

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.06.2017
Delivered on : 22.08.2017

CORAM

The Hon'ble Mr.Justice V.PARTHIBAN

C.M.A.No.1731 of 2017

B. Aruldoss ... Appellant/Petitioner

Vs

1.A. Alagu Sundari

2.The Royal Sundaral Alliance Insurance Co Ltd.,
No.Y-222, 1st floor, Kimberly Towers, 2nd Avenue,
Anna Nagar, Chennai -40 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Sec.173 of Motor Vehicles Act 1988 against the decree and judgment dated 21.04.2015 made in MCOP No.402 of 2013 on the file of Motor Accidents Claims Tribunal (III Additional District Court, Poonamalee).

For appellant : Mr.K. Varadha Kamaraj
For 2nd respondent: Mr.Vijayaraghavan

JUDGMENT

Aggrieved over the insufficient award passed by the Motor Accidents Claims Tribunal (III Additional District Court), Poonamalee dated 21.04.2015 in MCOP No.402 of 2013, the appellant, who is the claimant, has come forward with the present appeal, seeking enhancement of the same.

2. The brief facts, which led to the filing of the claim petition before the Tribunal, are as follows:

On 16.03.2013 at about 14.00 hours, the appellant was riding a motor cycle bearing Regn.No.TN-21-AK-6495 on Chennai to Bangalore Highways near Erulapalayam Koot Road from East to West and while he was a turn from South to North, a van bearing Regn.No.TN-07-AB-9833 came in West to East direction, in a rash and negligent manner with high speed and hit the motor cycle. As a result of which, the appellant sustained multiple grievous injuries with fractures. Claiming Rs.15,00,000/- towards compensation, the appellant has moved a petition before the Tribunal.

3. In order to prove his claim before the Tribunal, the appellant examined three witnesses, viz., P.W.1 to P.W.3 and marked Exs.P.1 to P.9. No oral evidence was adduced on the side of the respondent, but Ex.R.1 was marked.

4. The Tribunal, after taking into consideration the oral and documentary evidence, came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the first respondent and awarded a sum of Rs.3,72,685/- with interest at 7.5% p.a from the date of the claim petition, i.e. 26.04.2013 along with proportionate costs and also fixed the liability on the part of the Insurance Company to pay the compensation amount. Not being satisfied with the quantum of compensation, awarded by the Motor Accidents Claims Tribunal, the appellant/claimant has filed the present appeal.

5. The only point for consideration in the appeal is whether the claimant is entitled for enhancement of compensation awarded by the Tribunal.

6. It is not in dispute that the appellant sustained grievous injuries in the accident and took treatment for 28 days as inpatient. The medical officer assessed 45% disability and also 45% vision impairment. The Tribunal, on consideration of the medical evidence, had assessed the total physical disablement at 55% and awarded total compensation at Rs.3,72,685/- under the following heads.

Permanent Disablement (55%)	Rs.1,10,000/- - being Rs.2,000/- per percentage for 55%
Pain and suffering	Rs.50,000/-
Medical Expenses	Rs.1,93,685/-
Transport	Rs.5,000/-
Extra Nourishment	Rs.5,000/-
Loss of Income	Rs.9,000/-
Total	Rs.3,72,685/-

7. The learned counsel for claimant submitted that the victim was a Van driver/workman and since he had suffered impairment of vision in the left eye and also disablement due to injuries sustained on the left ankle, there was a loss of earning capacity and as such it was a fit case to apply multiplier method towards loss of earning power. He also submitted that no amount was awarded towards loss of amenities, future medical expenses, loss to attender etc.,

8. Per contra, the counsel for Insurance Company would submit that having considered both oral and medical evidence, the Tribunal has rightly granted just award, which required no interference and hence, he sought for dismissal of the appeal.

9. In an accident, if a man is disabled for the work, which he was doing before the accident, that he has no talents, skill, experience or training for anything else and he is unable to find any work, manual or clerical, such a man for all practical purposes has lost all earning capacity he possessed before and he is required to be compensated on the basis of total loss. An injured person is compensated for the loss which he incurs as a result of physical injury and not for physical injury itself. In other words, compensation is given only for what is lost due to accident in terms of an equivalent in money insofar as the nature of money admits for the loss sustained. In an accident, if a person loses a limb or eye or sustains an injury, the Court while computing damages for the loss of organs or physical injury, does not value a limb or eye in isolation, but only values totality of the harm which the loss has entailed: the loss of amenities of life and infliction of pain and suffering; the loss of the good things of life, joys of life and the positive infliction of pain and distress.

