IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.12.2017
CORAM:
THE HONOURABLE Dr. JUSTICE S.VIMALA
AND
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

C.M.A.No.2209 of 2017

R.Rangarajan @ Rangaraj ... Appellant / claimant

versus

1. S.Dhanasekar
2. The Divisional Manager,
United India Insurance Co. Ltd.,
No.13/A Nethaji Street, SBI, 2nd Floor,
Manjakuppam, Cuddalore ... Respondents
(R-1 remained exparte before the Tribunal and hence notice is dispensed with to him)

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set-aside the judgment and decree in MCOP No.564 of 2013, dated 28.07.2015 on the file of the Motor Accident Claims Tribunal and Principal Tribunal Judge, Thindivanam.

For Appellants : Mr. F.Terry Chella Raja
For Respondents : Mr. G.Udayasankar, for R-2
R-1 Exparte.

J U D G M E N T

(Judgment of the Court was delivered by S.Vimala, J.,)

The claimant / injured / amputee has filed a claim petition claiming a sum of Rs.25,00,000/- as compensation. The Tribunal has quantified the compensation at Rs.6,07,086/-, under the following breakup details:-

Future loss of earnings	-	Rs.4,32,086.00
Pain and sufferings	-	Rs. 25,000.00
Extra nourishment, transport expenses, & Attendant charges	-	Rs. 30,000.00
Loss of income (for six months)	-	Rs. 30,000.00
Medical expenses	-	Rs. 90,000.00
		Rs.6,07,086.00

2. The Tribunal has taken the monthly income at Rs.5,000/- and deducting 1/3rd towards the personal expenses, the balance of Rs.3,344/- has been taken as loss and adopting the multiplier of 18, the loss of income has been quantified at Rs.4,32,086/-.

3. The Tribunal has committed a fundamental mistake in the application of first principles of law. The question is whether the loss is to the injured or to the family of the injured. Only in cases where the loss is calculated for the family, while calculating the contribution of the deceased to the family, the personal expenses has to be deducted, in order to ascertain the extent of loss to the family. In a case where the injured is alive, the compensation is to be awarded only to the injured himself and not to the family. Therefore, there is no question of 1/3rd amount being deducted towards the personal expenses of the injured. While the injured is alive, deducting the 1/3rd amount from the monthly income is an insult to injury. Hence, the calculation by the Tribunal deducting 1/3rd has no basis.

4. The learned counsel appearing for the second respondent / Insurance Company submitted that the Tribunal has taken the physical disability only as 60%, as per the provisions of the Employees Compensation Act and that should be confirmed.

4.1. This contention is obviously sans logic. We are of the view that it is not the physical disability that matters, but only the functional disability that matters. The impact of physical disability upon the employment of the injured is the criteria to consider the extent of functional disability. It is not necessary that the physical disability should be equivalent to functional disability. While considering the extent of functional disability, the important interlude to the calculation will be the employment. Admittedly, the claimant himself is a driver and having Heavy Motor Vehicles Driving licence. What he has suffered is the amputation above knee level. When the amputation is above knee level, the skill of driving is totally lost and the driving cannot be done at all. In other words, the injured has suffered total loss of earning capacity, even though the physical disablement is 60%. In other words, the functional disability must be taken as 100%, even though the physical disablement is 60%. Therefore, it is clear that the Tribunal has done serious mistake in adopting 60% as a factor for calculating loss of earning capacity.

5. The next contention of the learned counsel appearing for the second respondent / Insurance Company is that documents have been filed which bear dates, which fell after the date of accident, namely, 10.10.2013, 20.11.2013, 20.12.2013, 02.01.2014, 02.02.2014, 02.03.2014 and 05.04.2014, in which, it is stated that the claimant has received monthly salary of Rs.15,000/-.

5.1. When the claimant has suffered amputation and he was under treatment, certainly he would not have been ambulatory and thus, would not have done any job. Therefore, obviously, those documents are fabricated documents. Perhaps, with a view to get more amount as compensation, those documents have been fabricated. However, the mistake committed in fabricating false documents with a greedy intention of getting more compensation would not be a ground to deprive the legitimate claim of the claimant. If his permissible claim is taken into consideration, it would be reasonable to take into account the monthly salary, atleast, at the rate of Rs.10,000/- per month. Considering the facts and circumstances of the case, if 40% future prospective increase in income is added and applying the multiplier of 18, the loss of income would be Rs.30,24,000/-.

6. The learned counsel appearing for the second respondent / Insurance Company pointed out that the injured in the claim petition itself has stated that he is a tourist driver, whereas the documents filed shows otherwise. Therefore, the learned counsel submitted that the deceased could not have got regular and consistent income and therefore, his salary should have been taken on a lower level.

