

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2017

PRONOUNCED ON : 21.03.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

C.M.A.No.1555 of 2011
and M.P.No.1 of 2011

The New India Assurance Co., Ltd.,
Motor 3rd Party Cell,
No.69/70, Sheikpet, Nadu Street,
Kancheepuram. ... Appellant/2nd Respondent

Vs .

1.Mayandi ... 1st Respondent/Petitioner

2.V.Shammugham
(2nd respondent was set exparte before
the Tribunal and hence summons to him
may be dispensed with ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act 1988, against the judgment and decree
dated 10.01.2011 made in M.C.O.P.No.26 of 2005 on the file of
the Motor Accidents Claims Tribunal, (Additional Subordinate
Judge) Chengalpattu.

For Appellant : Mr.K.Vinod

For R1 : Mr.T.Thangamurugan

JUDGMENT

The appellant herein is the insurer of the lorry which
caused the accident to the claimed. The claimant had suffered
40% disability and claiming a sum of Rs.1,00,000/-. However,
the Tribunal awarded a sum of Rs.2,78,800/- as against which,
the Insurance Company is before this Court.

2. The claimant is a self-employed person. On 21.02.2004,
while he was returning for supplying his snacks to the shops

nearby at about 1.00 p.m., the lorry owned by the second respondent came in a rash and negligent manner hit against the claimant's two wheeler, which resulted in the accident. Due to which, the claimant had sustained grievous injuries and his right leg foot got crushed. The claimant filed a claim petition before the Tribunal, claiming a sum of Rs.10,000/- towards partial loss of earning, Rs.10,000/- towards transport to hospital, Rs.10,000/- towards extra nourishment, Rs.25,000/- towards medical expenses, Rs.10,000/- towards loss of estate, Rs.40,000/- towards pain and suffering, Rs.40,000/- towards continuing permanent disability, in totalling a sum of Rs.1,45,000/-. However, the claimant restricted his claim to the tune of Rs.1,00,000/-.

3. The Insurance Company has filed a counter affidavit. However, the Tribunal after analysing the materials and evidence of P.W.1 who has given the disability certificate, awarded a sum of Rs.1,72,800/- under the head loss of income.

4. The learned counsel for the appellant/Insurance company would contend that the claim itself has been restricted to a sum of Rs.1,00,000/-. The Tribunal applied the multiplier at the time of accident, the injured was aged about 28 years and the Tribunal took into consideration, schedule to the Act and applied multiplier of 18 and awarded a sum of Rs.1,72,800/- towards loss of income. The medical bills produced by the claimant was accepted to the extent of Rs.39,996/- i.e. Rounded off to Rs.40,000/- was awarded towards medical expenses, Rs.40,000/- towards loss of pain and suffering and Rs.20,000/- towards other amenities. The Tribunal went wrong in awarding a sum of Rs.2,78,800/- for the injuries sustained by the claimant. The Tribunal was erroneous in believing the disability certificate. According to the learned counsel for the appellant, the Tribunal was not correct in holding that the claimant was earning a sum of Rs.3,000/-p.m.

5. It is worthwhile to advert to the contention raised by the learned counsel for the appellant, in view of the decision in the case of Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, this Court considered large number of precedents and laid down the following propositions :

"The provision of the motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and

equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned.

The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

- (i) Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
- (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising:
 - (a) Loss of earning during the period of treatment;
 - (b) Loss of future earnings on account of permanent disability.
- (iii) Future medical expenses.

Non-pecuniary damages (General damages)

- (iv) Damages for pain, suffering and trauma as a consequence of the injuries.
- (v) Loss of amenities (and/or loss of prospects of marriage).
- (vi) Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities

(and/or loss of prospects of marriage) and loss of expectation of life."

6. In Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited [reported in (2011) 13 SCC 236], the Court observed:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

"9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

7. In light of the principles laid down in the catena of cases, it is suffice to hold that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation, not only for the physical injury and treatment, but also for the loss of earning

and inability to lead a normal life and enjoy amenities, which would have been enjoyed, but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity is different and distinct and does not overlap with the amount awarded for pain and suffering and loss of enjoyment of life or the amount awarded for medical expenses.

8. In view of the above, this Court is of the view that the tribunal has awarded a reasonable amount. Hence, this Court has no intention to interfere with the quantum of compensation awarded by the Tribunal. Therefore, the appeal deserves to be dismissed and accordingly, the appeal is dismissed.

9. In the result, the civil miscellaneous appeal is dismissed by confirming the judgment and decree dated 10.01.2011 made in M.C.O.P.No.26 of 2005 on the file of the Motor Accidents Claims Tribunal, (Additional Subordinate Judge), Chengalpattu. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Chengalpattu.

Copy to
The Record Keeper,
VR Section, High Court, Madras.

+1cc to Mr.K.Vinod, Advocate SR.No.17555

C.M.A.No.1555 of 2011
and M.P.No.1 of 2011

NMI (CO)
GN(11/04/2017)