

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED 11.01.2017

CORAM

THE HONOURABLE DR. JUSTICE S.VIMALA

C.M.A. No.1431 of 2014

G.Neela Megam

.. Appellant/Petitioner

versus

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Annasalai, Chennai-600002 ... Respondents/Respondent

Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 17.09.2012 made in M.A.C.T.O.P.No.3483 of 2009 on the file of XVI Additional Judge, the Motor Accidents Claims Tribunal, Chennai.

For appellant : Mr.K.V.Muthuvisakan

For respondent : Mr.S.Sivakumar

J U D G M E N T

Life is like riding a bicycle. To keep your balance, you must keep moving.

Albert Einstein

The facts as it unfurls from the sequence of events leading to the calamity suffered by the claimant portrays the plight of the claimant who has lost his balance in the form of double amputation and is put at the mercy of his near and dear to pull on with the rest of his life in this fast moving world.

The Claimant, aged 55 years, doing Real Estate Business, met with an accident on 23.02.2009 at 15.30 hrs., on Perambur High Road, near Managalapuram bus stop, Chennai, due to which, he sustained amputation in both legs below knee. Therefore, he filed a claim petition in M.A.C.T.O.P.No.3483/2009 on the file of the XVI Additional Judge, Chennai, claiming a sum of Rs.20,00,000/- as compensation.

2. The Claims Tribunal, considering the oral and documentary

evidence, has awarded a sum of Rs.7,56,000/- as compensation. The break-up details of the same are as under:

Compensation for his 100% disablement (6000x12x8x100x100)	-	Rs.5,76,000/-
Compensation for Loss of income (future)	-	Rs.1,00,000/-
Compensation for his pain and sufferings	-	Rs. 50,000/-
Transport Expenses on attender and extra nourishment	-	Rs. 30,000/-

Total		Rs.7,56,000/-

Challenging the compensation awarded as inadequate, the claimant has filed this Civil Miscellaneous Appeal.

3. Learned counsel for the appellant contended that the Tribunal has not appreciated the injuries sustained by the claimant in its proper perspective and has awarded very meagre compensation, which requires to be enhanced. It is further submitted, that though the claimant has restricted his claim, however, it is always open to the Court, in the interest of justice, to award compensation commensurate with the injuries sustained by the claimant.

4. Per contra, learned counsel for the respondent submits that though the Claimant has claimed compensation for a sum of Rs.20,00,000/- before the Tribunal, the Claim in this Appeal is restricted only to Rs.10,56,000/- and, therefore, the award cannot be more than what is claimed in the appeal.

5. This Court gave its anxious consideration to the contentions advanced by the learned counsel on either side and perused the materials available on record as also the findings rendered by the Tribunal.

6. One of the basic contention raised by the learned counsel for the respondent is that though the claimant claimed Rs.20,00,000/- before the Tribunal, however, the claimant having subsequently restricted his claim to a sum of Rs.10,56,000/=-, this Court cannot grant compensation over what has been claimed by the claimant.

7. The provision for reasonable and just compensation under the Motor Vehicles Act is a beneficial piece of legislation, which has been enacted for the purpose of securing the family of the victims of motor accidents in the calamitous situation. Only in adversarial type of litigations, the Court has to

confine itself within the four corners of evidence for the purpose of determination. It is well settled position of law that the nature of the injury and the impact of the injury on the future life of the claimant has to be taken into consideration for the purpose of determining compensation. It is evident from the deposition of witnesses that the claimant has lost both his legs and, is therefore unable to stand and walk independently and he has to seek help of others in all his works. It is further stated that he was admitted as in patient in the hospital for more than 150 days. He has undergone surgery for five times. In such circumstances, the duty of the Court is to see that just compensation is awarded to the claimant on the basis of the materials available on record.