6.1. This contention has no logical basis for acceptance. It is common knowledge that the driver would get batta and other allowances, apart from food. The benefits are more when the driver goes to outstation, where the residence also is free. In other words, the driver is the only person who could travel without expenses at all. But those aspects have not been taken into account as he is not a regular driver. The wages payable, as per the Minimum Wages Act is bound to be taken into account and therefore, in our opinion, the monthly income at Rs.10,000/- would be reasonable.

7. So far as the other heads of claim are concerned, the award of Rs.1,00,000/- towards the pain and sufferings, Rs.1,00,000/- cumulatively together for attendant charges, extra nourishment and transport expenses have to be confirmed as they are found to be fair and reasonable.

8. The loss of income for a period of six months has been estimated at Rs.30,000/-, which is low and if the monthly income of Rs.10,000/- is taken, the loss of income for six months would be Rs.60,000/- and it is awarded accordingly.

9. A sum of Rs.90,000/- has been awarded towards medical bills, which includes purchase of artificial limbs, which is on the lower side, and hence, on that count, an additional sum of Rs.10,000/- is awarded, totalling to Rs.1,00,000/-.

10. The loss of enjoyment of amenities and loss of marital

prospects are the two grounds which are not considered by the Tribunal and that is the third grave mistake committed by the Tribunal, in not awarding any amount on those heads. Hence, considering the period of treatment and other attendant circumstances, a sum of Rs.1,00,000/- is awarded towards loss of amenities of life and a sum of Rs.1,50,000/- is awarded towards loss of marital prospects.

11. The restructured breakup details of the award reads thus:-

Future loss of earnings	-	Rs.30,24,000.00
Pain and sufferings	-	Rs. 1,00,000.00
Extra nourishment, transport expenses, & Attendant charges	-	Rs. 1,00,000.00
Loss of income (for six months)	-	Rs. 60,000.00
Medical expenses	-	Rs. 1,00,000.00
Loss of amenities of life	-	Rs. 1,00,000.00
Loss of marital prospects	-	Rs. 1,50,000.00
		Rs.36,34,000.00

12. The learned counsel for the second respondent would point out that the amount of compensation has been restricted to Rs.25,00,000/- by the claimant himself, while filing the claim petition and therefore, the claimant is not entitled to ask for more than Rs.25,00,000/-.

12.1. This contention is very vague, as vagueness could be. It is mandatory on the part of the Court to award 'just compensation' and the amount of compensation need not be confined to amount claimed by the claimant. The injured suffers economically, socially and psychologically and those injured persons would not have been in a position to calculate the exact amount of compensation on account of various intervening problems during the treatment also.

13. It is worth to consider the Full Bench of the High Court of Gujarat in Dr. Urmila J. Sangani v. Pragjibhai Mohanlal Luvana and others [AIR 2000 Gujarat 211]. In that case, the High Court after considering relevant decisions on the subject observed thus:

> "... We may mention that when the claimant feels that he is entitled to more compensation than what is claimed in the petition, it is always open to him/her to amend the claim petition and if the same is in consonance with the equity, justice and good conscience, there is no reason why the Claims Tribunal

should not grant amendment. Before compensation more than claimed is awarded, the opposite parties should be put to notice, the requisite additional issue/issues should be raised and the parties should be permitted to adduce their evidence on the additional issues, but if no such opportunity is given, the procedure would obviously suffer from material irregularity affecting the decision."

14. From the aforesaid observations it cannot be held that there is a bar for the Claims Tribunal to award the compensation in excess of what is claimed, particularly when the evidence which is brought on record is sufficient to pass such award. In cases where there is no evidence on record, the Court may permit such amendment and allow to raise additional issue and give an opportunity to the parties to produce relevant evidence. Therefore, this Court is justified in awarding just compensation, which was found to be more than what is claimed.

15. In the result, the award is enhanced from Rs.6,07,086/- to Rs.36,34,000/- and this amount of compensation shall be deposited, less the amount already deposited, along with interest at 7.5% per annum, from the date of petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. The claimant is not entitled to the interest for the default period. On such deposit being made by the second respondent / Insurance Company, the Tribunal shall transfer a sum of Rs.16,34,000/- to the Savings Bank Account of the appellant / claimant and the balance sum of Rs.20,00,000/- shall be deposited in anyone of the Nationalized Banks, in a Fixed Deposit, until further orders and the interest accrued thereon shall be withdrawn by the claimant / injured / appellant herein directly from the Bank. The excess court fee, for the enhanced compensation amount, shall be deposited by the claimant / appellant before receiving the copy of this judgment. No costs.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk

To

1. Motor Accident Claims Tribunal and Principal Tribunal Judge, Thindivanam.

2. The Section Officer, V.R.Section, Madras High Court, Chennai 104

+1cc to M/s.Malar, Advocate, S.R.No.91793
+1cc to Mr. G.Udayasankar, Advocate, S.R.No.91800

C.M.A.No.2209 of 2017

MG(CO)
CS/23/02/18