IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.03.2017

CORAM:

THE HON'BLE MR. JUSTICE S. MANIKUMAR
AND
THE HON'BLE MR. JUSTICE M.GOVINDARAJ

C.M.A. No.738 of 2017

T.Moorthy ... Appellant/Petitioner

Vs.

1. M/s.Thirupathy Cement Carrier
No.13/7, New Secretariat Colony
Kilpauk, Chennai - 600 010

2.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers
No.45 & 46, Whites Road
Chennai - 600 014

3.G.Mani

4. The New India Assurance Co. Ltd.,
39C, Bye Pass Road
Branch office
Dharmapuri - 636 701 ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 22.03.2016 made in M.A.C.T.O.P. No.2265/2014, on the file of Motor Accidents Claims Tribunal (Special Sub Judge), Dharmapuri.

For Appellants : Mr.R.Arun Duttan
for Mr.C.Munusamy
For Respondents : Mr.G.Vasudevan for R2

JUDGMENT

(Made by S.MANIKUMAR, J.)

Not satisfied with the quantum of compensation of Rs.5,20,500/- with interest, at the rate of 7.5% per annum from the date of claim till deposit and costs, awarded in M.C.O.P.No.2265/2014 dated 22.03.2016 on the file of the Motor

Accident Claims Tribunal (Special Sub Judge), Dharmapuri, injured/claimant, is on appeal, for enhancement of the same.

2. Short facts leading to the appeal are that, in the accident which occurred on 01.09.2010, appellant on the wheels, in a lorry bearing Registration No.TN-29 AC-6223, sustained grievous crush injuries in both the legs. After first aid in Kancheepuram Government Hospital, he was referred to Government Headquarters Hospital, Chennai. Though provided with better treatment, the doctors were constrained to amputate the left leg below knee. He was given treatment for compound fracture tibia of right leg. Nails inserted for union of bones were later-on removed.

3. Contending inter alia that due to the accidental injuries resulting in amputation, he had lost his avocation as driver, amenities, injured has filed MCOP No.2265/2014, claiming compensation of Rs.25,00,000/- under various heads. New India Assurance Co. Ltd., Dharmapuri, opposed the claim disputing the manner of accident, liability to pay compensation. Without prejudice to the same, the company disputed compensation, claimed under various heads.

4. On evaluation of pleadings and evidence, the Motor Accident Claims Tribunal held that the driver of lorry bearing Registration No. TN-20 AW-3079, insured with the second respondent alone was negligent for causing the accident. Having regard to the oral and documentary evidence, and accepting the avocation of the appellant, the Tribunal quantified the compensation as Rs.5,20,500/-, with interest, at the rate of 7.5% per annum from the date of claim till realisation and costs, as hereunder:

50% Permanent disability	: Rs.3,90,000/-
Pain and suffering	: Rs. 40,000/-
Loss of income during the period of treatment	: Rs. 20,000/-
Medical Expenses	: Rs. 20,500/-
Transportation	: Rs. 5,000/-
Nutrition and damages to articles	: Rs. 10,000/-
Mental agony and loss of amenities	: Rs. 35,000/-
	Rs.5,20,500/-

5. Seeking enhancement of the quantum of compensation, injured has filed this appeal on the grounds inter alia that in the accident, he suffered amputation of left leg below knee and compound fracture of right tibia. According to him, when he had underwent surgeries and incurred considerable medical expenses,

the Tribunal awarded a lesser compensation under the head pain and suffering. It is also his contention that when Rs.20,000/- was awarded as loss of earning, during the period of treatment at the rate of Rs.10,000/- per month and Ex.P4 - licence was produced, the Tribunal, has erred in fixing the monthly income of the appellant as Rs.5,000/- for the purpose of computing loss of future earning. According him, appellant earned a sum of Rs.15,000/- per month. Therefore, the Tribunal ought to have awarded just compensation under the head loss of future earning. Learned counsel for the appellant further submitted that, when PW2-doctor has rightly assessed the extent of disablement as 60% and issued Ex.P13-Disability certificate, in the absence of any contra evidence, the Tribunal, has reduced the same to 50% for computing the loss of earning capacity. He submitted that 60% disability ought to have been applied for computation.