8. In Nagappa v. Gurudayal Singh, (2003 (2) SCC 274 :: 2003 SCC (Cri) 523), the Apex Court held as under :-

"7. Firstly, under the provisions of the Motor Vehicles Act, 1988, (hereinafter referred to as "the MV Act") there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case, where from the evidence brought on record if the Tribunal/court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. The only embargo is - it should be "just" compensation, that is to say, it should be neither arbitrary, fanciful nor unjustifiable from the evidence. This would be clear by reference to the relevant provisions of the MV Act. Section 166 provides that an application for compensation arising out of an accident involving the death of, or bodily injury to, persons arising out of the use of motor vehicles, or damages to any property of a third party so arising, or both, could be made (a) by the person who has sustained the injury; or (b) by the owner of the property; or (c) where death has resulted from the accident, by all or any of the legal representatives of the deceased; or (d) by any agent duly authorised by the person injured or all or any of the legal representatives of the deceased, as the case may be. Under the proviso to sub-section (1), all the legal representatives of the deceased who have not joined as the claimants are to be impleaded as respondents to the application for compensation. The other important part of the said section is sub-section (4) which provides that "the Claims

Tribunal shall treat any report of accidents forwarded to it under sub-section (6) of Section 158 as an application for compensation under this Act". Hence, the Claims Tribunal in an appropriate case can treat the report forwarded to it as an application for compensation even though no such claim is made or no specified amount is claimed."

9. The above view has been reiterated by the Apex Court in Ibrahim - Vs - Raju (2011 (10) SCC 634 :: 2012 (1) SCC (Cri) 120 :: 2012 (3) SCC (Civ), wherein it has been held as under :-

"21. We are conscious of the fact that in the petition filed by him, the appellant had claimed compensation of Rs 3 lakhs only with interest and costs. It will be reasonable to presume that due to financial incapacity the appellant and his family could not avail the services of a competent lawyer and make a claim for adequate compensation. However, as the Tribunal and the High Court and for that reason this Court are duty-bound to award just compensation, we deem it proper to enhance the compensation from Rs 1,89,440 to Rs 6 lakhs. This approach is in tune with the judgment in Nagappa v. Gurudayal Singh [(2003) 2 SCC 274 : 2003 SCC (Cri) 523]. In that case, the Court considered a similar issue, referred to the judgments of the Bombay High Court in Municipal Corpn. of Greater Bombay v. Kisan Gangaram Hire [1987 ACJ 311 (Bom)], Orissa High Court in Mulla Md. Abdul Wahid v. Abdul Rahim [1994 ACJ 348 (Ori)] and Punjab and Haryana High Court in Devki Nandan Bangur v. State of Haryana [1995 ACJ 1288 (P&H)] and observed: (Nagappa case [(2003) 2 SCC 274 : 2003 SCC (Cri) 523] , SCC p. 282, para 21)

"21. For the reasons discussed above, in our view, under the MV Act, there is no restriction that the Tribunal/court cannot award compensation amount exceeding the claimed amount. The function of the Tribunal/court is to award 'just' compensation which is reasonable on the basis of evidence produced on record. Further, in such cases there is no question of claim becoming time-barred or it cannot be contended that by enhancing the claim there would be change of cause of action.

It is also to be stated that as provided under sub-section (4) to Section 166, even the report submitted to the Claims Tribunal under sub-section (6) of Section 158 can be treated as an application for compensation under the MV Act. If required, in appropriate cases, the court may permit amendment to the claim petition."

10. Following the ratio laid down by the Apex Court in the above decisions, it is to be stated that the hands of this Court are not tied and that it is open to this Court to award any just and reasonable compensation on the basis of the evidence available on record. Therefore, the contention of the respondent that no claim over and above the one made by the claimant could be granted is devoid of merits and is liable to be rejected.

11. Keeping the above proposition of law in mind, this Court proceeds to analyse the evidence available on record to find out whether the award passed by the Tribunal is just and reasonable and is in consonance with the ratio laid down by the Supreme Court or whether the compensation needs to be enhanced.

12. A perusal of the records reveals, even at a cursory glance, that the claimant has got both his legs amputated, thereby it is evident that the mobility of the claimant on his own accord has totally been closed and the claimant requires the help of others in order to move and even for performing his daily routine, the necessity of some person is required. In such circumstances, the various contentions and counter contentions raised by the parties either for enhancement of the award or for confirmation of the award needs to be looked into.

13. It is the contention of the learned for the respondent that the claimant took treatment only in the railway hospital and, therefore, no medical expenses was incurred and, hence, no compensation under this head need be quantified.

14. On the other hand, learned counsel for the appellant submits that though treatment was taken at the railway hospital, all the medicines were not available in the said hospital due to which the claimant had purchased some medicines or equipments from outside for taking treatment. Subsequent to discharge as well, the nature of injury suffered by the claimant warranted continuance of taking medication, which the claimant would have purchased from outside. In such circumstances, this Court has to consider award of expenses for future medication. This Court keeping in mind the injury suffered by the claimant and the necessity for the claimant to continue with medication to get

healed, is of the considered view that a sum of of Rs.1,00,000/- is to be awarded towards expenses towards future medication and future medical expenses.

