

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2018

CORAM

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

C.M.A. No. 2419 of 2016

P. Murugan ..Appellant/Claimant

Vs.

1. Santhosh Kumar

2. Senthil Kumar

3. M/s.HDFC Ergo General Insurance
Company Limited,
6th Floor, Leela Business Park,
Andheri Kurla Road,
Andheri East,
Mumbai - 400 059 ...Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 06.10.2015 passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Salem, in M.C.O.P. No. 62 of 2014.

For Appellant :: Mr.S. Udayakumar for
M/s. Karan & Uday

For Respondents:: Mr.Mohan Babu for
M/s. M.B. Gopalan Associates for R3
R1&R2 No Appearance.

J U D G M E N T

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

This Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.2,80,000/- awarded by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Salem, in M.C.O.P. No. 62 of 2014 by judgment dated 06.10.2015 for the injuries sustained by him and consequential amputation of right leg in the accident, which occurred on 09.01.2010 when the lorry, driven by the 2nd respondent, in which the

appellant was travelling, hit against another lorry on the backside. On account of the accident, the claimant suffered injuries all over the body, resulting in amputation of his right leg. Hence, the claim petition.

2. On contest, the Tribunal found that the lorry, belonging to the 2nd respondent and insured with the 3rd respondent, in which the appellant/claimant travelled was responsible for the accident and awarded a sum of Rs.2,80,000/-.

3. Heard Mr.S. Udayakumar, learned counsel for the appellant and Mr.Mohan Babu, learned counsel for the 3rd respondent.

4. The appeal has been preferred by the claimant alone and there is no appeal by the Insurance Company and therefore, the question of going into the negligence aspect does not arise.

5. It is evident from the records that the claimant sustained injuries in the accident, which was proved by Ex-P5 FIR and Ex-P6, Accident Register. The claimant sustained injuries all over the body, especially, chest and right leg and because of serious injuries, the right leg of the appellant was amputated below knee. The amputation has been proved by the medical records Ex-P8, Discharge Summary, Ex-P16, certificate issued to the appellant and Ex-P19, Disability Certificate. P.W.2, Doctor, had also deposed that because of the injuries sustained in the accident, the appellant's leg was amputated and determined the disability at 85%.

6. Taking into consideration 85% disability, a sum of Rs.1,70,000/- was awarded by the Tribunal, @ Rs.2000/- for each percentage of disability. When the claimant has lost one of his legs, it is highly impossible for him to go for any productive work. Therefore, calculating the "Loss of Income due to disability" by awarding Rs.2000/- per percentage of disability is erroneous and multiplier method is the proper method to calculate the "Loss of Income due to disability". Therefore, following the judgment rendered in Velusamy V. United India Insurance Company Limited reported in 2005 1 CTC Pg. 38, this Court adopts multiplier method.

7. The appellant contends that he is a driver and it is proved by Ex-P12, Driving Licence. Considering the fact that the accident occurred on 09.01.2010, it is appropriate to fix the monthly income at Rs.8000/-, which is in consonance with the judgment of the Honourable Apex Court

rendered in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, wherein a sum of Rs.6500/- was fixed as monthly income for a vegetable vendor, who sustained injuries in the accident, which occurred in 2008. The age of the victim is 34 years as proved by Ex-P12, Driving Licence and the appropriate multiplier for the age of 34 years is 16. Accordingly, applying the same, "Loss of Income due to disability" is calculated thus:

Loss of Income due to disability :: Rs.8000 x 12 x 16 x 85/100

:: Rs.13,05,600/-

The claimant suffered severe injuries leading to amputation of his right leg. The appellant would have undergone much pain, suffering and agony and therefore, Rs.50,000/- awarded by the Tribunal towards "Pain and Suffering" is enhanced to Rs.1 lakh. No amount was awarded towards "Attendant Charges". Therefore, a sum of Rs.25,000/- is awarded. Only a sum of Rs.5000/- was awarded towards "Extra Nourishment" and the same is enhanced to Rs.50,000/-. So also, the amount awarded towards "Transport Expenses" is low and the same is enhanced to Rs.15,000/-. No amount was awarded either towards "Future Medical Expenses" or "Artificial Limb". Therefore, a sum of Rs.1,00,000/- is awarded. The total compensation payable comes to

Loss of Income due to disability	::	Rs.13,05,600/-
Pain and Suffering	::	Rs. 1,00,000/-
Attendant Charges	::	Rs. 25,000/-
Extra Nourishment	::	Rs. 50,000/-
Transport Expenses	::	Rs. 15,000/-
Future Medical Expenses Or Artificial Limb	::	Rs. 1,00,000/-
Total	::	Rs. 15,95,600/-
rounded off to	::	Rs. 16 lakhs

The rate of interest awarded by the Tribunal @ 7.5% per annum remains unaltered. The appellant is directed to pay additional court-fee for the enhanced amount, if any.

8. The 3rd respondent Insurance Company is directed to deposit the entire award amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal after deducting the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant through RTGS within a period of one week thereon.

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal, to the tune of Rs. 2,80,000/- is enhanced to Rs.16 lakhs with interest @ 7.5% per annum. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

nv

To

1.The MACT (CJM),
Salem District.

2.the Section officer,
VR SECTION,
High court
Madras.

3.The Section officer,
Judicial Department ,
High court
madras.

+1cc to M/s. M.B. Gopalan Associates , Advocate SR.No. 36105

+1cc to M/s. Karan & Uday Advocate SR.No. 36706

C.M.A. No. 2419 of 2016

ASK(25/09/2018)

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