

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A.No.849 of 2014

J.Justin @ Mariya Justin Raj ... Appellant/Petitioner

Vs

1.N.Govindaswamy

2.S.Palani

3.The New India Assurance Company Ltd.,
Office - Door No.482, 483, SNI Chambers,
III Floor, Coimbatore. Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed against the award and decree of the learned Motor Accidents Claims Tribunal (Principal District Court), Tiruppur, dated 23.08.2013 in M.C.O.P.No.899 of 2008.

For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mr.D.Baskaran (for R3)

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 claimant, questioning the quantum of compensation of Rs.5,36,000/- awarded by the Tribunal for 90% disability, caused due to the injuries sustained by the appellant, in the accident which occurred on 15.10.2007 when the appellant, who was walking on the road along with his friends was dashed by a Tata Van, resulting in his sustaining grievous injuries. At the time of accident, the appellant was aged about 19 years, working as diamond polish worker, earning about Rs.3,000/- per month.

2.Heard Mr.Ma.P.Thangavel, learned counsel appearing for the appellant and Mr.D.Baskaran, learned counsel appearing for

the insurance company.

3.Since the claimant has come before this Court questioning the quantum of compensation and there is no appeal by the insurance company either in respect of negligence nor quantum of compensation, the question of going into the liability does not arise and it is deemed to have attained finality.

4.The claim of the appellant is that he has sustained grievous injuries and he is in a vegetative state and therefore, there is loss of 100% income.

5.Mr.D.Baskaran, learned counsel appearing for the respondent would oppose for enhancement and support the Tribunal's award.

6.After the accident, the appellant was taken to Saraswathi Hospital, Chinthamanipudur, Coimbatore, for first aid and thereafter, he was shifted to Government Hospital, Coimbatore. For further treatment, again, the appellant was shifted to Richmond Hospital, Coimbatore. Because of the accident, he has become immobilized as spinal cord was severely broken. It is evident from the medical records, especially Ex.P.7 - Discharge Summary; Ex.P.8 - Wound Certificate, the appellant suffered the following injuries:

"1.Burst fracture of L2 Vertebral body with unstable spinal columns;

2.Grade II anterolisthesis of L1 and L2 vertebral body;

3.Fracture involving L2 to L4 neural arches. Spondylolysis of L5 pars. Fractures in the sacral ala and superior pubic ramus on the left side and

4.Posterior pararenal space hematoma. Consolidation in the right lower lobe with hemothorax."

7.PW1, the victim deposed that he is bed ridden and 10 stitches on the right side of the hand; 4 stitches on the back side of the head and 24 stitches on the spinal cord have been done. It is evident from his evidence that he could not walk or sit and he is unable to do his day today work and he is still taking treatment as an outpatient. PW2, mother of the victim deposed in consonance with the evidence given by PW1. It is clear from PW3, expert evidence as well as from medical records produced that for the spinal cord fracture, plates and screws have been fixed. Sensation in both legs got reduced and as bladder is completely affected, which is otherwise called neurogenic bladder, he is unable to control urine. Since the bladder has become dysfunctional, the urine collected, directly passes out without being collected in the bladder and a tape has been fixed for passing urine. Due to

spinal cord injury, the muscle power in both the lower limbs is 0/5 and there is no muscle tone in both the lower limbs. When beaten with the medical hammer, there is no jerk in the joints of the legs and touching sensation is drastically reduced. Shake of the head denotes that the 2nd lumbar bone is reduced in its height and the appellant could not work by bending his hip and he develops pain in the spinal cord area and he could not stand or walk and is able to move only in a wheel chair as both the legs are affected. Taking note of the above position, the Tribunal elaborately discussed the above position in paragraph 7 of the award and determined the disability at 100%.

8.This Court referred the claimant to the Medical Board attached to Coimbatore Medical College Hospital and after examining the appellant, the Medical Board gave report on 06.04.2018 stating that there is 90% permanent disability. The report is extracted as follows:

"Burst fracture L2 Vertebral body - Spinal instrumentation done; Partial weakness of both lower limbs at hip, knee and ankle; Difficulty in stability activities of both lower limbs; Compression of L2 vertebral body; Neurogenic bladder."

9.The disability certificate issued by the Medical Board as per the order of this Court is also in tune with the findings given by the Tribunal, based on the medical records. There is only 10% variation. Since the Medical Board itself has given 90% disability and considering the position of the appellant, there would be loss of earning power at 100%. The finding reached by the Tribunal fixing 100% disability is considered to be 100% loss of earning power.

10.The appellant claimed that he was earning about Rs.3,000/- per month and PW4, who is the owner of the industry also supported such claim. Therefore, the Tribunal determined the monthly income at Rs.3,000/-. The same is confirmed.

