

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 04.01.2017

JUDGMENT PRONOUNCED ON : 30.06.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.112 of 2010

Manivasagam

... Appellant

Vs.

1.Venkatesh

2.The Branch Manager,
National Insurance Company Limited,
Branch Office-I,
78, T.V.S.Street,
Erode.

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 16.10.2008 in MCOP.No.1043 of 2004 passed by the Motor Accident Claims Tribunal (Fast Track Court), Namakkal.

For Appellant : Mr.R.Nalliyappan

For Respondents : Mr.J.Chandran [R2]
R1 - No appearance

JUDGMENT

This appeal is preferred by the claimant who challenges what he perceives as inadequate compensation for the injury that he had suffered in a road accident that took place on 05.04.2004. The accident had occurred when a mini door auto rickshaw in which the claimant was travelling as a cleaner hit a stationary vehicle from behind. In the said accident, the claimant had suffered grievous injuries on his left forehead, knee, elbow and all over his body.

2. For the injuries suffered, he moved the Tribunal with a claim of Rs. 5,00,000/- against which the Tribunal has passed an award for Rs.1,06,265/- payable with interest at 7.5% per annum. In arriving at the said sum, Tribunal accepted the medical evidence determining the permanent disability suffered by the claimant at 52%. The table below reflects the amount claimed by the appellant on various heads and the damages awarded by the Tribunal:

Heads	Amount Claimed (Rs.)	Amount Awarded (Rs.)
Loss of earning	1,00,000	Nil
Partial loss of earning	1,50,000	Nil
Transportation	10,000	5,000
Extra nourishment	25,000	5,000
Medical Expenses	1,50,000	44,265
Compensation for pain and suffering	1,50,000	Nil
Compensation for continuing permanent disability	50,000	Nil
Compensation for loss of earning power	1,00,000	Nil
Towards functional disability	Nil	52,000
Total :	7,35,000 (restricted to Rs.5,00,000/-)	1,06,265

3. The learned counsel for the appellant submitted that the Tribunal has gone wrong in ignoring the functional disability that the claimant had suffered and has awarded a mere Rs.52,000/- (at Rs.1,000/- per percentage of injury/disability). He added that the victim had suffered fracture to his left femur and his sciatic nerve has become dysfunctional owing to which movement of left foot is impaired. He submitted that in discounting compensation paid on the head of loss of earning capacity, the Tribunal's approach has fallen in error. Further, the Tribunal has also ignored to award adequate compensation on non-pecuniary heads such as pain and suffering, loss of amenities, need for assistance etc., He relied on the authorities in Jakir Hussein Vs Sabir and others [2015(1) TN MAC 321(SC)], Divisional Manager, National Insurance Co. Ltd., Vs Irayya & another [2015(1) TN MAC 748 (DB) (Kar.)], Branch Manager, United India Insurance Co., Ltd., Vs M. Ethirajulu [2015(2) TN MAC 454 (DB)]

4. Per contra, the learned counsel for the insurance company argued that the claimant/appellant was a workman and therefore he is not eligible to claim anything more than what is permissible under the Workmen Compensation Act. Even if he had an option of moving the Tribunal constituted under the M.V. Act, still the Tribunal cannot give him anything more than what he is eligible to obtain under the Workmen Compensation Act. Secondly he argued that the doctor's evidence does not disclose whether injuries suffered by the appellant was to his whole body or not and in the absence of any medical evidence to support functional disability

functional disability. Thirdly, he argued, the Tribunal had made a categorical finding that the appellant was not entitled to any claim on the head of loss of earning capacity. In this regard, the Tribunal has had the advantage of observing the claimant during enquiry in weighing the need to compensate the appellant on the head of loss of earning capacity.

5. I find the contentions of the respondent unconvincing. The appellant as a workman has been given the option to choose between the Tribunal constituted under Workmen Compensation Act and the MACT. Once the choice is made the law as applicable to the forum chosen will have its unrestricted operation and hence it is impermissible to telescope the mode of assessing compensation prescribed under one in substitution of the principles applicable to the other.

6. The authority in Rajkumar Vs. Ajay Kumar and another [(2011) ACJ 1] has cast a duty on the Court not fall back mechanically on the doctor's opinion as to the percentage of injury but to assess and quantify the same in terms of its impact on a accident-victim's means of livelihood. This duty does not depend on the awareness of the claimant before the Tribunal to seek it, but on the Tribunal to engage itself in remedying the situation that has disrupted the life of the victim. In this case, there are major injuries to the left pelvic region of the appellant marked by multiple fractures of bones. Besides the sciatic nerve has been irretrievably damaged and the doctors have opined that his movement of the left leg has been limited to 60 degrees as against the normal movement of 120 degrees. Not one of the nature of the injuries suffered by the victim or the consequent impact they left on him are disputed or disproved. The fact that the appellant was a cleaner at the relevant time too is not in dispute. The nature of the avocation that the appellant was engaged in could not be continued by him given the fact that his left leg has been substantially impaired. Compensation is awarded for the loss suffered in assessing which the victim's potential for alternative avocation can be a factor but not a decider. Taking all material factors into consideration this Courts holds that the nature of injuries suffered by the appellant has left him functionally disabled and the same is determined at 75%.

7. The appellant was 29 years old at the time of accident and his notional income can be fixed at Rs.2,500/- p.m. The appropriate multiplier being 17, the total compensation payable on the head of functional disability of the appellant is (Rs.2,500 x 12 x 17 x 75%) is Rs. 3,82,500/-. Compensation for pain and suffering is fixed at Rs.1,00,000/- and towards amenities Rs.20,000/- is awarded. Towards loss of earning determined for six months Rs.15,000/- is awarded. Compensation on other heads already awarded is retained. The amount payable on different heads consequent to the enhancement now made is as below:

Heads	Enhanced Compensation (Rs.)
Towards functional disability	3,82,500
Pain and suffering	1,00,000
Amenities	20,000
Loss of earning (for six months)	15,000
Transportation	5,000
Extra nourishment	5,000
Medical Expenses	44,265
Total :	5,71,765

8. In the result this appeal is allowed and the compensation payable to the appellant is enhanced to Rs.5,71,765/-, and the second respondent/insurance company is directed to deposit the same with interest at 7.5% p.a., less if any already deposited, within a period of four weeks from the date of receipt of a copy of this order, and on such deposit, the appellant/claimant is entitled to withdraw the same forthwith. The appellant is directed to pay additional court fee on the enhanced portion of the award. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To:

1. The Motor Accidents Claims Tribunal,
Fast Track Court,
Namakkal.
2. The Record Keeper,
VR Section,
High Court, Madras.

+1cc to Mr.R.Nalliyappan, Advocate, S.R.No.45624

C.M.A.No.112 of 2010

KS (CO)
CA(10/08/2017)