

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.08.2018	Pronounced on : 29.08.2018
--------------------------	----------------------------

CORAM

THE HONOURABLE Mr.JUSTICE K.K. SASIDHARAN
AND
THE HONOURABLE Mr.JUSTICE R. SUBRAMANIAN

C.M.A. 1912 of 2017

Murugan ... Appellant/ petitioner

Vs

1. Poonam Madhukar Ingale

(R1 remained exparte before the Tribunal, hence his presence may be dispensed with)

2. The Manager,

Shri Ram General Insurance company Limited,
E - 8, EPIP, RIICO Industrail Area, Sitapura,
Jaipur,
Rajasthan - 22.

..... Respondents /
Respondents

Prayer : Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicles Act, 1988, Civil Miscellaneous Appeals to enhance the award dated 08.03.2016 and made in M.A.C.T.O.P.No.179/2012 on the file of the Motor Accident Claims Tribunal, Additional Sub Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja

For Respondents : R1 - Exparte
Mr. Dhakshinamoorthy for R2

JUDGMENT

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

Challenge in this appeal is to the award of The Motor Accident Claims Tribunal, Tiruvannamalai dated 08.03.2016 in and by which the Tribunal granted a sum of Rs.17,17,800/- as compensation for the injury suffered by

the claimant in a motor accident that occurred on 07.03.2012.

2. The Claimant/appellant had sought for a compensation of Rs.30,00,000/- for the injuries sustained, as well as towards the permanent disability caused due to the accident. According to him, on 07.03.2012 at about 6.45 A.M, he was riding his motor cycle bearing Registration No. TN 32/J-2943 from Kattusithamur to Tiruvannamalai. While, he was driving at a slow speed on the left hand side of the road, the driver of the lorry, owned by the second respondent, bearing Registration No.K.A22/A-7152, which came in the opposite direction, driven by its driver in a rash and negligent manner, dashed against the motor cycle, as a result of which, the claimant suffered fracture in his right leg and injuries on his left thigh bone, right wrist, right palm and head. They were also other injuries all over his body. He was admitted in Tiruvannamalai Government Hospital and thereafter he was shifted to MIOT hospital, Chennai. The claimant has contended that he has spent about Rs.10,00,000/- towards medical expenses. The claimant has filed claim petition claiming a sum of Rs.30,00,000/- as compensation.

3. This claim petition was resisted by the second respondent Insurance Company contending that the claimant was not earning Rs.10,000/- per month, his avocation and age were also disputed. The Insurance Company, further claimed that the driver of the lorry bearing Registration No. K.A22/A-7152 was not possessing valid license. The liability of Insurance Company was also denied. The nature of injuries and the claim of permanent disability were also disputed by the insurance company.

4. The Tribunal on a consideration of the facts and circumstances of the case and the fact that FIR has been registered against the driver of the lorry as well as the fact that the driver had admitted guilt and paid fine before the Judicial Magistrate, which was as Exhibited as Ex.P- 8, concluded that the accident had occurred due to the rash and negligent driving of the lorry by its driver. Insofar as, quantum of compensation was concerned, the Tribunal examined the evidence of the Doctor, who has assessed the disability at 70% and concluded that the claimant would be entitled to Rs.2000/- towards disability. Thus, the Tribunal determined the compensation for permanent disability at Rs.1,40,000/-. Based on the medical bills produced, the Tribunal granted a sum of Rs.2,56,838/- towards medical expenses. A sum of Rs.20,000/- was granted towards the damages caused to the motor cycle; a sum of Rs.9,000/- was granted for transport expenses and the sum of Rs.36,000/- was granted for loss of income. The Tribunal also granted a sum of Rs.5,000/-

towards attender charges and Rs.5,000/-for pain and suffering. In all, the Tribunal has granted a total sum of Rs.4,71,838/- as compensation.

5. Complaining that the compensation awarded by the Tribunal is abysmally low, the claimant has come forward with this appeal.

6. We have heard Mr.F.Terry Chella Raja, learned counsel for the appellant and Mr.S.Dhakshnamoorthy, learned counsel for the second respondent Insurance Company. The first respondent had remained Ex-parte before the Tribunal and despite service, first respondent has not entered appearance either in person or through counsel.

7. Mr.F.Terry Chella Raja, learned counsel for the appellant would contend that the appellant was working as Mason and he is unable to work as such due to the permanent disability. By order dated 26.06.2018, this court had directed the appellant/claimant to appear before the medical board with a direction to the medical board to assess the permanent disability as well as his loss of earning capacity. Pursuant the said direction, a medical board was constituted by the Dean of Tiruvannamalai Medical College and Hospital, Tiruvannamalai. As per the direction of this court, the appellant had appeared before the Medical Board and the Board had observed that the disability percentage is about 60% and the Board has also found that there was a fracture in a right leg both the bones, fracture of left femur, fracture in the right hand and forearm. It is further finding of the Medical Board that all the fractures have been treated with Internal Fixator. The nature of the injuries would demonstrate that the claimant/appellant would have suffered a certain amount of permanent disability and considering his avocation as a Mason, he should have been compensated for the disability caused to him due to the injuries suffered by him in the accident. Unfortunately the Tribunal has not addressed this issue. The Tribunal has taken income of the appellant/claimant at Rs.1000/- per month, which in our opinion is very low. Even a coolie or unskilled workmen would earn about Rs.6000/- per month as the accident took place in the year 2012. Therefore, we fix the income of the appellant at Rs.6000/-. As per the judgment of the Larger Bench of the Supreme Court in National Insurance Company Limited Vs. Pranay Sethi & Others reported in 2018-1-L.W.331, the claimant being age about 34 at the time of the accident, the future prospects would have to be worked out at 40%. Therefore, loss of monthly income works out to Rs.8,400/-. The disability has been assessed at 60% by the Medical Board. Therefore, the claimant would be entitled to 60% of the actual pecuniary loss as compensation for the permanent disability. As per the judgment in Sarla Verma case,