11.There was no adding of future prospects by the Tribunal. 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, as the claimant is aged about 19 years. If 40% is added, the monthly income would be at Rs.4,200/- (3000 + 40% of 3000).

12.As per the judgment of the Honourable Supreme Court in Sarala Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC), the appropriate multiplier for the age of 19 years is "18". Therefore, the total loss of income arrived at, is as follows:

Total Loss of Income =Rs.4,200/- x 12 x 18
= Rs.9,07,200/-.

13.The Tribunal wrongly deducted 1/3rd towards personal expenses, which could be done only in the case of death and the instant case is an injury case and therefore, the said deduction is liable to be set aside and accordingly, set aside. Similarly, multiplier "16" has been adopted by the Tribunal, whereas it should be "18" as calculated above.

14.Pain and suffering:

The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering. As the appellant sustained spinal cord injury and other fractures, he has to undergo many surgeries and therefore, Rs.3,00,000/- is awarded towards pain and suffering.

15.Medical Expenses:

As per the medical bills Rs.79,485/- was rightly awarded by the Tribunal and the same is confirmed.

16.Future Medical Expenses:

The Tribunal has awarded only Rs.85,000/- towards future medical expenses. Considering the nature of injuries and disability sustained by the appellant, the appellant has to be awarded more amount towards future medical expenses. Accordingly, Rs.85,000/- is enhanced to Rs.3,00,000/-.

17.Permanent disability:

There is loss of 100% earning power and as per the medical records, disability is 90% and therefore for permanent disability, a sum of Rs.3,00,000/- is awarded.

18.Loss of marital prospects:

The appellant was hardly 19 years old and he was a trainee diamond polish worker. His chances of getting married is completely lost due to this accident and therefore, for loss of marital prospects a sum of Rs.3,00,000/- is awarded.

19.Loss of enjoyment of life and amenities:

The appellant is not in a position to enjoy the life and has been deprived of all the amenities. Therefore, a sum of Rs.3,00,000/- is awarded under this head.

20.Extra nourishment:

No amount has been awarded towards extra nourishment by the Tribunal and therefore, a sum of Rs.50,000/- is awarded towards extra nourishment.

21.Attendant charges:

Since the appellant is unable to move on his own, he is confined to a wheel chair and dependent on others for his essential work, he has to be provided towards attendant charges. At the time of accident, he was only 19 years, atleast for another 25 years, he needs an attendant. Therefore, relying upon the judgment of the Honourable Supreme Court in Kavitha Vs. Deepak and others reported in 2012 (2) TNMAC 362, attendant charges is awarded at Rs.2,000/- per month for 25 years (Rs.2000/- x 25) totalling to Rs.6,00,000/-.

22.Transport charges:

The Tribunal has awarded a sum of Rs.17,000/- towards transport charges. Since the claimant sustained grievous injuries and he has to take further treatment, the amount awarded towards transport charges is enhanced to Rs.1,00,000/-.

23.For water bed and Wheel chair:

Since the claimant has to be confined to bed and wheel chair during his further life time, he may get bed sore. To avoid that, the appellant has to necessarily use water bed and wheel chair, throughout his life and therefore, a sum of Rs.2,50,000/- is awarded under this head.

24.Hence, the total compensation payable in this case is Rs.34,86,685/- rounded off to Rs.35,00,000/-.

Head	Amount (Rs.)
Loss of Income	907200
Pain and suffering	300000
Medical expenses	79485
Future medical expenses	300000
Permanent disability	300000
Loss of marital life	300000
Loss of enjoyment of life and amenities	300000
Extra nourishment	50000
Attendant charges	600000
Transport charges	100000
Water bed and wheelchair	250000
	3486685

25.The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. The appellant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order.

26.The 3rd respondent is directed to deposit the entire amount awarded by this Court, along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal shall transfer a sum of Rs.15,00,000/- to the claimant's bank account through RTGS within a period of one week thereon. The balance award amount of Rs.20,00,000/- shall be deposited in interest bearing Fixed Deposit in any one of the Nationalised Banks, atleast for a period of five years.

27. Accordingly, the appeal is allowed, enhancing award of the Tribunal from Rs.5,36,000/- to Rs.35,00,000/- along with interest. No costs.

-sd/-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
1 The Principal District Judge,
Principal District Court,
Motor Accidents Claims Tribunal,
Tiruppur.

2 The Section Officer,
VR Section, High Court, Chennai.

+1 C.C. to Mr.Ma.Pa.Thangavel Advocate vide SR.NO. 28674

C.C. to Mr.D.Bhaskaran Advocate vide SR.NO. 28346

C.M.A.No.849 of 2014

CNR (CO)
VS 18.05.2018

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