6. Learned counsel for the appellant further submitted that, as per the medical records, Ex.P2-Accident Register, Ex.P10-photograph showing amputation, Ex.P3-Discharge summary, Ex.P12-Medical Bill dated 25.04.2012 for removal of plates issued by Rajesh Hospital, the appellant was in patient in Government Hospital from 01.09.2010 to 23.10.2010 for a period of 53 days and thereafter, hospitalised in Rajesh Hospital for removal of plates for a considerable period. In the above said circumstances, learned counsel for the appellant submitted that compensation of Rs.40,000/- awarded under the head pain and suffering is less. A sum of Rs.35,000/- awarded for mental agony and future prospects, is less. According to him, amputation below knee and compound fracture tibia resulting in 60% disablement, would certainly affect the mobility of the appellant from one place to another and therefore, the Tribunal ought to have granted just compensation under the head transportation. Rs.5,000/- awarded under this head is less. According to him, there is no award for future medical expenses also. For the above said reasons, he prayed for enhancement.

7. Per contra, Mr.G.Vasudevan, learned counsel for Royal Sundaram Alliance Insurance Co. Ltd.,/respondent No.2, fairly submitted that the award amount may require some enhancement under few heads.

Heard the learned counsel for the parties and perused the materials available on record.

8. For the purpose of fixing the monthly income of the appellant as Rs.5,000/-, the Tribunal has stated that no document has been marked. There are averments that the the appellant /injured earned Rs.15,000/-. Decision of the Tribunal is erroneous, and apparent on the face of the record, for the reason that when the accident occurred, he was on the wheels of the vehicle bearing Registration No.TN-29 AC-6223, and to prove

that he was a driver Ex.P7-driving licence has been marked. Further, as rightly contended by the learned counsel for the appellant, when the Tribunal has awarded Rs.20,000/- as loss of earning, for two months at the rate of Rs.10,000/- per month, there is no reason as to why the Tribunal, has not taken the same amount, for computing the future loss of earning, and chosen to determine the monthly income as Rs.5,000/-.

9. Though no document has been filed to prove that he earned a sum of Rs.10,000/- per month, having regard to the fact that the injured has marked Ex.P7 - driving licence and taking note of the date of accident, 01.09.2010, and for the reasons stated supra, this court deems it fit to fix the monthly income of the appellant/claimant as Rs.10,000/- and to support the same, take the benefit of judgment of the Hon'ble Supreme Court in Jaya Biswal & Others vs. Branch Manager, IFFCO Tokio General Insurance Company Ltd. & Another reported in 2016 (1) TN MAC 289 SC. wherein, the Hon'ble Supreme Court, referring to the date of accident, 19.07.2011, and the claim of the elder son of the appellants 1 and 2 therein that he had worked as a truck driver, fixed Rs.8,000/-, as the monthly income. Income varies from one place to another. Decision of Jaya Biswal's case is proximate to the case on hand.

10. Amputation below knee in the left leg, is proved by marking Ex.P3-Discharge summary, Ex.P10 - photograph showing Ex.P11-Disability certificate issued by PW2-doctor and supported by oral testimony. In the left leg, there is amputation. In the right leg, the appellant has sustained a compound tibia fracture. Surgery has been performed, implanting T-Nails and removed later-on. Ex.P12 dated 25.04.2012 is the supportive document issued by Rajesh Hospital for the expenditure incurred for removal of implant. Thus, the appellant, who sustained serious crush injuries on both legs, has become an amputee insofar as left leg is concerned and also suffered a compound fracture tibia in the right leg. Extent of disability assessed by PW2, doctor at 60%, cannot be said to be erroneous. As rightly contended by the learned counsel for the appellant, in the absence of any contra evidence, or medical evidence being inadequate, reduction of the extent of disability by the Claims Tribunal cannot be countenanced. Further, as per schedule I Part I Sl. No.20 of the Workmen's Compensation Act, 1923, the extent of statutory disablement, for amputation below knee is 50%. Added further, the appellant has suffered a compound fracture of tibia in the right leg. There could be functional disability in the right leg also. Though at Column No.3 under Section 166-A of the Motor Vehicles Act, 1988, age of the appellant has been mentioned as 42 years, there was no document supporting the same. Based on the entry in Ex.P2-Accident Register, the Tribunal has fixed the age as 47 years. In the absence of any other document, we deem it fit to adopt the same for the purpose