15. Insofar as pain and suffering is concerned, since the claimant has lost both the legs a sum of Rs. 2,00,000/- is awarded under this head and as the claimant has to walk with the help of artificial legs, a sum of Rs. 2,00,000/- is awarded under the head Artificial Limb (as per evidence). The above compensation also cannot be said to be unreasonable or excessive considering the gravity of the injuries and the impact on the future life of the claimant.

16. The learned counsel for the respondent submits that the loss of enjoyment of amenities can be considered only to persons of young age but not at the age of 56. But this contention cannot be accepted for the simple reason that dependency is more for aged persons due to deteriorating strength. In the present case, the claimant having lost both the legs due to amputation, dependency on other persons becomes indispensable. The claimant would find it difficult even to sit, which would shatter the confidence of the claimant. Therefore, the compensation under the head loss of amenities has to be awarded and, hence, a sum of Rs.3,00,000/- is awarded under this head.

17. Attendant charges is most important aspect to be considered in case of senior citizens. It is seen that in the present day scenario, even some of the aged parents are not being taken care of by the children and they are left at the old age homes. The claimant, who is a senior citizen, having lost both the legs is definitely at the mercy of some person and would definitely need help and assistance from external persons. An attendant is utmost necessary to the claimant not only throughout the day, but throughout his life. Therefore, this Court feels that a sum of Rs.5,00,000/- would be a just and reasonable compensation under the head Attendant Charges.

18. A sum of Rs. 25,000/- is awarded under the head Transport expenses and a sum of Rs.25,000/- is awarded under the head Extra Nourishment. Under the head Damages to clothing a sum of Rs.2,000/- is awarded.

19. On the issue of loss of earning power, the claimant, who was a railway employee, has taken voluntary retirement and it is claimed that he was doing real estate business and earning a sum of Rs.15,000/- per month at the time of accident. Even though, no documents have been filed to prove the income, had there not been other sources of income for the claimant, he

would definitely not have opted for voluntary retirement. Therefore, while fixing the monthly income of the claimant at Rs.6,000/= and adopting a multiplier of 9, this Court quantifies the loss of earning power at Rs.6,48,000/- (6000x12x9).

20. For the reasons aforesaid, the compensation awarded by the Tribunal is enhanced and the claimant is entitled to a compensation of Rs.20,00,000/-, which will carry interest at 7.5% p.a. from the date of claim petition till date of deposit, subject to payment of Court fee on the enhanced amount, if any. Accordingly, the civil miscellaneous appeal is allowed as above. No costs.

(*)21. It is represented that the compensation amount awarded by the Court below has been deposited by the Transport Corporation. The balance amount, enhanced by this Court above along with interest, shall be deposited by the Transport Corporation within a period of four weeks from the date of receipt of a copy of this order. The said amount shall carry interest @ 7.5% from the date of petition till the date of deposit. Out of the total amount of compensation awarded, a sum of Rs.8,00,000/- shall be kept in deposit for a period of three years in an interest bearing account by the Tribunal in any one of the Nationalized Bank and the interest accrued thereon shall be utilized by the relatives to take care of the claimant. After the period of three years, the said amount of Rs.8,00,000/- shall be transferred forthwith to the bank account of the claimant through RTGS. The Tribunal shall transfer the balance portion of the compensation amount excluding the amount of Rs.8,00,000/- directly to the bank account of the claimant through RTGS within a period of two weeks from the date of deposit by the Transport Corporation, which shall be utilized for the purpose of future medical treatment of the claimant.

s/d-

Assistant Registrar(CS VI)

12/06/2018

Deleted Para(21) in Judgment dated 09/01/2017 and submitted the 4th para in order dated 06/07/2018 as per order of this court dated 06/07/2018.

Sd\-

Assistant Registrar(IV)

12/07/2018

True Copy

Sub-Assistant Registrar

arr/GLN

To

1. Motor Accidents Claims Tribunal
XVI Addl. Judge,
Chennai.

Copy to

The Section Officer, VR Section,
High Court, Madras.

+1 CC to Mr.K.V. Muthuvisakan, Advocate sr (*) 43916.

To be Substituted
for the order
already despatched
On 22/06/18

C.M.A. No.1431 of 2014

RSY(CO)
SP(13/06/2018)
nr 12/07/2018



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