

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2018

Pronounced on : 20.07.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.208 of 2009
and M.P.No.1 of 2009

The New India Assurance Company Ltd.,
92, C.N.Chetty Road, East Coast Chambers,
II Floor, T.Nagar, Chennai 600 017.

.. Appellant/2nd respondent

.Vs.

1.E.Balakrishnan 1st respondent/Petitioner
2.Y.Maheswara Rao 2nd respondent/1st respondent
(2nd Respondent set exparte in the lower
Court. Hence, notice is dispensed with)

This Civil Miscellaneous Appeal has been filed under
Section 173 of the Motor Vehicles Act to set aside the fair and
decretal order dated 28.04.2005 made in M.C.O.P.No.152 of 2004
on the file of the Motor Accident Claims Tribunal, (Chief
Judicial Magistrate Court), Cuddalore.

For Appellant : Mr. G.Sukumari
For 1st Respondent : Mr.S.Alex Raj for
Mr.N.R.Raja Gopal

JUDGMENT

The 1st respondent had lodged a claim petition under the
Section 166 of the Motor Vehicles Act, 1988 before the Motor
Accident Claims Tribunal, Cuddalore and claimed a sum of
Rs.8,00,000/- as compensation from the Appellant and the 2nd
respondent herein.

2. The Tribunal by the impugned order has awarded a sum of
Rs.2,90,075/- with interest at the rate of 9% p.a. to the
1st Respondent. Details of the amount awarded as compensation are
as under:-

Pain and suffering	Rs. 15,000/-
Nutrition	Rs. 2,000/-

Pain and suffering	Rs. 15,000/-
Attender charges	Rs. 3,000/-
Receipt of transport expenses	Rs. 6,723/-
Medical bills	Rs. 11,352/-
Loss of income (Rs.4,500/- X 6 = Rs.27,000)	Rs. 27,000/-
Permanent disability	Rs. 75,000/-
Future loss of earning capacity	Rs.1, 50,000/-
Total	Rs. 2,90,075/-

3. Appellant is aggrieved by the impugned order. The appellant- Insurance company is primarily aggrieved by the impugned order on the following amounts awarded as compensation to the 1st Respondent:-

- a) Rs.27,000/- awarded towards Loss of Income.
- b) Rs.75,000/- awarded towards permanent disability.
- c) Rs.1,50,000/- awarded towards future loss of earning.

4. Primarily, the attack is on the ground that there is no discussion in the impugned order as to how the above these three amounts were determined.

5. Briefly the facts are that at about 4.00 a.m. on 17.10.2000, a speeding van belonging to the 2nd respondent-owner insured with the appellant driven in a rash and negligent manner hit the auto coming from the opposite direction driven by the 1st respondent.

6. Due to the impact, the auto capsized and the 1st respondent suffered grievous injuries. 1st respondent's both legs and shoulder were fractured. The 1st respondent also suffered other grievous injuries on the head and above the right eyebrow.

7. Under these circumstances, the 1st respondent is said to have undergone treatment and later discharged. There is no dispute regarding the accident and the nature of the injury suffered by the 1st respondent in this appeal.

8. After hearing the Tribunal awarded a sum of Rs. 2,90,075/- to the 1strespondent by the impugned Order. Since the passing the impugned award, there is more clarity on the law relating to the compensation in case of permanent disability. Therefore, this case is being disposed after considering these decisions.

9. Heard the Counsel for the appellant and the 1strespondent.

10. The learned counsel for the appellant-insurance company would submit that the amount awarded by the Tribunal is without any discussion as to how each of the amount stated above have been arrived at except the loss of earning.

11. The appellant is also aggrieved by the interest awarded at 9% by the Lower Court. The learned counsel would submit that the amount awarded is also on the higher side.

12. The learned counsel further submitted that even otherwise, interest awarded has to be restricted to 7.5%.

13. Learned counsel for the 1strespondent cited the decision of the Hon'ble Supreme Court in Kumari Kiran v. Sajjan Singh reported in 2014 (2) TNMAC 553 (SC) to state that the claimant was entitled to just compensation under Section 166 of the Motor Vehicles Act applying the principles in the Workmen's Compensation Act and the amount awarded cannot be questioned. Learned Counsel submitted that on the contrary, the claim was to be enhanced.

14. The learned counsel for the 1strespondent would further refer to the decision of the Supreme Court in Nagappa Vs.Gurudayal Singh (2003)2 SCC 274 and Ibrahim vs. Raju and Others, (2011)10 SCC 634 to say that the Tribunals, the High Courts and the Supreme Courts are duty bound to award just compensation to the claimants under Section 166 of the Act and if required the claimant can be permitted to file amendment to claim petition.

