

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.503 of 2015

K.Fantus @ Bandoos Kumar

... Appellant / Petitioner

Vs

1.R.Shahira Banu

2.Sri Ram General Insurance Co. Ltd.,
No.66, Thirumalai Pillai Street,
T.Nagar, Chennai.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the decree and judgment dated 19.09.2013 made in M.C.O.P.No.2052 of 2010 on the file of Motor Accident Claims Tribunal, (Special Sub Court-I), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Dhakshnamoorthy (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 19.09.2013 made in M.A.C.T.O.P.NO.2052 of 2010 on the file of Motor Accident Claims Tribunal, Special Sub Judge-1, Chennai.

2.The Appellant is the petitioner, 1st Respondent is 1st Respondent and 2nd Respondent is 2nd Respondent in M.A.C.T.O.P.NO.2052 of 2010, on the file of Motor Accident Claims Tribunal, Special Sub Court-1, Chennai. According to the Appellant while he was walking along with a Motor Cycle bearing Registration No.TN-22-AD-5257 on 05.03.2010 at about 15.15 hours near Garden Water Company, Madavakkam Main Road, Kovilambakkam, the 1st Respondent Lorry bearing Registration No.TN-46-B-2547 driven by its Driver rash and negligent manner hit the appellant Motor Cycle, due to which the petitioner thrown away from Motor

Cycle he suffered multiple grievous injuries. The appellant aged was 19 years at the time of accident and load man in Garden Water Company, Chennai-600117 and earning Rs.7,000/- per month. He made claim for a sum of Rs.12,00,000/- as compensation. The 1st Respondent is the owner of the vehicle remained exparte before the Tribunal.

3.The Appellant filed counter statement and denied various allegations made by the 1st Respondent and pleaded the accident not happened due to rash and negligent driving of the 2nd respondent rider and denied the age and income of the appellant and denied the injuries of 1st Respondent.

4.Before the Tribunal, Appellant examined as PW1 and one Doctor Thiagarajan examined as PW2 and marked 7 Documents as Ex.P1 to Ex.P7. On behalf of 2nd Respondent, no one was examined and no documents were marked.

5.The Tribunal considering the pleadings ,oral and documentary evidence and accepting the evidence of PW1 and PW2 came to the conclusion that the accident occurred only due to rash and negligent driving of the 1st Respondent Vehicle was insured with the 2nd Respondent and held Respondents are liable to pay Compensation. The tribunal fixed the age of the appellant as 19 years as per Ex.P2 (Discharge Summary) and the Tribunal fixed the income of the appellant as Rs.4,500/- per month as notional income since the appellant not filed any solid proof to prove the income and occupation. The appellant sustained fracture in Right Clavicle and Amputation left leg up to knee and took treatment in Government Stanley Hospital, Chennai. To prove the injuries sustained by appellant one Doctor Thiagarajan was examined, he assessed Disability 65% for amputation of left leg and 25% for Right clavicle Fracture the same reduced by 60% and 20% respectively by the Tribunal. Since, the appellant sustained permanent disability the loss of income calculated as follows:

$$\text{Rs.4,500} \times 60/100 \times 12 \times 16 = \text{Rs.5,18,400/-}$$

and for 20% partial permanent disability awarded Rs.20% X 2000 = 40,000/- and awarded total compensation of Rs.6,33,400/- with 7.5% interest as under:

Award by Tribunal is as follows:

Sl.No.	Particulars	Amount
1.	Loss of income (Rs.4500x60/100x12x16)	Rs.5,18,400/-
2.	Compensation for Disability 20% X 2000	Rs. 40,000/-
3.	Transport	Rs. 10,000/-
4.	Extra-Nourishment	Rs. 10,000/-
5.	Medical Expenses	Rs. 15,000/-
6.	Loss of Amenities	Rs. 10,000/-
7.	Pain and Suffering	Rs. 30,000/-
TOTAL		Rs.6,33,400/-
		with 7.5% interest

6. Against the said award dated 19.09.2013 made in M.A.C.T.O.P.No.2052 of 2010, the present Civil Miscellaneous Appeal has been prepared by the appellant for enhancement of the award amount.

7. The learned counsel for the appellant submitted that the tribunal fixed the age of the appellant as 19 years as per Ex.P2 (Discharge Summary) when his age was 19 years, the Tribunal wrongly fixed the multiplier as 16 and the multiplier should be 18 years as per rulings rendered in the case of Sarla Verma and others Vs Delhi Transport Corporation and another, 2009 (2) TNMAC 1 (SC). The learned counsel for the appellant further submitted that the tribunal went wrong in fixed the income of the appellant as Rs.4500/- per month as notional income and further submitted that the income of the appellant should be fixed Rs.6500/- per month as notional income as per rulings rendered in Syed Sadiq Vs. United India Insurance Co. Ltd., 2014 (1) TNMAC 459 (SC) case, since the appellant has not filed any solid proof to prove the income and occupation. The counsel for appellant further submitted that 40% future prospects has to be added as per the Hon'ble Apex Court Rulings in National Insurance Co. Ltd. Vs. Pranay Sethi and others. The learned counsel for appellant further submitted that due fracture in Right Clavicle and Amputation left leg up to knee by appellant

he had sustained 100% loss of earning capacity and the same proved by Doctor evidence (PW2). The Doctor assessed Disability 65% for amputation of left leg and 25% for Right clavicle Fracture, the same reduced by 60% and 20% respectively by tribunal without any basis. Hence, afore said reasons award of tribunal towards pecuniary loss and non pecuniary loss in very low the same to be enhanced. Hence, he prayed enhance the award and allow the above Civil Miscellaneous Appeal.

