

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2018

CORAM

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

C.M.A. No. 3514 of 2017

Mr.Gaurav Kumar ... Appellant/Petitioner

Vs.

1. M/s. Gestamp Sungwoo Hitech
(Chennai) Pvt. Ltd.,
No.488/2, Mannur Village,
Vallarpuram Post,
Sriperumbudur Taluk,
Kanchipuram District.
PIN - 602 105.
2. United India Insurance Company Ltd.,
No.58, Purasaiwalkam High Road,
Purasaiwalkam, Chennai - 600 007.
(Now operating from ' Silingi Building',
Motor Third Party Claims Office,
No.134, Greames Road,
Chennai - 600 006.) ... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 03.08.2017 passed by the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, in M.C.O.P.No. 4829 of 2013.

For Appellant :: Mr.G. Balaji Prasad

For Respondents:: Mr.S. Arunkumar for R2

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J U D G M E N T

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

This Civil Miscellaneous Appeal has been filed by the injured/claimant as against the award of the Motor Accidents Claims Tribunal (II Judge, Court of Small Causes), Chennai, passed in M.C.O.P. No. 4829 of 2013 by order dated 03.08.2017,

by which 50% contributory negligence was fixed on the claimant, for non-possession of valid licence, in respect of the accident, which occurred on 21.06.2013, in which the appellant sustained grievous injuries leading to amputation of his right leg above knee and fracture of both bones of right forearm and a sum of Rs.5,11,000/- was awarded as compensation for the disability sustained by him.

2. On contest, though the Tribunal found that the accident occurred because of the rash and negligent driving of the driver of the Maruti Omni Ambulance, owned by the 1st respondent and insured with the 2nd respondent, however, fixed 50% towards contributory negligence on the claimant for non-possession of valid driving licence by him and out of the total award of Rs.10,21,000/-, deducted 50%, thereby entitling the claimant to a sum of Rs. 5,11,000/-. The said award is being challenged by the claimant.

3. Heard Mr.G. Balaji Prasad, learned counsel for the appellant and Mr.S.Arunkumar, learned counsel for the 2nd respondent Insurance Company.

4. A perusal of the records would show that the Tribunal, based on the evidence of P.W.2 eye witness as well as the claimant and the filing of FIR as against the ambulance driver, rightly found that the accident occurred because of the rash and negligent driving by the driver of the ambulance. Having found that the driver of the ambulance was responsible for the accident, the Tribunal should not have fixed 50% contributory negligence on the part of the victim on the ground that he did not possess valid driving licence. Though non-possession of valid driving licence is not permitted under the Motor Vehicles Act, 1988, considering the fact that the Tribunal found that the accident occurred solely because of the driver of the ambulance, 50% contributory negligence fastened by the Tribunal on the claimant is hereby set aside.

5. The victim is claimed to be a construction worker allegedly earning a sum of Rs.10,000/- per month. However, the Tribunal, based on his salary certificate, Ex-P6, determined the monthly income at Rs.6000/- even though the salary certificate showed only Rs.5,440/- as his monthly income. The said determination by the Tribunal is based on evidence and the same is sustained. The Tribunal, while calculating the compensation, has deducted 50% towards "Personal Expenses", which would arise only in case of death. Therefore, 50% deducted by the Tribunal towards "Personal Expenses" is set aside. As far as "Future Prospects" is concerned, though 50% was added towards "Future Prospects", as per the Constitution Bench's judgment of the

Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and Other reported in 2017 ACJ 2700, 40% has to be added towards "Future Prospects". Therefore, adding 40% towards "Future Prospects" to the monthly income of the victim, the "total monthly income" comes to Rs. 8400/- ((Rs.6000/- (+) 40% (Rs.6000/-))).

6. Furthermore, a perusal of the records would reveal that the claimant sustained injuries leading to amputation of his right leg below hip and P.W.3 Doctor assessed the disability at 85%. The Tribunal, taking into consideration, the fracture in right forearm, which would constitute 10% disability, took the total disability at 90%. Irrespective of the fact whether the fracture in right forearm would constitute 10% disability, as proved by the claimant, he was a construction worker and having lost one of his legs, it would not be possible for him to do any work. Therefore, "loss of earning capacity" is 100%. However, the Tribunal, taking disability at 90%, fixed the same as "Loss of Earning Power". The approach of the Tribunal is erroneous and this Court holds that "Loss of Earning Power" is 100%.

7. The appropriate multiplier, as per the age of the victim, is 18 and adopting the said multiplier, for 100% disability, "Loss of Income due to disability" would be,

Loss of income due to disability :: Rs.8400 x 12 x 18
:: Rs.18,14,400/-

8. As far as the other heads are concerned, the Tribunal awarded only Rs.2000/- towards "Attendant Charges" and it is very low as the claimant was hospitalized for nearly 50 days. Hence, a sum of Rs.25,000/- would be reasonable. As this Court has applied multiplier method, Rs.12,000/- awarded towards "Loss of Income" is deleted. A sum of Rs.25,000/- awarded towards "pain and suffering" is very low and a sum of Rs.1 lakh is awarded under the said head. Rs.5000/- awarded towards "Transportation Charges" is enhanced to Rs.25,000/-. Similarly, towards "Extra Nourishment", the amount awarded is enhanced to Rs.25,000/-.

9. If a person wishes to remain unmarried, it is altogether a different matter. But, if a person is compelled to remain as a bachelor, as in the present case, due to the injuries sustained and consequent amputation, it would be utmost agonizing. Of late, even for a normal groom, it has become a herculean task to find a suitable bride, as the expectations of prospective brides are very high and it is impossible for a person, whose leg has been amputated to get a suitable bride. In other words, the "marital prospects" of the claimant are very bleak. Therefore, a sum of Rs.2 lakhs is awarded towards "Loss

of Marital Prospects" which the Tribunal did not award. So also, towards " Loss of Amenities", a sum of Rs.2 lakhs is awarded as no amount was awarded under this head. To sum up, the total compensation payable to the claimant, works out to,

Loss of Income due to disability::	Rs. 18,14,400/-
Pain and Suffering	:: Rs. 1,00,000/-
Transport Expenses	:: Rs. 25,000/-
Loss of Marital Prospects	:: Rs. 2,00,000/-
Loss of Amenities	:: Rs. 2,00,000/-
Attendant Charges	:: Rs. 25,000/-
Extra Nourishment	:: Rs. 25,000/-
Total	:: Rs. 23,89,000/-
rounded off to	:: Rs. 24,00,000/-

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

10. Since the offending vehicle did not have Fitness Certificate, as proved by the Insurance Company, the Tribunal rightly ordered pay and recovery. The said direction is confirmed.

11. The 2nd 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 amount to the bank account of the claimant, through RTGS, within a period of one week thereon. Since pay and recovery has been ordered, the Insurance Company is at liberty to file an execution petition to recover the amount from the owner of the offending vehicle treating it as a decree as against the owner.

12. In the result, the Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal, to the tune of Rs. 10,21,000/- is enhanced to Rs.23,89,000/- rounded off to Rs.24 lakhs with interest @ 7.5% per annum. No costs.

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Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

1.The MACT (II Judge,)
Court of Small Causes,
Chennai.

2.The Section Officer,
VR Section, High Court, Madras.(2 Copies)

+lcc to Mr.G.Balaji Prasad, Advocate Sr.36456

+lcc to Mr.S.Arunkumar, Advocate Sr.36349

C.M.A. No. 3514 of 2017

br[co]
srg 28/09/2018



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