

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgement Reserved : 05.12.2016

Judgement Pronounced : 03.03.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.No.1653 of 2009

P.Sekar ... Appellant/Petitioner

Vs.

1. K.P.Natarajan

2. National Insurance Co., Ltd.
No.751, Anna Salai,
Chennai - 600 002. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal preferred under Section 173 of the Motor Vehicle Act, 1988, against the common judgement and decree in O.P.No.2692 of 2004 dated 22.09.2008 on the file of II Fast Track Judge, Additional District and Sessions Judge, (Before the Motor Accidents Claims), Chennai.

For Appellant : Mr.A.Shanmugaraj

For R1 : No appearance

For R2 : Mr.M.Krishnamoorthy

J U D G M E N T

The claimant, who was stated to be aged 19 years, a machine operator by occupation, was knocked down from behind by a lorry, when he was riding his cycle. The accident took place on 07.01.2004, in which the appellant had suffered fracture of his right femur and multiple injuries all over the body.

2. On various pecuniary and general heads of damages, the claimant approached the Tribunal, with the claim of Rs.5,00,000/- and considering various aspects of injury, the Tribunal has quantified the compensation payable at Rs.1,16,216/-, and has directed the owner and the insurer of the lorry to pay the same with interest at 9% per annum. In quantifying the percentage of disability, while PW-2 the doctor had assessed it at 15%, the Tribunal has taken it at 30%. The various heads on which compensation was sought and awarded are tabulated below:-

Heads	Amount Claimed (Rs.)	Amount Awarded (Rs.)
Transport to Hospital	10,000	3,000
Medical Expenses	50,000	1,216
Future Medical Expenses		30,000
Pain and Sufferings	5,000	5,000
Loss of earning power	4,35,000	15,000 [Rs.2,500 X 6 months]
Permanent disability		60,000
Extra nourishment		2,000
Total	5,00,000	1,16,216

3. The learned counsel for the appellant/claimant contended that:

- Towards permanent disability, the Tribunal has awarded a sum of Rs.2,000/- for every percentage of injury, whereas it should have granted at least Rs.3,000/- for every percent of injury.
- The Tribunal has failed to consider loss of future earning capacity by treating appellant's injury as one of functional disability as expounded in Rajkumar Vs. Ajay Kumar and another [(2011) ACJ 1] and compensation should have been assessed as per the dictum in Santosh Devi Vs National Insurance Co., [2012(2) TNMAC (SC)] and Sarala Varma & Other Vs. Delhi Transport Corporation & another [2009(2) TNMAC 1]: [2009 ACJ 1298].
- The appellant was an inpatient for 20 days and has taken treated as an out-patient for six months, which is established by Ex.P5 [Out-patient Records] as well as Ex.P3 [discharge summary]. However, the Tribunal has compensated the pain and suffering he underwent at a meager Rs.5,000/-, and hence it needs an enhancement. On the head of future medical expenses, the Tribunal has awarded only Rs.30,000/-, which requires a revision now, given the present cost of living.

4. Per contra, the learned counsel for the second respondent/Insurance Company took this Court through various O.P. chits in Ext.P-5 and spotlighted his argument on the point that in each of the O.P.chits of the physician, it was recorded that the knee (of the injured leg of the appellant) rotated in full, which implies that there is no functional disability. Therefore, the Tribunal's approach in declining

any compensation on this head just and appropriate. He also added, the Tribunal has awarded Rs.30,000/-, towards future expenses and this amount is appeared to have been awarded not on evidence but on compassion. The appellant has not produced any material to demonstrate that he required any future medical expenses since the time of the accident in 2004 till date.

5. The nature of injury suffered by the appellant does not indicate that he has suffered any permanent disability whatsoever. Still, the Tribunal treated it as one and determined it at 30% and granted compensation at Rs.2,000/- for every percentage of disability. If the award is carefully scrutinized only on the head of pain and suffering the appellant was inadequately compensated under the impugned award. This now raised from Rs.5,000/- to 20,000/-. On other aspects the award is in order.

6. In the result, the appeal is partially allowed and the compensation awarded is enhanced from Rs. 1,16,216/- to Rs.1,31,216/-. The respondents are directed to deposit the enhanced amount with interest at 9% per annum and the same is directed to be deposited within four weeks from the date of receipt of a copy of this order, whereupon the claimant would be entitled to withdraw the same forthwith. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

kmi

To:

1. The Additional District and Session Judge
[II Fast Track Court],
Motor Accidents Claims Tribunal,
Chennai.

Copy to: The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.A.Shanmugaraj,Advocate sr.14369

+1cc to Mr.M.Krishnamoorthy,Advocate sr.14009

C.M.A.No.1653 of 2009

rsy(co)
ss(27/3/2017)