

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2018

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2068 of 2011

E.Said Alavi @ Sidal Ali

... Appellant/Petitioners

..Vs..

1.E.Sekar

2.M/s. United India Insurance Company Limited,
C/o. Motor Third Party Claims Offices,
No.38, Anna Salai,
Chennai - 600 002.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the award passed by the Motor Accidents Claims Tribunal (Small Causes Court No.V) in M.C.O.P.No.974 of 2006 dated 23.07.2010, inter alia.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.R.Vijayakamala for R2
R1 - Exparte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.974 of 2006 dated 23.07.2010, on the file of the V Judge, Court of Small Causes, Chennai.

2.The brief facts of the case of the appellant/claimant is as follows:

On 23.01.2006 at about 13.30 hours, the appellant/claimant was riding his motorcycle bearing Registration No. TN 04 Y 4355 along 11th Avenue, Ashok pillar, Kodambakkam, Chennai. At that time, a speeding auto rickshaw bearing Registration No. TN 07 H 1058 hit the two wheeler, as a result of which, the appellant/claimant sustained injuries. He was immediately rushed to Vijaya Health Center, Vadapalani, Chennai. The claimant was aged about 52 years on the date of the accident and he was running a tea stall, earning a sum of Rs.6,000/- per month.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the auto rickshaw bearing Registration No. TN 07 H 1058 was the cause of the accident and that since the auto rickshaw was insured with the United India Insurance Company, the second respondent herein, both of them are jointly and severally liable to pay compensation to him.

4. In the trial court, the owner of the auto rickshaw remained absent and was set ex-parte. The second respondent Insurance Company contested the claim petition by filing a counter. They have denied all the allegations of the appellant/claimant.

5. The Tribunal after analysing the evidence on record, awarded a compensation of Rs.2,04,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant. The details of the award passed by the Tribunal under various heads are extracted hereunder:

S.No.	Head	Amount granted
1.	Disability	Rs.67,500/-
2.	Loss of earning	Rs.9,000/-
3.	Transportation	Rs.2,000/-
4.	Extra nourishment	Rs.3,000/-
5.	Damage of cloth and articles	Rs.500/-
6.	Medical expenses	Rs.1,02,000/-
7.	Pain and sufferings	Rs.20,000/-
Total		Rs.2,04,000/-

Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Mr. T.G. Balachandran, learned counsel appearing for the appellant drew the attention of this Court to the discharge summary (Ex.P3), wherein it has been diagnosed thus:

"Bilateral frontal haemorrhagic contusion left sided SDH with minimal right frontal SDH/left sided SAH/crack fracture left parietal bones. HTN/DM type - 2."

He contended that the appellant/claimant was connected to the ventilator initially and after the improvement of neurological status, ventilator was removed. He would further

contend that the Tribunal is wrong in awarding only a sum of Rs.67,500/- towards partial permanent disability especially when Dr.M.Saravanabavanandam (P.W.2), has assessed the partial permanent disability at 45%. He would therefore, contend that the multiplier method should be adopted as far as the present case is concerned. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

"8.Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. The Tribunal should not mechanically apply the percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of

course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9. The Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is a permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

7. A perusal of the discharge summary (Ex.P3) shows that the appellant/claimant was found to be normal at the time of his discharge. The contention of the appellant/claimant is that he was owning a tea stall. Therefore, it cannot be concluded that the appellant/claimant was totally disabled from running his business on account of the accident. By applying the principles laid down in the decision in Rajkumar vs Ajaykumar & Another (cited supra), multiplier method is not warranted as far as the present case is concerned. Therefore, a sum of Rs.1,35,000/- (45% x 3,000) is awarded towards partial permanent disability. It is also the contention of the appellant/claimant that he was earning a sum of Rs.6,000/- per month. It is seen that no evidence was adduced in this regard and therefore, the notional income of the appellant/claimant is taken as Rs.4,500/-, since

the accident took place in the year 2006. The appellant/claimant sustained head injury and was connected to the ventilator for some time. Therefore, definitely he would not have been in a position to attend to his work at least for six months. Hence, the loss of income is calculated as Rs.27,000/-(4,500 x 6). The appellant/claimant has produced medical bills to the tune of Rs.1,02,000/-. Apart from this, he is entitled to a sum of Rs.10,000/-, Rs.10,000/-, Rs.10,000/-, Rs.2,000/- and Rs.2,000/- towards transportation charges, extra nourishment, pain and sufferings, loss of articles and attender's charges respectively.

8.The learned counsel appearing for the appellant would further contend that since, the appellant/claimant has sustained head injury and an operation was also performed to remove the blood clot, a sum of Rs.25,000/- can be awarded under the head future medical expenses. It is pertinent to point out that no evidence was adduced to show that the appellant/claimant was made to incur a sum of Rs.25,000/- towards future medical expenses. However, considering the nature of injuries sustained by the appellant/claimant, awarding a sum of Rs.25,000/- towards future medical expenses would meet the ends of justice. Thus, the following amount is awarded to the appellant/claimant as detailed below:

S.No	Head	Amount granted
1.	Partial permanent disability	Rs.1,35,000/-
2.	Loss of income	Rs.27,000/-
3.	Transportation	Rs.10,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Loss of articles	Rs.2,000/-
6.	Medical bills	Rs.1,02,000/-
7.	Pain and sufferings	Rs.10,000/-
8.	Attender's charges	Rs.2,000/-
9.	Future medical expenses	Rs.25,000/-
Total		Rs.3,23,000/-

Thus the appellant/claimant is entitled to a sum of Rs.3,23,000/-. The second respondent is directed to deposit the enhanced compensation amount together with interest at the rate of 7.5% per annum for the amount of Rs.2,98,000/- (less the amount already deposited) within a period of four weeks from the date of receipt of a copy of this order. No interest is awarded for the amount awarded under the head future medical

expenses (i.e., for Rs.25,000/-). On such deposit being made, the appellant/claimant is at liberty to withdraw the same after following due process of law.

9.With the above observations, the Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mbi

To

The Judge (Motor Accident Claims Tribunal)
Small Causes Court No.V,
Chennai.

Copy to

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

+1cc to M/S.R.Vijayakamala, Advocate Sr.80019

+1cc to M/S.T.G.Balachandran, Advocate Sr.79883

C.M.A.No.2068 of 2011

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srg 14/03/2019

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