IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

CORAM:

THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

C.M.A.No.1201 of 2017

Soundarrajan ...Petitioner

Vs

1. Balu Reddy Rejendran
   (R1 set exparte in Trial Court
   Hence notice may be dispensed
   with in this Appeal)

2. The Shriram General Insurance Co. Ltd.,
   No.66, 2nd Floor, City Centre Complex,
   Thirumalai Pillai Road, Chennai
   Now at No.4, Lady Desika Road,
   Mylapore, (New Alwarpet Signal),
   Chennai – 600 004. ...Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act against the judgment and decree of the learned Motor Accidents Claims Tribunal (Addl District Judge IV) at Ponneri made in M.C.O.P.No.134 of 2011 dated 14.07.2014.

For Petitioner	:	Mr.F.Terry Chellaraja for Mr.K.M.Ramesh
For Respondents	:	Mr.K.Poomalai for R2 R1 – Set exparte.

JUDGEMENT

This Civil Miscellaneous Appeal has been preferred under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree of the Motor Accident Claims Tribunal (Additional District Judge-IV), Ponneri dated 14.07.2014 made in M.C.O.P.No.134 of 2011.

2. The victim has come before this Court seeking enhancement of compensation awarded by the Tribunal.

3. The appellant got injured in an accident occurred on 09.12.2010, when he was travelling as pillion rider in a motor cycle, the same was hit behind by a lorry, insured with the second respondent, driven by its driver in a rash and negligent manner. In the said accident, the appellant got injured seriously and therefore, the claim petition.

4. After contest, the Trial Court found that the accident has occurred due to the rash and negligent driving by the first respondent/driver and therefore entrusted the liability on the second respondent to an extent of Rs.4,76,960/-. The said amount is inadequate and therefore, the appellant is before this Court with this appeal.

5.Heard Mr.F.Terry Chellaraja, learned counsel appearing for the appellant and Mr.K.Poomalai, learned counsel appearing for the second respondent/Insurance Company.

6.Based on the evidence of the victim and Ex.P.1/FIR filed against the driver of the lorry, the Tribunal had rightly come to a conclusion that the lorry was driven rashly and negligently. Therefore, the finding regarding rash and negligence is confirmed. That apart, there is no appeal by the Insurance Company as against the said finding.

7.The Tribunal determined the disability of the appellant as 85%, even though P.W.2, the Doctor deposed that the victim has suffered 100% disability as the appellant lost sensation on both the lower limbs. Awarding Rs.2,000/- for percentage of disability, a sum of Rs.1,70,000/- has been awarded for 85% disability. This approach of the Tribunal needs to be deprecated and condemned. A 25 year old young man got injured has been proved by Exs.P.3 and P.4-discharge summaries and Exs.P.10 to P.12 and P.14, disability certificates. The Appellant sustained injuries on the backside over lumbar region and lost sensation of both the lower limbs. He was in the hospital from 03.12.2010 to 05.01.2011 and underwent surgery. Even after surgery, the sensation could not be restored and he became haemophilic and he has to be helped by others even for ordinary day-to-day works. He was not married at the time of accident and there is no chance for him to get married as he had lost sensation below the hip. Remaining as a bachelor is one's choice. But, because of the accident if a person is compelled to remain as bachelor, it is very cruel as it is contrary to his wishes. Loss of marital prospects is a very serious one in one's life and therefore, the appellant has to be compensated for loss of marital prospects, which the Tribunal failed to consider and award. Therefore, a sum of Rs.2,00,000/- is awarded towards “loss of marital prospects”.

8.As far as disability is concerned, P.W.2-Doctor had categorically stated that, because of loss of sensation below the hip and inability to move the two legs, 100% disability was sustained by the appellant and inspite of all that, in the absence of any contra expert opinion, the Tribunal had erroneously fixed the disability at 85%. More than that, a serious error was committed by the Tribunal in not applying multiplier method for calculating the compensation for disability. It is not a case where Rs.2,000/- can be awarded for each percentage of disability. This Court already found that 100% disability has been caused to the appellant and therefore, multiplier method has to be adopted.

9.The claimant/appellant was 25 years old at the time of accident. The appropriate multiplier as per the judgment in ***Sarla Verma Vs. Delhi Transport Corporation & Anr.*** reported in ***2009(2) TN MAC 1 (SC)*** is 18. The daily income of the appellant was stated to be Rs.400/- per day by the appellant. The accident occurred on 03.12.2010. The Hon'ble Supreme Court in ***Neeta V. Divisional Manager, MSRTC, Kolhapur*** reported in ***2015(1)TN MAC 161 (SC)*** determined the monthly income of a 33 year old Carpenter as Rs.12,000/- p.m. The accident in the aforesaid case occurred on 22.03.2011, whereas in this case, the accident occurred on 03.12.2010, before the accident which occurred in the above case. Even though, in the said case, Hon'ble Supreme Court determined the monthly income at the rate of Rs.12,000/- per month, in the case on hand, this Court is inclined to fix the monthly income of the appellant as Rs.10,000/- p.m.

10.Since the age of the appellant is 25 years, 50% has to be added towards *future prospects* as per the judgment of Hon'ble Supreme Court in the case of ***Rajesh V. Rajbir Singh*** reported in ***2013(2) TN MAC 55 (SC).*** Taking Rs.15,000/- as monthly income including 50% towards future prospects and applying multiplier of 18, loss of income would be Rs.32,40,000/- (15,000/- X 12 X 18).

