IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM:

THE HONOURABLE Dr. JUSTICE S.VIMALA

C.M.A.No.920 of 2012

Murugan ... Appellant

Versus

1. Sweet Raj
2. The Managing Director,
   Tamil Nadu State Transport Corporation,
   Vellore. ... Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree in M.C.O.P.No.155 of 2004 dated 01.03.2011 on the file of the Motor Accident Claims Tribunal / Sub Court Arani.

For Appellant : Mr.P.Satheesh Kumar

For Respondents : Mr.G.Palani for R2
R1 - Exparte

JUDGMENT

The nature of disablement could not have been permanent and that the percentage of disablement cannot be taken as 80% in the absence of any explanation by the Doctor in the Disability Certificate - in view of this observation, the learned counsel for the second respondent strenuously contended that there is no scope for allowing the appeal or for enhancing the compensation.

2. Since the claim is pending from 18.10.2003, this Court was not inclined to remand the matter. Fortunately, the claimant was present before this Court and the Doctor attached to this Court was willing to assist the Court in arriving at the nature of disablement. The evidence was recorded with regard to the nature of treatment and the nature of disablement.

3. The Doctor, who examined the claimant physically, after noting down, the surgical marks over 9th, 10th and 11th of the back bone and after noting down the dislocation of shoulder opined that it is a case of permanent disablement and the disablement, as spoken to by the claimant is an outcome of injuries to the back bone.

4. The claimant came in a wheel chair and he was assisted by his son and the evidence was recorded in the Chamber in the presence of learned counsel on both sides as well as the Doctor.

5. The case of the claimant is that he was 43 years old at the time of accident, Mason and Contractor by profession, earning a sum of Rs.10,000/-p.m., became functionally disabled, totally and completely. Hence the compensation for loss of earning capacity should be calculated by using multiplier method, fixing the permanent disablement at 100%.

6. To appreciate this contention, it is necessary to understand the nature of problems suffered by the claimant.

7. It is equally necessary to consider the principles relevant to the preposition in Raj Kumar v. Ajay Kumar (2011) 1 SCC 343, the Hon'ble Supreme Court considered large number of precedents and laid down the following propositions:

> "The provision of the Motor Vehicles Act, 1988 ('the Act', for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money can do so, in a fair, reasonable and equitable manner. The court or the Tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences, is inevitable.
>
> A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn or could have earned. The heads under which compensation is awarded in personal injury cases are the following: Pecuniary damages (Special damages)
>
> i.Expenses relating to treatment, hospitalisation, medicines, transportation, nourishing food, and miscellaneous expenditure.
>
> ii.Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising: (a) Loss of earning during the period of treatment; (b) Loss of future earnings on account of permanent disability.

iii.Future medical expenses. Non-pecuniary damages (General damages)

iv.Damages for pain, suffering and trauma as a consequence of the injuries.

v.Loss of amenities (and/or loss of prospects of marriage).

vi.Loss of expectation of life (shortening of normal longevity).

In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life."

17. In Sri Ramachandrappa v. The Manager, Royal Sundaram Alliance Insurance Company Limited (2011) 13 SCC 236, the Court observed:

"8. The compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. The Courts have time and again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

9. The term "disability", as so used, ordinarily means loss or impairment of earning power and has been held not to mean loss of a member of the body. If the physical efficiency because of the injury has substantially impaired or if he is unable to perform the same work with the same ease as before he was injured or is unable to do heavy work which he was able to do previous to his injury, he will be entitled to suitable compensation. Disability benefits are ordinarily graded on the basis of the character of the disability as partial or total, and as temporary or permanent. No definite rule can be established as to what constitutes partial incapacity in cases not covered by a schedule or fixed liabilities, since facts will differ in practically every case."

18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the

victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and do not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses"

7. In the evidence, the claimant would state that he is running the life with the wheel chair and no position is comfortable for sleeping and that he is dependent upon his son for everything. Therefore, irrespective of the percentage of physical disablement, the functional disablement should be taken as 100%.

8. It is in the evidence that the claimant has taken treatment in various hospitals and that even after treatment, the Claimant has only having the life of a living dead.

