

.0000.IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2017

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA

C.M.A.No.2443 of 2017

Antonymsamy

.... Appellant/Petitioner

Vs.

1. Naveen

2. The Managing Director,
New India Assurance Company Limited,
Trichy branch-2, Viman Centre 43-A/2,
Braminan Road Contonment, Trichy.

.... Respondents/Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree passed in M.C.O.P.No.49 of 2015, dated 27.03.2017, on the file of Motor Accident Claims Tribunal, Additional District Judge, (FAC) Ariyalur.

For Appellant : Mr.S.P.Yuaraj

For Respondents : Mr. J.Chandran for R-2

J U D G M E N T

The injured, aged 45 years, a wood cutter, earning a sum of Rs.15,000/- per month, met with an accident on 30.12.2014, in which he suffered 75% disability. Claiming a sum of Rs.20,00,000/- as compensation, he filed the claim petition before the Additional District Court(FAC) Ariyalur, in MCOP No.49/2015.

2. The Tribunal, on consideration of oral and documentary evidence, passed an award for a sum of Rs.7,49,000/-, the break-up details of the same are as under :-

Disability (75 x 3,000)	-	Rs.2,25,000/-
Loss of income (24 x 6,000)	-	Rs.1,44,000/-
Pain & Suffering	-	Rs.1,00,000/-
For fixing artificial limb	-	Rs. 50,000/-
Attender charges	-	Rs. 5,000/-

Transport	-	Rs. 10,000/-
Extra nourishment	-	Rs. 15,000/-
Medical Bills (Limited to)	-	Rs.2,00,000/-

Total	-	Rs.7,49,000/-

Challenging the same as inadequate, the claimant has filed this appeal.

3. The contention of the learned counsel for the claimant/appellant is that the multiplier method of quantification ought to have been adopted to assess the loss of earning capacity and that has not been done by the Tribunal. It is also contended that the income should have been taken at least at the rate of Rs.6,500/= per month based on the decision reported in Syed Sadiq - Vs - Divisional Manager, United India Insurance Co., Ltd., (2014 (1) TNMAC 459 (SC)), and therefore, the compensation requires enhancement.

4. A perusal of the award passed by the claims Tribunal reveals that the Court has chosen to award the disablement compensation by awarding Rs.3,000/- per percentage of disability and towards the loss of earning capacity, taking into consideration the monthly income of the claimant at Rs.6,000/-.

5. In order to appreciate to contention raised, it is necessary to look into the details of injury suffered, the period of treatment, the percentage of disability and the impact of disablement suffered upon the functional disability.

6. The claimant has suffered amputation of the right leg during the month of June 2016. The accident had taken place on 30.03.2014. Till such time, he had not been taking continuous treatment. He had been admitted in the hospital on 03.06.2016 and discharged on 08.06.2016.

7. Therefore, it is the case of the claimant that, for a period of at least 24 months, the loss of earning should be considered; the Doctor has assessed the disability at 75%; hence the monthly income should have been fixed only at Rs.6,500/- and not at Rs.6,000/- and the loss of income should be assessed on that basis.

8. This contention well founded and monthly income should be taken at the rate of Rs.6,500/- and it should be taken for a period of 24 months. If that yardstick is adopted, the loss of income for a period of 24 months would come to Rs.1,56,000/-.

9. The compensation awarded has to be calculated by adopting multiplier method of quantification, as there is a clear finding on loss of earning capacity and the person with amputation

cannot discharge the work of a wood-cutter, which will create further additional loss of earning capacity. However, based on the injuries suffered, this Court finds that it would be safe to fix the functional disability at 50%.

10. Therefore, adopting the multiplier method of quantification the loss of earning should be calculated. Thus, taking the monthly income at Rs.6,500/= and calculating the the loss of earning fixing the functional disability at 50% and adopting multiplier of 12, the compensation is quantified at Rs.5,46,000/- (Rs.6,500x12x14x50/100).

11. Insofar as the amount of compensation awarded under the heads pain and sufferings and medical bills are concerned, this Court finds that the said compensation is just and reasonable and hence the same are confirmed.

12. Considering the nature of disability, period of treatment and the impact of the disability upon the day-to-day living of the claimant, the compensation awarded under the other heads need to be enhanced. Accordingly, this Court enhances the compensation towards attendar charges to Rs.50,000/-; towards transportation to Rs.30,000/- and towards extra nourishment to Rs.50,000/-. Further, this Court awards a sum of Rs.2,50,000/- towards fixing of artificial limb as the sum of Rs.50,000/- awarded by the Tribunal is on the lower side.

13. It is evident from the award that no amount has been awarded under the head loss of amenities and future medical expenses. Considering the nature of injury and the treatment required, this Court awards a sum of Rs.50,000/- towards loss of amenities and Rs.90,000/- towards future medical expenses.

14. Accordingly, this Court enhances the compensation under various heads as detailed above and restructures the compensation as under :-

Disability (6,500x12x14x50/100) -	Rs.5,46,000/-
Loss of income (24 x 6,500) -	Rs.1,56,000/-
Pain & Suffering -	Rs.1,00,000/-
For fixing artificial limb -	Rs.2,50,000/-
Attender charges -	Rs. 50,000/-
Transport -	Rs. 30,000/-
Extra nourishment -	Rs. 50,000/-
Medical Bills (Limited to) -	Rs.2,00,000/-
Loss of amenities -	Rs. 50,000/-
Future medical expenses -	Rs. 90,000/-

Total -	Rs.15,22,000/-

15. In the result, this Civil Miscellaneous Appeal is allowed, enhancing the total amount of compensation from Rs.7,49,000/- to Rs.15,22,000/-, which is payable with interest at the rate of 7.5% p.a from the date of petition till the date of deposit. Consequently, connected Civil Miscellaneous petition is closed. No costs.

16. The 2nd respondent / Insurance Company is directed to deposit the award amount as awarded by this Court above, along with interest at 7.5% p.a. and costs (as quantified by the Tribunal), less the amount, if any, already deposited, to the credit of the claim petition, within a period of four weeks from the date of receipt of a copy of this judgement. On such deposit being made, the Tribunal shall transfer a sum of Rs.5,00,000/- to the savings bank account of the claimant through RTGS and the balance shall be deposited in a fixed deposit in any one of the Nationalised banks until further orders and the interest accrued thereon shall be withdrawn by the claimant directly from the bank. The claimant shall pay the Court fee, if any, for enhanced compensation before receiving the copy of the judgement.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

kv/GLN
To

1.The Motor Accident Claims Tribunal,
Additional District Judge, (FAC) Ariyalur.

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

+1 CC to Mr.S.P. Yuvaraj, Advocate sr 61390.
+1 CC to Mr.J. Chandran, Advocate sr 60697.

C.M.A.No.2443 of 2017

RK(CO)
SP(16/04/2018)