11.The appellant has to depend upon a third party even for attending nature's call and he has to be assisted by a third party and therefore towards attendant charges, compensation has to be paid. As per the judgment of Hon'ble Supreme Court in the case of ***Kavita V. Deepak and others*** reported in ***2012 (2) TN MAC 362(SC)***, Rs.3,000/- p.m. can be spent by the appellant towards attendant charges. The claimant was 25 years old at the time of accident and the life expectancy of the claimant should be 55 years as is done by the Hon'ble Supreme Court in the case of ***Nizam's Institute of Medical Sciences V. Prasanth S. Dhananka*** reported in ***2009(6) SCC 1***. If Rs.3,000/- is fixed as attendant charges per month, then for 30 years, the expenditure towards attendant charges would be Rs.10,80,000/-(3000 x 12 x 30).

12.The claimant lost sensation below the hip and he could not function as a normal person. He could not work and visit any place and there would be loss of amenities and therefore a sum of Rs.2,50,000/- is awarded towards “loss of amenities”, as he is constrained to be an immobile person.

13.The appellant was hospitalized for more than two months and underwent surgery and therefore a sum of Rs.50,000/- is being awarded to him towards “extra nourishment”.

14.The Tribunal has awarded only Rs.1,960/-towards “transportation charges” to travel to hospital and the same is enhanced to Rs.25,000/- as the appellant has to travel to hospital engaging a vehicle many times for taking treatment.

15.The pain and sufferings suffered by the claimant cannot be estimated especially, when a serious accident occurred, the shock and the pain suffered by the victim cannot be estimated in terms of money. However, the Tribunal had awarded Rs.2,50,000/- towards pain and sufferings and the same is confirmed.

16.The award of Rs.4,76,960/- is very meagre considering the injuries sustained by the appellant and consequent disability of the appellant and therefore, this Court enhances the compensation from Rs.4,76,960/- to Rs.50,95,500/- rounded off to Rs.50,00,000/-.

17.Mr.K.Poomalai, learned counsel for the respondent/Insurance Company very strenuously opposed for enhancement contending that the amount awarded by the Tribunal is correct and the amount awarded is adequate. He relied upon the judgment of the Division Bench of this Court in the case of ***Ashokan(died) V.The Managing Director, Maruthupandiar Transport Corporation Ltd.***, reported in ***2017(1)TN MAC 206(DB)*** in which the monthly income of a graduate having computer knowledge, working in a company was fixed at Rs.3,000/- after deducting personal expenses and adding 50% of future prospectus, fixed the monthly income as Rs.4,500/-. Therefore relying upon the said judgment Mr.Poomalai, seeks deduction of the injured appellant's income at Rs.4,500/- p.m. Similarly, in the case of ***The Managing Director, State Transport Corporation, Chennai V. Nagarajan and others*** *reported in* ***2017(1) TN MAC 232***, this Court fixed monthly income of the injured claimant at Rs.4,500/- as he sustained injuries in the accident occurred on 14.12.2014. He also relied upon another judgment of this Court in T***amizhmeena V.Tamil Nadu State Trans. Corpn. Ltd*** reported in ***2016 ACJ 1855***, wherein this Court awarded a sum of Rs.17,50,000/- for a person, who lost one leg and also another judgment of this Court in the case of ***National Insurance Co. Ltd., V. Gopalakrishnan*** reported in ***2017(1) TN MAC 813***, for an injured Mason, this Court determined monthly income at the rate of Rs.4,500/- and therefore Rs.4,500/- should be fixed as monthly income.

18.However, in the light of the judgment of the Hon'ble Supreme Court in the case of ***Neeta V. Divisional Manager, MSRTC, Kolhapur*** reported in ***2015(1)TN MAC 161 (SC),*** the above judgments relied upon by the Mr.K.Poomalai, learned counsel for the respondent/Insurance Company would not be applicable.

19.The beneficial provisions of the Motor Vehicles Act, which are intended to comfort, console and compensate the victim of road accident, have to be interpreted very liberally in the interest of the victim. What is required to be given is only just compensation. In an endeavor to do complete justice, this Court is enhancing the compensation from Rs.4,76,960/- to Rs.50,95,500/- (rounded off to Rs.50,00,000/-). The rate of interest awarded by the Tribunal at the rate of 7.5% per annum remains unaltered.

20.The status of appellant who is present before the Court is very pathetic and he is completely in a vegetative state and he has to lead the rest of his life as such.

21.Since the appellant should be provided with income throughout his life time, this Court permits the appellant only to withdraw

Rs.25,00,000/- at present. The balance amount shall be deposited in interest barring fixed deposit in the name of the appellant for a period of 15 years. The appellant is entitled to withdraw the interest once in two months.

22. The bank details of the appellant is given below:

Dena Bank, Redhills Branch, Chennai
Saving Bank A/c.No.127710053132
Cust ID:113394830
Name:Mr.Soundarrajan C
Mrs.Chandra C

23.In the result,

(i)C.M.A.No.1201 of 2017 is partly allowed and the appellant/claimant is entitled to a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) along with Interest at the rate of 7.5% per annum from the date of petition till the date of realisation and proportionate Costs;

(ii)the respondent/Insurance Company is directed to transfer the aforesaid award amount along with interest and costs to the personal Savings Bank Account of the claimant (details given supra) in this appeal through RTGS system, within a period of eight weeks from the date of receipt of a copy of this Judgment;

(iii)Additional Court fee for the enhanced compensation shall be paid before this Court within a week after deducting the amount already paid;

(iv)Copy of the order should be directly sent to Dena Bank, Redhills Branch, Chennai as well as to the counsels on record.

28.07.2017

Index : Yes/No

Internet: Yes/No

Note : Issue order copy on 21-12-2017.

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To

The Motor Accidents Claims Tribunal
(Addl District Judge IV) at Ponneri

N.KIRUBAKARAN, J.

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C.M.A.No.1201 of 2017

Dated : 28.07.2017