of computing the loss of earning capacity. For the age group of persons between 46 to 50 years, the multiplier would be 13. Loss of earning capacity works out to Rs.60,000 x 10 x 13/100 = Rs.7,80,000/-.

11. Appellant has sustained crush injuries in both legs. He would have experienced severe pain at the time of accident, during amputation, implanting nails and removal, and thereafter also.

12. Pain is one, which is experienced momentarily, but it may continue even for a longer period, depending upon the gravity and situs of the injury, whereas, suffering is loss of happiness, on account of the same. Pain has no difference between Rich and Raff. Compensation of Rs.40,000/- awarded under the head pain and suffering is less. Considering the nature of injuries, period of treatment, we are inclined to award a sum of Rs.1,00,000/- under the head pain and suffering.

13. Rs.20,000/- awarded at the rate of Rs.10,000/- per month for loss of earning during the period of treatment is also less. Material on record discloses that appellant was in Government Hospital for nearly 53 days and thereafter, implants were removed in Rajesh Hospital, for which he would have immobilised for a considerable period, a month or more. A sum of Rs.40,000/- would be just and reasonable for the loss of earning during the period of treatment.

14. Yet another factor taken to be note of is that when there is amputation and removal of plates, the appellant would require some future medical expenses, which the Tribunal has not granted. Under the said head, a sum of Rs.15,000/- is awarded.

15. For transportation, the Tribunal has awarded a sum of Rs.5,000/-, which is less. An amputee would have engaged a vehicle to visit the hospital for treatment. Even assuming that he is fitted with any artificial leg, still he may require transportation compensation. Hence under the said head, a sum of Rs.30,000/- is awarded.

16. In Govind Yadav vs. The New India Assurance Company Limited reported in (2011) 10 SCC 683, the Hon'ble Supreme Court, awarded a sum of Rs.1,50,000/- for loss of amenities, and enjoyment of life, in the case of amputation, where the disability was assessed at 70%. In the said judgment, the Hon'ble Apex Court held as follows:

> 10. The personal sufferings of the survivors and disabled persons are manifold. Some time they can be measured in terms of money but most of the times it is not possible to do so. If an individual is permanently disabled in an accident, the cost of his

medical treatment and care is likely to be very high. In cases involving total or partial disablement, the term `compensation' used in Section 166 of the Motor Vehicles Act, 1988 (for short, `the Act') would include not only the expenses incurred for immediate treatment, but also the amount likely to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident. A very large number of people involved in motor accidents are pedestrians, children, women and illiterate persons. Majority of them cannot, due to sheer ignorance, poverty and other disabilities, engage competent lawyers for proving negligence of the wrongdoer in adequate measure. The insurance companies with whom the vehicles involved in the accident are insured usually have battery of lawyers on their panel. They contest the claim petitions by raising all possible technical objections for ensuring that their clients are either completely absolved or their liabilities minimized. This results in prolonging the proceedings before the Tribunal. Sometimes the delay and litigation expenses' make the award passed by the Tribunal and even by the High Court (in appeal) meaningless. It is, therefore, imperative that the officers, who preside over the Motor Accident Claims Tribunal adopt a proactive approach and ensure that the claims filed under Sections 166 of the Act are disposed of with required urgency and compensation is awarded to the victims of the accident and/or their legal representatives in adequate measure. The amount of compensation in such cases should invariably include pecuniary and non-pecuniary damages. In R.D. Hattangadi v. Pest Control (India) Private Limited (1995) 1 SCC 551, this Court while dealing with a case involving claim of compensation under the Motor Vehicles Act, 1939, referred to the judgment of the Court of Appeal in Ward v. James (1965) 1 All ER 563, Halsbury's Laws of England, 4th Edition, Volume 12 (page 446) and observed:

> "Broadly speaking while fixing an amount of compensation payable to a victim of an accident, the damages have to be assessed separately as pecuniary damages and special damages. Pecuniary damages are those which the victim has actually incurred and which are capable of being calculated in terms of money; whereas non-pecuniary damages are those which are incapable

of being assessed by arithmetical calculations. In order to appreciate two concepts pecuniary damages may include expenses incurred by the claimant: (i) medical attendance; (ii) loss of earning of profit up to the date of trial;

(iii) other material loss. So far non-pecuniary damages are concerned, they may include (i) damages for mental and physical shock, pain and suffering, already suffered or likely to be suffered in future; (ii) damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit; (iii) damages for the loss of expectation of life, i.e., on account of injury the normal longevity of the person concerned is shortened; (iv) inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life."

In the same case, the Court further observed:

"In its very nature whenever a tribunal or a court is required to fix the amount of compensation in cases of accident, it involves some guesswork, some hypothetical consideration, some amount of sympathy linked with the nature of the disability caused. But all the aforesaid elements have to be viewed with objective standards."

17. Reverting and taking note of extent of disablement as 60%, we deem it fit to award a sum of Rs.1,25,000/- under the head "Loss of amenities, enjoyment of life. A sum of Rs.2,000/- is awarded under the head conventional damages.

18. For nutrition a sum of Rs.10,000/- has been awarded. The same is just and reasonable and it does not require any enhancement.

19. Appellant who has lost his left leg below knee and sustained a compound fracture of tibia in the right leg, would have taken assistance, during hospitalisation and requires, an attendant in future also. The Tribunal has not awarded any amount under this head. Hence, we deem it fit to award a sum of Rs.80,000/- under this head.

20. In view of the re-working, as stated supra, compensation due and payable to the appellant/injured works out to Rs.12,02,500/- with interest, at the rate of 7.5% per annum from the date of claim till realisation, and costs, as here under:

50% Permanent disability	: Rs. 7,80,000/-
Pain and suffering	: Rs. 1,00,000/-
Loss of income during the period of treatment	: Rs. 40,000/-
Medical Expenses	: Rs. 20,500/-
Future Medical Expenses	: Rs. 15,000/-
Transportation	: Rs. 30,000/-
Nutrition	: Rs. 10,000/-
Conventional Damages	: Rs. 2,000/-
Mental agony and loss of amenities	: Rs.1,25,000/-
Attendant charges	: Rs. 80,000/-
	Rs.12,02,500/-

On appeal, compensation of Rs.5,20,500/- determined by the Tribunal with interest at the rate of 7.5% per annum from the date of claim till deposit and costs, is enhanced to Rs.12,02,500/- with interest at the rate of 7.5% per annum from the date of claim till deposit and costs.

21. Royal Sundaram Alliance Insurance Co. Ltd./respondent No.2, is directed to deposit the amount now determined by this court with interest, at the rate of 7.5% per annum from the date of claim petition till realisation, to the credit of of M.A.C.T.O.P. No.2265/2014, on the file of Motor Accidents Claims Tribunal (Special Sub Judge), Dharmapuri, within a period of four weeks from the date of receipt of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same, by making necessary application and producing proper identity, before the Tribunal.

Civil Miscellaneous Appeal is allowed, in the above terms.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

asr

To

The Motor Accident Claims Tribunal
(Special Sub Judge), Dharmapuri.

+1cc tot Mr.C. Munusamy, Advocate Sr. 16754

+1cc to Mr.G. Vasudevan, advocate Sr. 16740

C.M.A.No.738 of 2017

RJ(CO)
VR(13/04/2017)