8.The learned counsel for the 2nd Respondent contended that the accident not happened due to rash and negligent driving of the 1st respondent vehicle and the appellant himself responsible for accident and denied the age, occupation and income of the appellant and denied the injuries of appellant. The counsel for 2nd Respondent further contended that disability 60% and 20% fixed by the tribunal is high and contented that the award of tribunal various heads very high. Hence, he prayed dismissal of above appeal.

9.I heard Mr.K.Varadha Kamaraj, learned counsel for the appellant and Mr.S.Dhakshnamoorthy, learned counsel for the 2nd Respondent and perused the materials available on record.

10.As far as negligence concern, I find this accident happened due to the rash and negligent driving of the 2nd respondent vehicle because 1st Respondent (PW1) is best person to speak the accident he clearly says that the accident happened rash and negligent driving of 1st Respondent Vehicle and the same corroborated by FIR.

11.I find the claimant suffered amputation of left leg up to knee and fracture right clavicle the same proved by as per Ex.P2 (Discharge Summary). The Doctor (PW2) assessed Disability 65% for amputation of left leg and 25% for Right clavicle Fracture, but, the Tribunal reduced the same 60% and 20% respectively, it is not correct and un basis, when the claimant age 19 years the tribunal wrongly fixed multiplier 16 and the multiplier should be 18 years as per rulings rendered in Sarla Verma and others Vs Delhi Transport Corporation and another, 2009 (2) TNMAC 1 (SC). I find the Tribunal went wrong in fixed the income of the appellant as Rs.4,500/- per month as notional income and it is fair and reasonable income of the appellant should be fixed Rs.6,500/- per month as notional income as per rulings rendered in Syed Sadiq Vs. United India Insurance Co. Ltd., 2014 (1) TNMAC 459 (SC) case and I add 40% future prospects as per the

Hon'ble Apex Court rulings in National Insurance Co. Ltd. Vs. Pranay Sethi and others. The income of the appellant after add 40% future prospects is Rs.9,100/- = (6500+40% of 6500). The age of the deceased is 19, hence correct multiplier is 18. Therefore, total loss of income is arrived at Rs.11,79,360/- (Rs.9100 X 12 X 18 X 60/100).

12.The Tribunal has awarded a sum of Rs.10,000/- towards transport, the same is enhanced to Rs.15,000/-.

13.The tribunal has awarded a sum of Rs.10,000/- towards loss of amenities and marital prospects the same enhanced to Rs.1,00,000/-.

14.The tribunal has awarded a sum of Rs.30,000/- towards pain and sufferings the same is enhanced to Rs.75,000/-

15. The tribunal not awarded any amount towards attending charges, I award Rs.10,000/- towards attending charges.

16.The award of Rs.10,000/- towards Extra Nourishment and award of Rs.15,000/- towards medical expenses and award of Rs.40,000/- towards disability is confirmed.

17.The modified award amount is as follows:

Sl.No.	Heads	Amount
1.	Loss of income (Rs.9100x60/100x12x18)	Rs.11,79,360/-
2.	Compensation for Disability 20% X 2000	Rs. 40,000/-
3.	Transport	Rs. 15,000/-
4.	Extra-Nourishment	Rs. 10,000/-
5.	Medical Expenses	Rs. 15,000/-
6.	Loss of Amenities	Rs. 1,00,000/-
7.	Pain and Suffering	Rs. 75,000/-
8.	Attending Charges	Rs. 10,000/-

TOTAL Rs.14,44,360/-
with 7.5% interest

18.The Appellant is directed to pay additional court fee for the enhance amount, if any, more than appeal value amount.

19.In the result, the above Civil Miscellaneous Appeal is allowed. No costs. The 2nd Respondent / Insurance company is directed to deposit the entire award amount before the tribunal as per the modified award passed by this court along with interest and costs ,with in six weeks from the date of receipt of a copy of this order after deducting the amount already deposited, if any. On such deposit, the appellant/claimant permitted to withdraw modified award amount along with interest, after adjusting the amount already withdrawn if any.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

The Motor Accident Claims Tribunal,
(Special Sub Court-I), Chennai.

+1 cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.59582

+1 cc to Mr.S.Dakshinamoorthy, Advocate, S.R.No.60220

C.M.A.No.503 of 2015

RK(CO)
SSM(20/03/2019).

सत्यमेव जयते

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