15. The learned counsel for the 1strespondent has prayed for an enhanced compensation for a sum of Rs.7,83,415/- and has filed a Memo of calculation in support of the same.

16. The details of the enhanced compensation now claimed are as under:-

Heads of compensation	Award passed by the Tribunal	Just Compensation to be awarded
a) Pain and suffering	Rs.15,000/-	Rs.50,000/-
b)Extra nourishment	Rs. 2,000/-	Rs.10,000/-
c) Attender Charges	Rs. 3,000/-	Rs.10,000/-
D) Transport Charges	Rs. 6,723/-	Rs. 6,732/-
e) Medical Expenses (Ex.P.8 and Ex.P.11)	Rs.11,352/-	Rs. 11,352/-
f) Loss of income during treatment period of 6 months	Rs.27,000/-	Rs. 27,000/-
g) permanent disability	Rs.75,000/-	Rs. 90,000/-
h) future loss of income	Rs. 1,50,000/-	Rs. 5,78,340/-
Total	Rs.2,90,075/-	Rs.7,83,415/-

17. The amount awarded by the Tribunal is sought to be enhanced in the light of the following judgements of the Supreme Court's apart from the one's already referred to in the previous paragraph.:-

- " i) Jitendra KhimShankar Trivedi vs. KasamDaud and Kumbhar 2015(4)SCC 237
- ii) Sandeep Khanuja vs. Atul Dandee 2017 (3) SCC 351
- iii) Kumari kiran vs Sajjan Singh (2015) 1 SCC 539
- iv) Jakir Hussein vs Sabir (2015) 7 SCC 252
- v) S.Manickam vs. Metropolitan Transport Corporation Ltd ., 2013 ACJ 1935
- vi) Sarla Verma and other vs. Delhi Transport Corporation Ltd., 2009(6) SCC 121
- vii) National Insurance Co., Ltd., vs. Pranay Sathi 2017(2) TNMAC 609"

18. The loss of income for six month alone has been arrived on the notional income of Rs.4,500/- for six months. The loss of income during the period of treatment is on the notional income as on the date of the accident. Therefore, the amount awarded cannot be questioned on the strength of the evidence available on record.

19. The Tribunal has however awarded an amount of Rs.1,50,000/-towards the loss of income and an amount of Rs.75,000/- towards permanent disability.

20. There is however, no discussion as to how the amount has been arrived in the impugned order. Therefore, the submission of the learned counsel for the appellant is in a way correct.

21. However, the said submission does not further their case to set aside the order. On the other hand, there are enough material on record to show that the amount awarded was lower than the amount which the Tribunal could have awarded if the later judgments referred to above were available at the time of disposal of the case by the Tribunal.

22. The loss of future income was to be arrived after considering the extent to which 45% permanent disability compromised the earning capacity in terms of the decision of the Hon'ble Supreme Court in Raj Kumar v. Ajay Kumar, (2011) 1 SCC 343.

23. In para Nos.12 and 13, the Hon'ble Supreme Court has explained the method how it has to be determined. These paragraphs are reproduced below:-

" 12.Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:-

- (i) whether the disablement is permanent or temporary;
- (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;
- (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there

is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

13. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent disability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

24. After determining the extent to which the earning capacity was compromised, loss of income on account of the future prospect is to be added.

25 . The method to arrive at the loss of future income and future prospect has been explained in V.Mekala Vs M.Malathi and Another(2014)11 SCC 178.

26. The above decision was passed before the Constitutional Bench of the Hon'ble Supreme Court gave its decision in Pranay Sethi case referred to above and has standardized the percentage for different kind of employment and avocations.

27. In V.Mekala Vs M.Malathi and Another (2014)11 SCC 178, 50% of the notional existing income was adopted for determining the future prospect. In Pranay Sethi case, the percentage has been standardized which is now to be followed.

28. Without considering the addition to income on account of the future prospect, 1st respondent would have been entitled to a sum of Rs.4,37,400/-[4500 X 12x45/100x 18] based only notional income of Rs.4500/-. This would have been a just compensation under the heading "Loss of Income/Earning" if the 45% disability implied loss of earning by 45%.

29. There are instances of the Courts awarding amounts straight away based on the disability certificate alone without applying the criteria in Raj Kumar v. Ajay Kumar.

