

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

C.M.A.No.29 of 2011

M.Kadher Ibrahim

.. Appellant

Vs.

1. G.Kumar

2. National Insurance Co., Ltd.,
Plot No.C20, AD-I, Second Avenue,
Anna Nagar, Chennai-600 040.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 01.04.2010 made in MACT.O.P.No.2661 of 2006 on the file of the Motor Accident Claims Tribunal (V Judge, Small Causes Court), Chennai.

For Appellant : Mrs.V.Suguna

R1 : Ex parte

For R2 : Mr.S.Vadivel

JUDGMENT

The claimant is the appellant. The accident occurred on 22.04.2006. At the time of accident, the claimant was riding his motor cycle bearing Registration No.TN 22 AE 9632. The van bearing Registration No.TN 22 A 9934, belonging to the 1st respondent, hit the claimant from behind. The accident occurred due to the rash and negligent driving of the van driver. He sustained the following injuries:-

1. Amputation of left leg below knee.
2. Fracture over left elbow
3. Contusion over right hand
4. Head injury
5. Lacerated injuries over right leg
6. Multiple injuries all over the body

2. The appellant/claimant filed the claim petition seeking compensation of Rs.20,00,000/-. The Insurance Company opposed the claim. Before the Tribunal, the appellant examined his former employer as PW-3 and a Doctor as PW-2. He has marked Ex.P1 to P10.

3. The Tribunal, on a consideration of the materials made available before it, has awarded compensation under various heads as detailed below:-

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Permanent disability/loss of earning capacity	5,50,800 [4500x12x17x60]
Loss of Proper marital life	50,000
Attendar Charges	10,000
Damage to clothing & materials	2,000
Pain and sufferings	1,00,000
Transport	5,000
Extra nourishment	10,000
Medical Expenses	30,000
Loss of Amenities	25,000
Total	7,82,800

The claimant has preferred this appeal for enhancement of compensation.

4. The learned counsel for the appellant would submit that the claimant has taken treatment as in-patient at Miot Hospital from 22.04.2006 to 27.04.2006 and again from 10.05.2006 to 11.05.2006 that since he had undergone surgery, he is not in a position to do his normal avocation. According to the claimant, these aspects were not taken into account by the Tribunal. The learned counsel for the appellant further submitted that the Tribunal ought to have fixed the percentage of disability at 65% as his leg was amputated and he had suffered cent percent functional disability.

5. It is seen from the records that PW-2, Doctor issued a disability certificate, Ex.P-8 and the disability was assessed by him at 65%. Hence, as per Ex.R1, medical certificate, his disability was assessed at 45%. The Tribunal has pointed out that the Doctor, who issued Ex.R1, discharge summary was not examined to substantiate that the disability was only at 45%. However, the District Rehabilitation Officer issued an Identity Card and passbook wherein the percentage of disability was shown as 60%. The Tribunal has also taken into account, the provisions of Motor Vehicles Act and after analyzing the evidence, fixed the percentage of disability at 60%.

6. Considering the materials on record, I am of the view that the Tribunal has rightly fixed the disability as 60%. It is not in dispute that the petitioner was aged 22 years and his monthly income was fixed at Rs.4,500/-

per month by the Tribunal. The former employer of the appellant was examined and he has produced Ex.P-6, salary certificate. The Tribunal did not accept the evidence of PW-3 on the ground that the account books were not produced by his employer to show PW-1's salary. It must be pointed out that there is no contra evidence to reject the evidence of PW-1 and he appears to be an disinterested witness.

7. I am of the view that on the basis of the evidence of PW-3 and Ex.P6, salary certificate and having regard to the avocation of the petitioner, his salary should have been fixed at Rs.7,500/-.

8. As his age is 22 years, the multiplier to be adopted is "18" in the light of dictum in ***Sarala Varma & Other Vs. Delhi Transport Corporation & another*** [2009(2) TNMAC 1]: [2009 ACJ 1298].

9. The amount is enhanced to Rs.9,72,000/- [7500x12x18x60] instead of Rs.5,50,800/- awarded by the Tribunal on the head of loss of future earning power. The amounts awarded under other heads by the Tribunal appears to be reasonable. The total compensation awarded by the Tribunal at Rs.7,82,800/- is enhanced to Rs.12,04,000/- with interest at 7.5% per annum from the date of petition till date of realization.

10. Accordingly, this appeal is allowed in part. The claimant is entitled to Rs.12,04,000/- with interest at 7.5% p.a. The Insurance Company is directed to deposit the amount within six weeks from the date of receipt of a copy of this order, less the amount already deposited, whereupon the claimants would be entitled to withdraw the same forthwith. The claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount. No costs.

14.02.2017

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To:

1. The Motor Accident Claims Tribunal
Small Causes Court [V Court], Chennai.
2. The Section Officer,
V.R.Section, High Court, Madras - 104.

N.AUTHINATHAN, J

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