (Rupees Two Lakhs only).

14. A sum of Rs.5,000/- (Rupees Five Thousand only) awarded towards transportation charges is very low and the same is enhanced to a sum of Rs.15,000/- (Rupees Fifteen Thousand only).

15. The amounts awarded under the heads, viz., a sum of Rs.5,400/- (Rupees Five Thousand and Four Hundred only) awarded towards attendant charges and a sum of Rs.9,263/- (Rupees Nine Thousand Two Hundred and Sixty Three only) towards medical expenses, are confirmed.

16. However, a sum of Rs.5,000/- (Rupees Five Thousand only) awarded under the head 'extra nourishment' is low and the same is enhanced to a sum of Rs.20,000/- (Rupees Twenty Thousand only).

17. Similarly, a sum of Rs.20,000/- (Rupees Twenty Thousand only) awarded under the head 'loss of enjoyment' is enhanced to a sum of Rs.30,000/- (Rupees Thirty Thousand only).

18. No amount is awarded by the Tribunal under the head 'loss of amenities' and hence, this Court awards a sum of Rs.20,000/- (Rupees Twenty Thousand only).

19. Accordingly, the appellant/claimant is entitled to get the following compensation:

S1. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount reduced/enhanced by this Court (Rs.)	Total (Rs.)
1.	For Permanent Partial Disability	6,04,800.00	(+) 11,50,200.00	17,55,000.00
2.	For Pain and Sufferings	50,000.00	Nil	50,000.00
3.	For Artificial Leg	85,250.00	(+) 1,14,750.00	2,00,000.00

4.	Transportation Charges	5,000.00	(+) 10,000.00	15,000.00
5.	Attendant Charges	5,400.00	Nil	5,400.00
6.	Medical Expenses	9,263.00	Nil	9,263.00
7.	Extra Nourishment	5,000.00	(+) 15,000.00	20,000.00
8.	Loss of Enjoyment	20,000.00	(+) 10,000.00	30,000.00
9.	Loss of Amenities	Nil	(+) 20,000.00	20,000.00
Grand Total				21,04,663.00
Rounded off				21,05,000.00

The rate of interest awarded by the Tribunal at 7.5% per annum, is confirmed.

20. It is represented that the fourth respondent-Insurance Company already deposited the award amount as per the award of the Tribunal and the same is placed on record.

21. In the result,

(i) This Civil Miscellaneous Appeal is allowed;

(ii) The appellant/claimant is entitled to a sum of Rs.21,05,000/- (Rupees Twenty One Lakh and Five Thousand only) with interest at the rate of 7.5% per annum from the date of petition till date of realisation;

(iii) The fourth respondent-Insurance Company is directed to transfer the entire award amount, less the amount already deposited, if any, directly to the Personal Savings Bank Account Number of the appellant/claimant through RTGS/NEFT after getting the Account Details of the appellant/claimant by the officials of the fourth respondent-Insurance Company, within a period of six weeks from the date of receipt of a copy of this judgment and the same shall be kept in an interest bearing Fixed Deposit in any one of the Nationalised Banks for a period of five years;

(iv) Meanwhile, the appellant/claimant is permitted to withdraw the amount already deposited by the fourth respondent-Insurance Company before the Tribunal along with accrued interest and proportionate costs;

(v) In the facts and circumstances of the case, there will be no order as to costs. Consequently, the connected civil miscellaneous petition is closed.



To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Thanjavur at Kumbakonam.

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

+1 CC to M/s.K.BHASKARAN, Advocate, SR No.83133.

RSB

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and
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