

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on: 04.01.2017
Judgment Pronounced on: 24.02.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1095 of 2010
and CMP No.17237 of 2016

P. Mahendran. ... Appellant /Claimant

Vs.

1. V.Shanthi

2. National Insurance Company Ltd.,
C/o.Motor Third Party Claims Office
No.751 Anna Salai, Chennai- 2. ... Respondents /Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order and decree dated 04.08.2008 made in M.C.O.P.No.416 of 2004 passed by the Motor Accidents Claims Tribunal [VI Judge], Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran

R1 : Ex-parte before the Trial Court

For R2 : Mr.G.Udayasankar

JUDGMENT

The Claimant, who was working as a cleaner in a Eicher Mini Lorry, having suffered injury in an accident that took place on 22.05.2003, has come forward with this appeal seeking enhancement of compensation. Initially, he has made a claim for Rs.8,00,000/- before the Tribunal but was awarded Rs.2,25,000/- with interest at 7.5% p.a. Now, before this Court, the appellant has filed C.M.P.No.17237 of 2016, seeking an enhancement of compensation from Rs.2,25,000/-.

2. The appellant has suffered crush injury to his left arm when the mini lorry in which he was traveling as its cleaner capsized, which ultimately ended in amputation of the injured arm. He was hospitalized twice between 22.05.2003 and 24.05.2003

and 24.05.2003 and 02.06.2003. The appellant was 31 years at the relevant time and claimed that his monthly income including his daily batta was Rs.5,000/-. The Tribunal, while passing its award for Rs.2,25,000/-, has accepted the medical evidence determining the permanent disability of the appellant at 70% and awarded Rs.1,05,000/- [calculated at Rs.1500 per percentage of disability]. On the head of loss of income, it has fixed monthly income at Rs.4000/- and awarded compensation of Rs.24,000/-. On the head of medical expenses, the appellant had produced Ext.P-3, which arithmetically would come to Rs.71,197.50/-, but the Tribunal had calculated it at Rs.56,000/-.

3. The learned counsel for the appellant submitted that the nature of the injury suffered by the appellant and the amputation that he had undergone to his left hand, has literally disabled him functionally and the same should be reckoned at 100% loss of earning power. He also submitted that his monthly income should be fixed at Rs.5,000/-, the prospect of earning future enhancement of income should be reckoned at 50% and accordingly, his monthly income should be determined at Rs.7,500/- and since he was aged 31 years at the relevant time, the multiplier of 16 to be applied. He also sought compensation under various other heads.

4. Per contra, the learned counsel for the Insurance Company submitted that the Tribunal has determined the monthly income at Rs.4,000/- notionally, when, as per second schedule the notional monthly income is to be fixed at Rs.3,000/- in all cases where exact income could not be ascertained. And, if this were to form the basis, the compensation awarded by the Tribunal is just, fair and appropriate. Conceding that in calculating the medical expenses there is an arithmetical error, the learned counsel submitted that on the head of total functional disability the submission made by the learned counsel for the appellant was exaggerated as it is not impossible for the claimant to engage himself in alternate avocation.

5. Before delving on the merit of the claimant's plea for enhancement, it must be outlined that suffering of an accident-victim should not be viewed condescendingly. Is the claimant responsible in any way for the play of cruel destiny in his life? Can he be blamed for the limb that he lost? Is human limb a mere tool for earning? Is it not a symbol of human dignity? A firm No, would be the answer for the first three and a stern yes is the answer for the last.

6. To start with there is no dispute as to the monthly income of the appellant/claimant. So, the same is retained. And, it is

necessary to remind the insurance company that it is not a claim made under Sec.163-A of M.V.Act for this Court fix the notional income at Rs.3,000/-. The claimant was working as a cleaner and loss of one of his hand will have a direct impact on the nature of his avocation. It is a case where extent of functional disability that the appellant is enduring can be ideally fixed at 80% even though medical assessment of the disability as per the evidence of P.W.2 is only 70%. He being 31 years, the suitable multiplier to be applied is 16. Accordingly, the compensation payable for loss of appellant's future earning capacity is determined at (4,000 x 12 x 16 x 80%) Rs. 6,14,400/-. Towards loss of earning he must be granted compensation at least for a period of ten months, since it would be impossible for him to engage in any alternate avocation instantly. This is determined at Rs.40,000/-. For pain and suffering the claimant deserves to be compensated at Rs.1,00,000/-. So far as the head of medical expenses is concerned, the arithmetic error that the Tribunal has committed is rectified and the same is assessed at and rounded to Rs.72,000/-. All other heads of compensation does not require to be interfered with and the same are confirmed. The compensation to which the claimant/appellant is entitled to on various heads is as below:

Heads	Amount Awarded	Amount Enhanced
Permanent disability	1,05,000 [1500X70]	6,14,400
Loss of income	24,000 [4000X6 months]	40,000 [4000X10]
Pain and Suffering	25000	1,00,000
Medical Attendance	5000	5000
Transport	5000	5000
Extra nourishment	5000	5000
Medical Expenses	56000	72000
Total	2,25,000	8,41,400

7. To conclude the appeal is partially allowed and the compensation payable to the claimant/appellant is enhanced from Rs.2,25,000/- to Rs.8,41,400/- and the second respondent/insurance company is directed to deposit the same with interest at 7.5% p.a within a period of four weeks from the date of receipt of a copy of this order, whereupon the appellant

would be free to withdraw the same. The appellants are directed to pay additional court fee on the enhanced portion of the award. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

kmi

To:

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

+1cc to M/s.G.Udayasankar, Advocate, S.R.No.11818/17

+1cc to M/s.T.G.Balachandran, Advocate, S.R.No.11940/17

C.M.A.No.1095 of 2010

SV(CO)
CU(09/08/2017)

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