

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.2076 of 2011

R.Karthikeyan

.. Appellant/Petitioner

Vs.

1. Vinayagam

2. The Divisional Manager,
M/s.Oriental Insurance Company Ltd.,
Easwaran Koil Street,
Pondicherry.

.. Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicles Act, 1988, against the award dated 31.03.2011 made in MACT.OP.No.1472 of 2005 on the file of the Motor Accidents Claims Tribunal cum Additional Sub Court, Pondicherry.

For Appellant : Mr.J.Kumaran
For Respondents : R1 - Exparte
R2 - Mr.J.Chandran

JUDGMENT

On 22.05.2005 at about 5.00 a.m., when the petitioner was travelling as a cleaner in the van bearing registration No.TN04 9222 from Bangalore to Pondicherry, the driver of the vehicle drove it so rashly and negligently that it dashed against a road side tree, owing to which, he suffered multiple injuries. Seeking a compensation of Rs.5,00,000/-, the victim approached the Tribunal. The Tribunal, however, has passed an award for Rs.1,79,000/- payable with interest at 7.5% per annum. Dissatisfied with the quantum awarded, the claimant has preferred the present appeal seeking enhancement of compensation.

2. The learned counsel for the appellant argued that Ext.P-5, wound certificate along with the evidence of P.W.3, the doctor, who evaluated the disability of the injured, would throw adequate light on the fact that the injuries suffered by the victim amounts to functional disability and it is a fit case, where the Tribunal should have adopted multiplier method. He added, even on other heads of non-pecuniary damages, compensation should have been reasonable.

3. Per contra, the learned counsel for the respondent submitted that P.W.3, has nowhere categorically indicated that the disability of the injured constituted functional disability as to impair his livelihood. At the best, it should be treated as partial permanent disability and not as functional disability.

4. In paragraph No.8 of the award, the Tribunal has extracted the nature of injury suffered by the victim reading it along with Ext.P-5 wound certificate. They read as follows :

- a. Malunited segmental comminuted fracture of right tibia with various angulation deformity
- b. Shortening of right leg by 3 cms
- c. Restriction of last 20' of flexion and last 10' of extension of right knee and last 10' of flexion and extension of right ankle.
- d. Puckered hypertrophic scar (right) leg lower 1/3 with muscle loss with graft donor site left thigh showing keloid formation.
- e. Minimal Malunion of fracture Mandibular rami with condyles with restriction of T.M. joint movements by 10'
- f. Crush injury right foot with extension contracture right little toe.

5. Nature of injuries suffered especially the crushed injury of the right foot, shortening of right leg by 3 cms., restrictions on the movements of joints, definitely would indicate that they would affect claimant's ability to employ himself profitably in the avocation in which he was engaged in prior to the accident. On a careful appreciation of evidence before this Court, I deem the nature of disability as a functional disability and I also consider the functional disability at 50% would be appropriate. In the absence of any evidence to indicate the monthly salary of the victim, the same is fixed at Rs.3,000/-. Since the appellant was aged 22 years at that relevant time, the appropriate multiplier to be applied as per Sarala Varma dictum is 18. Accordingly, the compensation on the head of functional disability is [Rs.3,000x12x18x50%] Rs.3,24,000/-. So far as loss of income for four months is concerned, this Court fixes it at Rs.3,000/- per month and hence for a period of 4 months, Rs.12,000/- was awarded on this head; towards pain and suffering, I enhance it to Rs.25,000/-. On the other head of compensation, the award of the Tribunal is confirmed. The break-up details of the

enhanced award amount of compensation reads as follows :

Heads of compensation	Enhanced Amount (Rs.)
Towards functional disability	3,24,000.00
Towards transportation and extra nourishment	10,000.00
Loss of income for 4 months	12,000.00
Medical Expenses	35,000.00
Pain and suffering	25,000.00
Total :	4,06,000.00

6. In the result, the appeal is partially allowed and the award amount of compensation is enhanced from Rs.1,79,000/- to Rs.4,06,000/-. The second respondent/insurance company is directed to pay the enhanced award of compensation along with accrued interest at 7.5% p.a., less if any already deposited, within a period of six weeks from the date of receipt of a copy of this order, whereupon the claimant is permitted to withdraw the same forthwith. The appellant is directed to pay the necessary court fee, if any for the enhanced portion of the award amount. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To:

1. The Additional Sub Judge
Motor Accidents Claims Tribunal
Pondicherry.
2. The Section Officer,
VR Section,
High Court, Madras. (2 copies)

+1 CC to Mr.J. Kumaran, Advocate sr 55788.
+1 CC to Mr.J. Chandran, Advocate sr 55844.

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PA (CO)
SP (08/02/2018)



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