IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1444 of 2014

Senthilnathan ... Appellant/Claimant

Vs

1.Managing Director,
M/s.MAG Excel Exports Ltd.,
No.26, Royapettah High Road,
Chennai, Tamil Nadu.

2.The Divisional Manager,
The New India Assurance Company Ltd.,
Jawaharlal Nehru Street,
Pondicherry. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act against the Judgment dated 09.02.2009 made in M.A.C.T.O.P.No.840 of 2005 on the file of the Motor Accidents Claims Tribunal (II Additional District Judge), Pondicherry.

For Appellant : Mr.F.Terry Chellaraja

For Respondents : Ms.Elveera Ravindran (for R2)

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.1,83,100/- for the injuries sustained by him, in the road accident, which occurred on 29.05.2005, when he was riding his motorcycle, which was hit down by the car belonging to the 1st respondent and insured with the 2nd respondent/insurance company.

2.The Tribunal after hearing the claim petition came to the conclusion that the accident occurred because of the rash and negligent driving of the car belonging to the 1st respondent and took 65% as disability and awarded a sum of Rs.65,000/- and along with other amounts awarded a sum of Rs.1,83,100/-. Aggrieved over the quantum alone, the claimant has come before this Court.

3.Heard, Mr.F.Terry Chellaraja, learned counsel for the appellant and Ms.Elveera Ravindran, learned counsel for the 2nd respondent.

4.Since the claimant alone has come before this Court, the question of going into negligence does not arise. Even otherwise, the Tribunal based on Ex.P.1-FIR filed against the driver of the car and evidence of PW1, rightly found that the car was responsible for the accident.

5.The appellant/claimant sustained head injury, fracture of right femur and tibia and fibula and crush injury over right hand, dislocation of right wrist, lacerated would left knee, left pelvis, left chest, left ankle and stitching wound over right forearm. It is evident from the medical records, especially, Ex.P.8-discharge summary given by MIOT Hospital that the claimant was admitted as an inpatient for ten days. Thereafter, he was admitted in the Government General Hospital. A perusal of Ex.P.9 would disclose that the claimant sustained grievous injuries in the accident which occurred on 29.05.2005. He was admitted in MIOT Hospital and he underwent closed interlocking nailing of the right femur on 31.05.2005; Closed interlocking nailing of the right tibia on 31.05.2005 and external fixation application for the right wrist on 31.05.2005. He was admitted on 31.05.2015 and discharged on 13.06.2015. After the surgeries, as evident from Ex.P.8, he was again admitted on 29.06.2005 and discharged on 18.07.2005. During that period, the claimant underwent surgery called IM nailing for fractured tibia right, IM nailing for fractured right femur, external fixator removal of right wrist and POP cast application. Further bone grafting on right femur was also done on 09.07.2005. From the above Exs.P.8 and P.9, it is very clear that the claimant underwent nine surgeries and because of the injuries, the claimant is said to have sustained 65% permanent disability, as proved by PW2 Doctor's oral evidence as well as Ex.P.21 disability certificate. The photographs Ex.P.17 also disclose that the right hand below wrist has become disfigured and as an artist, he could not do his work. It is clear from Ex.P.19 that the appellant completed Master's Degree in Fine Arts. So, a qualified Fine Artist could not continue his artistic work. Therefore, there is loss of job/work to him due to the injuries. Therefore, following the judgment of the Division Bench of this Court in Velusamy Vs. United India Insurance Company Limited, reported in 2005 (1) CTC 38, loss of income has to be assessed by adopting multiplier method and not awarding amount for each percentage of disability. Therefore, this Court calculates the compensation by adopting multiplier method. There is no contra evidence as far as the determination of disability at 65%, which has also been accepted by the

Tribunal.

6.The Tribunal has fixed the monthly income at Rs.4,000/- and the same is confirmed. Since the claimant was hardly 30 years at the time of the accident, following the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 40% has to be added towards future prospects. After adding 40% the monthly income would be Rs.5,600/- (Rs.4,000/- + 40% of Rs.4,000/-).

7.The appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "17" as the claimant's age is "30" and the "loss of income" would be at Rs.7,42,560/- (Rs.5,600/- x 12 x 17 x 65/100).

8.Pain and suffering:

The Tribunal has awarded a sum of Rs.20,000/- towards pain and suffering. Since, it is very low, this Court enhances it to Rs.50,000/-

9.Nutritious food and attendant charges:

The Tribunal has awarded a sum of Rs.5,000/- towards nutritious food and attendant charges. The same is enhanced to Rs.25,000/-.

10.Medical bills:

The Tribunal's award of Rs.3,100/- towards medical bills is confirmed.

11.Transportation:

The Tribunal has awarded a sum of Rs.6,000/- towards Transportation charges. The same is enhanced to Rs.10,000/-.

12.Loss of income:

The Tribunal has awarded a sum of Rs.24,000/- towards loss of income. Since this Court adopts multiplier method to determine the loss of income, amount awarded by the Tribunal under this head is set aside.

13.Disfigurement charges:

The Tribunal has awarded a sum of Rs.10,000/- towards disfigurement charges. The same is enhanced to Rs.25,000/-.

14.Future loss of income:

The Tribunal has awarded a sum of Rs.30,000/- towards future loss of income. Since multiplier method is adopted, the amount awarded under this head is set aside.

15.Plastic surgery and to remove plates:

The Tribunal has awarded a sum of Rs.20,000/- towards plastic surgery and to remove plates. The same is confirmed.

Head	Amount (Rs.)
Total loss of income	742560
Pain and suffering	50000
Nutritious food and attendant charges	25000
Medical bills	3100
Transportation charges	10000
Disfigurement charges	25000
Plastic surgery and to remove plates	20000
	875660

16.Hence, the total compensation payable in this case is Rs.8,75,660/- rounded off to Rs.8,76,000/-

17.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The claimant is directed to pay the additional court fee for the enhanced amount, if any.

18.The insurance company is directed to deposit the entire award amount as per the modified award along with interest and costs, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount with interest and costs to the bank account of the claimant through RTGS within a period of one week thereon.

19.Accordingly, this appeal is partly allowed, enhancing the award of the Tribunal from Rs.1,83,100/- to Rs.8,76,000/- with interest @ 7.5% per annum. No costs.

s/d-
Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

The II Additional District Judge,
Motor Accidents Claims Tribunal,
Pondicherry.

+1 CC to Ms.M.Malar, advocate sr 35563.
+1 CC to Mr. Elveera Ravindran, Advocate sr 35524.

C.M.A.No.1444 of 2014

SP(03/08/2018)