IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2495 of 2005

P.Natarajan ... Appellant/Petitioner

..Vs..

1.V.Nandakumar
2.N.R.Veerappa Gounder
3.The New India Assurance Company Limited,
12, New Hospital Road,
Gobichettipalayam. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Additional District Judge (Fast Track Court No.IV), Erode at Bhavani in M.C.O.P.No.47 of 2003 dated 27.05.2003.

For Appellant : Mr.P.Parthikannan for Mr.S.Kaithamalai Kumaran

For Respondents : Mr.M.Krishnamoorthy for R3
No appearance for R2 and R1

JUDGMENT

The appellant is the claimant in M.C.O.P.No.47 of 2003 on the file of the Additional District Judge, Fast Track Court No. IV, Erode.

2.The case of the appellant/claimant in nutshell is as follows:

On 23.12.2000, the appellant/claimant was riding his bicycle along Sathy Road, Erode. At about 12.45 pm, when he was nearing Chettipalayam Bridge, a speeding lorry bearing Registration No. TNX - 7116 hit the bicycle, as a result of which, the appellant/claimant sustained injuries all over his body. He was immediately rushed to the hospital where he was treated as an inpatient for one month.

3.According to the appellant/claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TNX - 7116 belonging to the second respondent was the cause of the accident, and that since the second respondent has insured his vehicle with the third respondent, both of them are jointly and severally liable to pay compensation to the appellant/claimant.

4.The Tribunal after analysing the evidence on record, awarded a compensation of Rs.3,25,000/- together with interest at the rate of 9% per annum. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5.Mr.P.Parthikannan, learned counsel appearing for the appellant would contend that the Tribunal had fixed the monthly income of the appellant/claimant as Rs.2,500/- which is very meagre. He would further contend that no amount towards future prospectus was added to the monthly income of the injured especially when his left hand was amputated above elbow level and Dr.R.Krishnasamy (P.W.3) has assessed the permanent disability as 85% and that the Tribunal was wrong in reducing the percentage of permanent disability.

6.A perusal of the discharge summary (Ex.A17) shows that the left hand of the appellant/claimant was amputated above the elbow level and Dr.R.Krishnasamy (P.W.3) has assessed the permanent disability as 85%.

7.However, the trial court has given a cogent reason for arriving at 50% as the disability of the appellant/claimant. As per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343, multiplier method has got to be adopted since the appellant/claimant was totally disabled from carrying out his routine work. In the instant case, the appellant/claimant is carrying on business in groundnut oil mill and his business activities would have definitely been affected on account of the accident and therefore, 40% has to be added towards future prospectus of the appellant/claimant as per the decision in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601.

8.According to the appellant/claimant, he was earning a sum of Rs.5,000/- per month. He has not adduced any evidence before the Tribunal to show that he was actually earning a sum of Rs.5,000/- per month. Considering the age of the appellant/claimant and also the year of the accident, the monthly income of the appellant/claimant is fixed as Rs.3,000/- and after adding future prospectus of 40%, a sum of Rs.4,200/- is taken up for calculating loss of earning capacity. Since, the appellant/claimant was aged 28 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17 as per the decision in Sarlavarma and others vs.

Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Thus the loss of earning capacity is calculated as follows:

= Rs.4,200/- x 12 x 17 x 50/100
= Rs.4,28,400/-

Apart from the above amount, the appellant/claimant is entitled to a sum of Rs.20,000/-, Rs.25,000/- and Rs.5,000/- towards loss of amenities, pain and sufferings and transportation. Since the left hand of the appellant/claimant was amputated above elbow level, he could not have been in a position to attend to his work at least for six months and therefore, a sum of Rs.18,000/- (Rs.3,000/- x 6) is awarded towards loss of income. The appellant/claimant is also entitled to a sum of Rs.5,000/- towards extra nourishment and Rs.2,000/- towards attender's charges.

9.The learned counsel appearing for the appellant contended that the appellant/claimant would have definitely incurred a sum of Rs.10,000/- towards future medical expenses and the Tribunal did not award any amount for future medical expenses. Thus the compensation awarded under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.4,28,400/-
2.	Loss of amenities	Rs.20,000/-
3.	Loss of Income	Rs.18,000/-
4.	Transportation	Rs.5,000/-
5.	Extra nourishment	Rs.5,000/-
6.	Pain and sufferings	Rs.25,000/-
7.	Attender's charges	Rs.2,000/-
8.	Future medical expenses	Rs.10,000/-
Total		Rs.5,13,400/-

10.In the result,
(i) The appeal is partly allowed. No costs.
(ii) The compensation amount is enhanced from Rs.3,25,000/- to Rs.5,13,400/-. The appellant/claimant is directed to pay the court fee within a period of six weeks from today i.e., 05.12.2018 for the enhanced compensation amount and the Registry is directed to draft the decree only after the payment of Court fee.
(iii)The third respondent Insurance Company is directed to pay the enhanced compensation amount together with interest

at the rate of 7.5% per annum on Rs.5,03,400/- from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of a copy of this order to the credit of M.C.O.P.No.47 of 2003. On such deposit being made by the third respondent, the appellant/claimant is at liberty to withdraw the same. No interest is awarded for future medical expenses (i.e., Rs.10,000/-).

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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To

1. The Additional District Judge,
   Fast Track Court No.IV,
   Erode at Bhavani.

2. The Section Officer,
   VR Section, High Court, Madras (2 copies)

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.84178

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No.83818

C.M.A.No.2495 of 2005

AK(CO)
GMY(31/01/2019)