multiplier to be applied for the age group of 31-35 years is 16. Adopting the above guidelines of the Hon'ble Supreme Court, loss of income due to permanent disability is calculated as follows:-

Monthly pecuniary loss is fixed at Rs.8,400/-.
 $8400 \times 12 \times 16 \times 60/100 = 9,67,680$.

8. The Tribunal has granted a sum of Rs.36,000/- towards loss of income for a period of 36 months, on the basis that the claimant was earning Rs.1000/- per month. We have fixed monthly income at Rs.6000/-.

9. Mr.S.Dhakshinamoorthy, learned counsel for the respondents would contend that 36 months is too long, and the same should be reduced.

10. We are therefore of the opinion that the loss of income can be calculated for a period of 18 months, considering the nature of the injuries suffered by the appellant/claimant. Therefore, the loss of income would work out to Rs.1,08,000/-. The total compensation arrived at by the Tribunal is modified as follows:-

	Amount in Rs.
For Permanent Disability	- 9,67,680/-
Loss of Income	- 1,08,000/-
Medical Expenses	- 2,42,000/-
Transport Charges	- 9,000/-
Pain and Suffering	- 5,000/-
Damages of the vehicle	- 20,000/-
Attender charges	- 5,000/-
Total	----- Rs.13,56,680/- -----

11. In view of the foregoing discussion, the appeal is allowed in part and the award of the Motor Claims Tribunal is modified as above, granting a sum of Rs.13,56,680/- as compensation with 7.5% interest from the date of the petition till the date of payment and proportionate costs. There shall be no further order as to cost in this appeal.

Sd/-

Assistant Registrar(Co)

//True Copy//

Sub Assistant Registrar

mp/gbi

To

1.The Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruvannamalai.

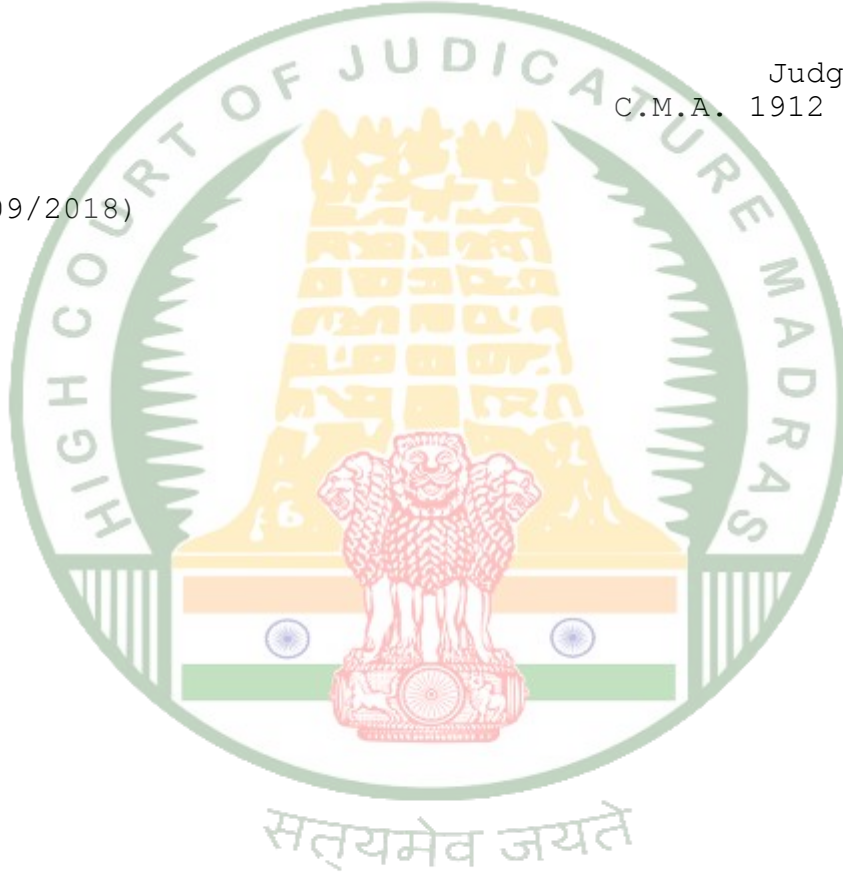
2.The Section Officer,
VR Section,
High court
Madras.

+1cc to Mr.M.Malar, Advocate SR.No. 29570

+1cc to Mr. Dhakshinamoorthy , Advocate SR.No. 60221

Judgment in
C.M.A. 1912 of 2017

ASK(28/09/2018)



WEB COPY