

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN
C.M.A.No.369 of 2015
and
M.P.Nos.1 and 2 of 2015

The Cholamandalam Ms General Insurance Co. Ltd.,
No.1, Village Road,
"Rashmi Towers", II Floor,
Nungambakkam, Chennai 600 034 ... Appellant

Vs

1.Subash

2.L.Prabhu

... Respondents

PRAYER : Civil Miscellaneous Appeal filed against the judgment and decree in M.C.O.P.No.4659 of 2012, dated 04.08.2014 on the file of the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : Mr.R.Mohan Babu
for Mr.N.Vijayaraghavan

For Respondents: Mr.Richard Suresh Kumar (for R1)
for Ms.G.Anitha

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 insurance company against the award of Rs.17,33,000/- as compensation for the disability sustained by the 1st respondent, aged about 23 years, a cleaner, earning about 8,500/- per month, in the accident, which occurred on 26.06.2012.

2.Heard Mr.R.Mohan Babu, learned counsel appearing for the appellant and Mr.C.Richard Suresh Kumar, learned counsel appearing for the 1st respondent.

3.The only question to be decided is with regard to quantum of compensation. The Tribunal determined the disability at 60%,

based on Exs.P.2, P.3, P.6 and P.8 Medical records and PW2-Doctor's evidence and considering the following injuries sustained by the claimant:

"1.Amputation of above knee right leg; 2.Fracture of femur left leg; 3.Fracture of femur right; 4.Fracture of patella left leg; 5.Severe head injury; 6.Crush injuries to left leg and 7.Left ankle region medial malleolus 5.5 cm abrasions and other serious multiple injuries all over the body."

4.In this case, the 1st respondent's right leg was amputated below knee. As per Ex.P.2, he was hospitalised from 26.06.2012 to 16.07.2012 in Rajiv Gandhi Government General Hospital, Chennai and thereafter, as per Ex.P.3, he was hospitalised as an inpatient from 17.07.2012 to 03.08.2012 for a period of 17 days in Nalam Hospital. As per Ex.P.7 - Disability Certificate, PW2-Doctor has assessed disability at 60%. Therefore, the Tribunal determined the loss of earning power at 60%. Since the petitioner is a cleaner and his leg was amputated, it may not be possible for him to continue the avocation. Therefore, the loss of earning capacity is 100% or absolute.

5.Though the claimant claimed a sum of Rs.8,500/- as monthly income, the Tribunal took only Rs.8,000/-, in the absence of any evidence. The accident occurred only in the year 2012 and Rs.8,000/- determined by the Tribunal is very reasonable, as the Honourable Supreme Court determined the monthly income of a vegetable vendor at Rs.6,500/-, who lost his leg in the accident occurred in the year 2008, whereas this accident occurred in the year 2012. Therefore, the Tribunal was right in determining the monthly income at Rs.8,000/- and the same is confirmed. The Tribunal has not added any amount towards future prospects. As per the Constitution Bench's judgment 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 income would be Rs.11,200/- (Rs.8000/- + 40% of 8000). The Tribunal adopted the correct multiplier of "18", as the age of the victim was 23 years. Therefore, loss of earning capacity would be at Rs.24,19,200/- (11200 x 12 x 18).

6.Disability:

The Tribunal awarded a sum of Rs.60,000/- towards disability and the same is deleted.

7.Loss of income:

Similarly, Rs.96,000/- towards loss of income during the treatment period and the same is also deleted, as this Court has adopted multiplier method.

8.Extra nourishment:

The Tribunal has awarded a sum of Rs.25,000/- towards extra nourishment and the same is enhanced to Rs.50,000/-, considering the amputation of leg and necessity to rejuvenate the 1st

respondent.

9.Transport charges:

The Tribunal has awarded a sum of Rs.15,000/- towards transport to hospital, the same is enhanced to Rs.25,000/-.

10.Medical expenses:

The Tribunal's award of Rs.1,25,000/- towards Medical Expenses is confirmed.

11.Future medical expenses:

The Tribunal's award of Rs.1,00,000/- towards future medical expenses is confirmed.

12.Attender charges:

The Tribunal's award of Rs.25,000/- towards attender charges is confirmed.

13.Mental agony to the claimant and pain and suffering:

The Tribunal has awarded a sum of Rs.75,000/- under the head pain and suffering and a sum of Rs.1,00,000/- towards mental agony. This Court reduced the same together to Rs.1,00,000/- under the heads mental agony and pain and suffering.

14.Loss of amenities:

The Tribunal awarded a sum of Rs.75,000/- towards loss of amenities, the same is deleted as this Court has adopted multiplier method, taking 100% loss of earning capacity.

15.Damages to clothes:

The Tribunal's award of Rs.1,000/- towards damages to clothes is also confirmed.

16.Hence, the total compensation awarded in this case is Rs.28,45,200/-

Head	Amount (Rs.)
Loss of earning capacity	2419200
Extra nourishment	50000
Transport charges	25000
Medical expenses	125000
Future medical expenses	100000
Attender charges	25000
Mental agony to the claimant and pain and suffering	100000
Damages to clothes	1000
	2845200

17.The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. The claimant is directed to pay the requisite court-fee, if any, within a period of one week from the date of receipt of a copy of this order. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation.

Accordingly, award of the Tribunal (i.e.,) Rs.17,33,000/- is enhanced to Rs.28,45,200/- invoking Order 41 Rule 33 of CPC, and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimants, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

18. Accordingly, this Appeal is dismissed, enhancing the award of the Tribunal (i.e.,) Rs.17,33,000/- to Rs.28,45,200/- with interest. Consequently connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To
The II Judge,
Court of Small Causes,
Chennai 600 104.

copy to:

The Record Keeper,
VR section,
High Court, Madras.

+1cc to Ms.G.Anitha, Advocate sr.no.32076
+1cc to Mr.N.Vijayaraghavan, Advocate sr.no.32638

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