30. Determination of the compensation without following the decision of the Hon'ble Supreme Court cannot be permitted. Similarly, if the addition to the income on account of the future prospect for a self employed is to be applied as per the decision of the Hon'ble Supreme Court in Pranay Sethi case, the 1st respondent would have been entitled to a still higher compensation as below:-

Loss of Income:-	$4500 \times 12 \times 45 / 100 \times 18$	Rs.4,37,400/-
40% Addition to Loss of Income on account of Future Prospect:-	$4,37,400 \times 40 / 100$	Rs.1,74,960/-
	Tota	Rs.6,12,360/

31. Again this amount would be correct only on the assumption that 45% permanent disability also implied reduction in 45% of the earning capacity. Again, determination of the compensation without following the decision of the Hon'ble Supreme Court in in Raj Kumar v. Ajay Kumar referred to supra cannot be permitted.

32. Without proper determination based on merely the disability certificate will lead to distortion. It will indeed result in unfair determination and unjust compensation which is not intended.

33. At the same time, it would be harsh to remit the case back to the Tribunal now after a lapse of 18 years after the accident and 15 years after the impugned order was passed by the Tribunal. Therefore, decision of the Hon'ble Supreme Court in S Perumal versus K Ambika and another (2015) 11 SCC 411 can be relied upon to meet the ends of justice.

34. The Hon'ble Supreme Court placed reliance on several cases including its decision in Rajkumar versus Ajay Kumar (2011) 1SCC 343 and awarded a sum of Rs.2 lakhs as the compensation under the heading loss of future income. The notional income of the victim in that case was also Rs.4,500/- and the victim had suffered 25% permanent disability. Para 14 from the said judgment is reproduced below:-

" 14. We shall now consider the question as to what is just and reasonable compensation to be awarded to the claimant. The claimant was a poultry labourer, he would have earned not less than Rs 4500 per month. Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lump sum compensation of Rs 2,00,000 towards loss of future earnings on account of permanent disability, Rs 13,500 (Rs 4500 × 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the medical bills (Ex.P.5), for which an amount of Rs 1,00,000/- is awarded towards medical expenses; Rs 50,000/- is awarded towards pain and sufferings; Rs 10,000/- is awarded for transport charges and Rs 10,000/- is awarded for attender charges; Rs 10,000/- is awarded towards extra nourishment and Rs 50,000/- is awarded towards loss of amenities."

35. At the time of the accident in the present case, the 1st respondent was an auto driver aged about 27 years

and had suffered 45% disability whose notional income was determined as Rs.4,500/-.

36. Since there is no determination of extent to which the permanent disability had compromised the earning capacity in the present case as well, a sum of Rs.2,00,000/- is awarded towards loss of income following the decision of Hon'ble Supreme Court S.Perumal Vs K.Ambika case and another 40% of Rs.2,00,000/- towards future prospect applying the principle in Pranay Sethi case .

37. Thus, the 1st respondent shall be entitled for a sum of Rs.2,80,000/- towards loss of income an addition towards future prospect. Rest of the amounts awarded are also enhanced/maintained in terms of the decision of the Hon'ble Supreme Court in S.Perumal Vs K.Ambikaas follows:-.

1.	Pain and Suffering	Rs. 50,000/-
2.	Extra Nourishment	Rs. 10,000/-
3.	Attender Charges.	Rs. 10,000/-
4.	Transportation Charges.	Rs. 6,723/-
5.	Medical Expenses.	Rs. 11,352/-
6.	Loss of income during Treatment	Rs. 27,000/-
7.	Permanent Disability	Rs. 75,000/-
8.	Loss of income and addition towards future prospect.	Rs. 2,80,000/-
9.	Loss of amenities.	Rs. 30,000/-
	Total.	Rs. 5,00,075/- Rounded off to Rs.5,00,000/-

38. Insofar as interest is concerned, granted by the Tribunal at the rate of 9% p.a. is on the higher side and the same is reduced to 7.5% p.a.

39. In fine, the 1st Respondent shall be entitled for a just compensation of Rs.5,00,000/-. Accordingly, the impugned order is partially modified and ordered accordingly with the following directions:-

i) The 1st respondent/claimant is directed to pay the additional court fee for the enhanced award amount before the Tribunal.

ii) The appellant/Insurance Company is directed to deposit the above said amount of Rs.5,00,000/- after deducting the amount already paid / deposited before the Tribunal together

with interest at 7.5% from the date of claim till the date of payment within three months of this order.

ii) On such deposit, the 1st respondent/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn.

40. The Civil Miscellaneous Appeal is partly modified with the above direction. With cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar
(Special Cell CJ conference)

//True Copy//

Sub Assistant Registrar

kkd

To

The Chief Judicial Magistrate,
(Motor Accident claims Tribunal)
Cuddalore.

+1cc to Mr.R.Sivakumar, Advocate sr.no.48649

copy to:

The Section Officer,
VR Section,
High Court, Madras.

सत्यमेव जयते

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and M.P.No.1 of 2009

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