9. The Tribunal has awarded compensation of Rs.5,06,674/- under the following breakup details :-

Medical bills	:	Rs.3,66,674/-
Disability	:	Rs. 80,000/-
Partial loss of earnings	:	Rs. 30,000/-
Pain and sufferings	:	Rs. 20,000/-
Nutrition	:	Rs. 5,000/-
Transportation	:	Rs. 5,000/-
		Rs.5,06,674/-

10. It is contended by the learned counsel for the appellant that the compensation awarded is meagre and the decision of the Hon'ble Supreme Court gives sufficient guidelines to enhance the quantum of compensation and the following decision is relied upon Kavita v. Deepak, (2012) 8 SCC 604

"Ss. 166, 168 and 171 - Compensation - Just compensation - Permanent disability - Heads under which compensation to be awarded - Loss of earning capacity, reiterated, is a different head from pain and suffering and medical expenses - Neurological deformity - Victim virtually becoming a vegetable requiring treatment throughout life - Victim had to give up partnership in a business earning Rs 12,000 p.m. - Victim lost her memory and capacity of hearing and had spent about Rs 10.5 lakhs on medical treatment - Present mental state of appellant claimant was of a six-year-old and requiring constant physiotherapy and support of one attendant at all times - Tribunal and High Court granting a lump sum compensation failing to take into consideration loss of income during period of treatment when appellant was totally incapacitated and also disregarding pain and suffering of victim, escalation in cost of medical treatment, physiotherapy and nursing - Approach of Tribunal and High Court, strongly deprecated - Held, even if income of appellant is taken to be Rs 2000, loss of income during period of treatment would be Rs 1,47,000 approximately - Applying multiplier of 17 for the 30-year-old, future loss of earning calculated at Rs 3,67,200 - Assuming claimant's life expectancy to be 55 yrs, it would be appropriate to award attendant charges @ Rs 2000 p.m. and physiotherapy expenses @ Rs 3000 p.m. - Sum awarded for physical and mental pain enhanced to Rs 3,00,000 and another Rs 3,00,000 awarded under heads of loss of amenities and loss of life expectancy - Compensation already awarded by Tribunal and High Court enhanced to a total of about Rs 34.4 lakhs to be paid within 3 months by demand draft at appellant claimant's residence deducting the amount already paid"

11. From the perusal of the award of the Tribunal, it is evident that the compensation under loss of earning capacity has not been calculated appropriately. The loss of earning capacity should have been calculated using multiplier method of quantification. Taking the monthly income at Rs.4,500/-, considering future prospective increase in income at Rs.1,000/- and adopting multiplier of 14, the loss of earning capacity is quantified at Rs.9,24,000/-

12. The compensation is awarded under the following relevant heads in the light of the evidence recorded and the materials available :-

Medical bills (rounded off)	:	Rs.3,66,000/-
Pain and sufferings	:	Rs. 30,000/-
Extra nourishment	:	Rs. 10,000/-
Transport	:	Rs. 10,000/-
Loss of expectation of life	:	Rs. 10,000/-
Loss of enjoyment of amenities	:	Rs. 50,000/-
Loss of earning capacity	:	Rs.9,24,000/-
		Rs.14,00,000/-

13. In the result, the Civil Miscellaneous Appeal is partly allowed, enhancing the quantum of compensation from Rs.5,06,674/- to Rs.14,00,000/- payable with interest at the rate of 6% from the date of petition till the date of deposit.

14. It is brought to the notice of the Court that the amount as determined and awarded by the Claims Tribunal has not yet been deposited.

15. Hence, the Transport Corporation is directed to deposit the entire amount of compensation, to the credit of M.C.O.P.No.155 of 2004, on the file of the Motor Accident Claims Tribunal / Sub Court Arani, within a period of six weeks from the date of receipt of copy of this Judgment. On such deposit being made, the Tribunal shall transfer a sum of Rs.7,00,000/- to the claimant's account through RTGS and deposit the balance amount in a Fixed Deposit scheme in any one of the Nationalized Banks, initially for a period of three years and renewable thereafter. The claimant is entitled to receive the interest once in three months. Consequently, connected Miscellaneous Petition, if any is closed. No costs.

16. For reporting compliance post on 07.11.2017.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vsi2/kv

To

1. The Motor Accident Claims Tribunal /
Sub Court Arani.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

3.The Section Officer,
Judicial Department,
High court, Madras.

(for reporting compliance on 07.11.2017)

+1 Cc to Mr.P.Satheesh Kumar, Advocate sr 69930(07/11/2017)

C.M.A.No.920 of 2012

PA(CO)
GN(06/11/2017)