10. Thus, in my view, the present case is a fit case for awarding compensation under both heads i.e. loss of earning capacity and disability. In a similar circumstances, the Hon'ble Division Bench of this Court in the case of "United India Insurance Co. Ltd., Vs. Veluchamy and another [2005 (1) TNMAC 87 (DB)]", by holding that the money cannot renew a physical frame that has been battered and shattered in the claimant's family, awarded the compensation under the heads of loss of earning capacity by applying multiplier method and then towards disability. For awarding compensation towards loss of disability, this Court hereby adopts percentage method and accordingly, it is hereby awarded a sum of Rs.1,65,000/- towards 55% disability sustained by the appellant (55 x 3000) by fixing Rs.3000/- per percentage of disability. However, as regards loss of earning capacity, it is to be noted that there is no evidence that the injured could no longer perform as a driver or that he was removed from service on the account of disablement. However, considering the nature of injuries, period of treatment and the disability assigned as 55%, this Court is inclined to grant to consolidated sum of Rs.2,50,000/- under the head loss of earning capacity. As regards pain and suffering, since the injured was young and had sustained grievous injuries and also was inpatient for 28 days and his physical disability was assessed as 55%, This Court finds it is just and reasonable to enhance the amount to Rs.1,00,000/- from Rs.50,000/- towards pain and suffering. Coming to medical expenses, an amount of

Rs.1,93,685/- was incurred towards medical expenses vide Ex.P.4 Considering the above, this Court is inclined to round off the amount to Rs.2,00,000/- towards medical expenses. Taking note of the fact that the claimant had suffered permanent disablement and also requires continuous treatment, a sum of Rs.50,000/- is just and reasonable to be awarded towards future medical expenses. As such, Rs.5,000/- towards transport and Rs.5,000/- towards extra nourishment awarded by the Tribunal seem to be very low, this Court is inclined to enhance the same to Rs.15,000/- each. Towards loss of amenities of life, a further sum of Rs.25,000/- is reasonable to be added. Further, towards loss of income, a sum of Rs.9000/- is reasonable to be awarded.

11. In fine, the award of the Tribunal granted for Rs.3,72,685/- would stand enhanced in terms herein below:

Permanent Disablement (55%)	Rs.1,65,000/- - being Rs.3,000/- per percentage for 55%
Pain and suffering	Rs.1,00,000/-
Medical Expenses	Rs.2,00,000/-
Future Medical Expenses	Rs.50,000/-
Transport	Rs.15,000/-
Extra Nourishment	Rs.15,000/-
Loss of Income	Rs.9,000/-
Loss of Amenities	Rs.25,000/-
Loss of Earning capacity	Rs.2,50,000/-
Total	Rs.8,29,000/-

12. In the result, the award of the Tribunal for Rs.3,72,685/- with interest at 7.5% p.a. from the date of petition, i.e. 26.04.2013 shall stand enhanced to Rs.8,29,000/- with proportionate interest at 7.5% p.a. from 26.04.2013 till date of payment by the insurer. The insurer shall deposit the enhanced amount with interest at 7.5% p.a. from 26.04.2013 within four weeks from date of receipt of this order.

The appeal shall stand allowed in part with the above terms. There shall be no orders as to costs in this appeal.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

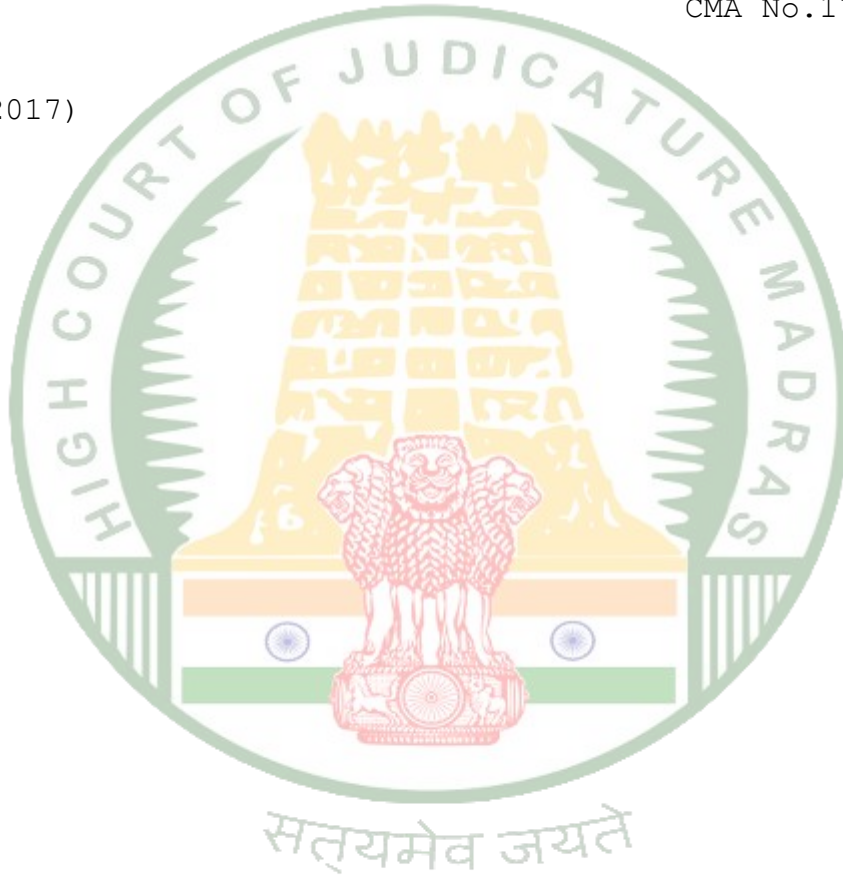
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To

1. The Motor Accidents Claims Tribunal
(III Additional District Court, Poonamalee)

CMA No.1731 of 2017

GP (CO)
sp(11/10/2017)



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