

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 22.11.2016

Judgment Pronounced on : 04.08.2017

CORAM :

THE HONOURABLE Mr. JUSTICE N.SESHASAYEE

CMA.No.2632 of 2009

K.Selvam

..Appellant/Petitioner

Vs.

1.Narayanasamy

2.The Divisional Manager,
The New India Insurance Co. Ltd.,
Motor 3rd Party Claims Cell,
No.69.70, Sheikpet Nadu Street,
Kanchipuram.

..Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 09.7.2008 made in MCOP.No.235 of 2006 on the file of the Motor Accidents Claims Tribunal, Sub Judge, Kanchipuram.

For Appellant : Mr.S.Sankaralingam
for Mr.J.Mahalingam

For Respondents : R1 - No Appearance
R2 - J.Chandran

JUDGMENT

On 13.12.2005 at about 14.30 hours when the claimant along with one Elumalai, a pillion rider was proceeding to Panapakkam in connection with wiring works in a Hero Honda motor cycle bearing registration No.TN01-C-1285, at a place at Baluchetty Chatram by-pass road, a lorry driven in a rash and negligent manner came from rear side of the motor cycle and dashed against it killing the pillion rider on the spot and leaving the claimant/appellant herein with multiple grievous injuries including head injury, fracture of left eye bone and fracture of 2nd & 5th rib. His veins in the left hand too was cut and he suffered extensive lacerated injuries on both the hands. Seeking compensation of Rs.15,00,000/-, the claimant has approached the Tribunal. After appreciating the evidence before it, the Tribunal found that the negligence was exclusively on the part of the offending lorry and passed an award of Rs.2,18,215/-.

2. The appellant was stated to be a two wheeler mechanic and stated to be earning Rs.10,000/- a month and he was also stated to be 35 years at that relevant time. P.W.4, the doctor who had examined the victim had categorically found that owing to the severance of nerve of the left hand, the appellant had lost sensitivity of the left hand and cannot use the left hand at all, and fixed the percentage of permanent disability at 70%. The Tribunal, in a case where claim was preferred under Sect. 166 of M.V. Act resorted to Sec. 163(A) and adopted the schedule provided under Workmen Compensation Act and granted Rs.70,000/-, in a rather the lengthy order. After providing compensation for other heads of compensations it arrived at a sum of Rs.2,18,215/- The break-up of the compensation amount awarded by the Tribunal on the various heads is as below :

Heads	Amount Awarded (Rs.)
Loss of earning	18,000.00
Transportation	5,000.00
Extra nourishment	3,000.00
Medical expenses	1,04,715.00
Damages to clothes & other articles	500.00
Mental shock, pain and suffering	10,000.00
Permanent disability	70,000.00
Total :	2,11,215.00 (****)

(****) Though the totalling of compensation amount on various heads comes to Rs.2,11,215/-, the Tribunal has shown the award amount as Rs.2,18,215/-.

3. The learned counsel for the appellant was vehement in his argument, when he contended that Tribunal has been far too mechanical and excessively insensitive in its approach in determining the compensation. First, in a claim preferred under Section 166 of the M.V. Act, it is impermissible for the Tribunal to mechanically adhere to the provision of 163(A) of the M.V. Act. Secondly, the Tribunal appears to have blind folded in ignoring the impact that the injury has left on the victim. In fitness of things, the injury suffered by the victim should have been treated as functional disability and it should have been accordingly compensated. He also argued that even on the non-pecuniary heads of damages, more particularly on pain and suffering and mental shock, a meager sum of Rs.10,000/- alone was awarded.

4. Per contra, the learned counsel for the second respondent/insurance company contended that the Tribunal has been careful enough not to get carried away by the injuries and at any rate, there is no medical certificate that would indicate that the claimant has suffered functional disability.

5. The approach of the Tribunal is perplexing and frustrating. Here is a victim who is a mechanic by occupation, to whom his hands were indispensable tools, has lost a hand due to severance of the nerves of the hand. His left hand more or less is in a vegetative state and he is incapable of using it for any purpose whatsoever in his life. It might be that the doctor has assessed the percentage of disability at 70% but does that mean that with one hand he can pursue his occupation? This is not how the appellant has planned his life nor is this the pattern of struggle he volunteered to embrace. If the attitude of the Tribunal has to be appreciated, it puts premium on the recklessness of a driver and any driver with Rs.70,000/- would be licenced to inflict an injury of the nature that may paralyse a limb of a victim and still get away with that. I find the victim has suffered 100% functional disability and that the Tribunal has betrayed his hopes of just and fair compensation. Since he has not produced any evidence of his actual income the same is reckoned at Rs.4,000/- a month, and at that rate his annual income would be Rs.48,000/-. The Tribunal has failed to consider loss of future earning capacity by treating claimant'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)]. As the claimant was 35 years at the time of the accident, multiplier applicable is 16 and the total compensation payable on the head of total functional disability is thus arrived at Rs.7,68,000/-. Towards pain and sufferings, the amount awarded by the Tribunal is very low and hence I enhance it to Rs.1,00,000/-. Where nothing was awarded by the Tribunal on the head of amenities and assistance, Rs.25,000/- each on the above said heads is awarded. On other aspects, the award of the Tribunal is confirmed. The final break-up of the award is as below :

Heads	Amount (Rs.)	Enhanced
Towards functional disability	7,68,000.00	
Transportation	5,000.00	
Extra nourishment	3,000.00	
Medical expenses	1,04,715.00	
Damages to clothes & other articles	500.00	

Heads	Amount (Rs.)	Enhanced
Mental shock, pain and suffering	1,00,000.00	
Loss of earning	48,000.00	
Other amenities	25,000.00	
Towards Assistance	25,000.00	
Total :	10,79,215.00	

6. In the result, the appeal is allowed and the compensation awarded is enhanced from Rs.2,18,215/- to Rs.10,79,215/-. The second respondent/insurance company is directed to deposit the enhanced amount with interest at 7.5% per annum and the same is directed to be deposited within six weeks from the date of receipt of a copy of this order, less if any already deposited, whereupon the claimant would be entitled to withdraw the same forthwith. The claimant is directed to pay necessary court fee for the enhanced portion of compensation. It is made clear that the claimant will not be entitled to the award of interest during the period of delay in filing the appeal. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To :

1.The Sub Judge,
The Motor Accidents Claims Tribunal
Kanchipuram.

2.The Section Officer,
VR Section,
High Court, Madras.

+ 2 ccs to Mr. J. Mahalingam, Advocate SR.56120

+ 1 cc to Mr.J. Chandran, Advocate Sr.56742

CMA.No.2632 of 2009

AK(CO)

EU(04/10/2017)