

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.M.A.No.730 of 2018

RanjithAppellant/Petitioner

-vs-

1.N.Raja

2.The New India Assurance Co. Ltd.,
T.P.Hub, No.232, Bombay Mutual Building, 6th Floor,
NSC Bose Road, Chennai - 1.

.... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order made in MCOP.No.3726 of 2016 on the file of the Motor Accident Claims Tribunal (II Small Causes Judge), Chennai, dated 14.11.2017.

For Appellant : Mr.T.Gobinath

For Respondents : Mr.S.Manohar for R2

R1 - No Appearance

J U D G M E N T

[Judgment of the Court was delivered by R.SUBRAMANIAN,J.]

The challenge in this appeal is, to the award of the Motor Accident Claims Tribunal, (II Court of Small Causes), Chennai made in MCOP.No.3726 of 2016, by the claimant seeking enhancement.

2. The claimant who suffered injuries in the accident that occurred on 11.04.2016 is the appellant. The injuries suffered in the accident resulted in amputation of his right foot. He had also undergone treatment as inpatient in Global Hospital, Chennai for 16 days and was treated as an outpatient till

13.02.2017. Claiming that he had undergone 9 surgeries including Diversion Colostomy, the claimant sought for compensation of Rs.63,00,000/-.

3. The claim was resisted by the Insurance Company contending that the accident occurred due to the rash and negligent driving of the two-wheeler by the claimant. The version of the claimant regarding the manner in which the accident had occurred was denied by the Insurance Company. The nature of the injuries, treatment taken and the resultant loss of earning power were also disputed by the Insurance company.

4. The Tribunal which heard the Original Petition concluded that the accident occurred due to the rash and negligent driving of the driver of the car. In coming to the said conclusion, the Tribunal relied upon the evidence of PW2, eye witness corroborated by Ex.P1, FIR. The Insurance Company did not adduce any evidence to prove the absence of negligence on the part of the driver of the car.

5. On quantum, the Tribunal rejected the medical bills and awarded a sum of Rs.1,04,000/- for medical expenses. Rs.2,000/- was awarded for attender charges. The Tribunal also found that the permanent disability that had occurred due to the accident is only 18% and awarded a sum of Rs.54,000/- at the rate of Rs.3,000/- per percentage of disability. The Tribunal awarded a sum of Rs.34,000/- for loss of income during the treatment period, taking the income at Rs.17,000/- per month. A sum of Rs.10,000/- towards pain and suffering, Rs.5,000/- towards transportation, Rs.5,000/- towards extra nourishment were awarded. In all, the Tribunal awarded a sum of Rs.2,14,000/- as compensation. Terming the compensation as abysmally low the claimant is before us by way of this appeal.

6. We have heard Mr.D.Poovannan, learned counsel appearing for the appellant and Mr.S.Manohar, learned counsel appearing for the 2nd respondent Insurance Company. The 1st respondent owner of the offending car though served has not appeared either in person or through counsel duly instructed.

7. Mr.D.Poovannan, learned counsel appearing for the appellant claimant would contend that the award of the Tribunal is unjust and unreasonable. He would also fault the Tribunal for rejecting the medical bills and not awarding any amount towards loss of earning power. He would contend that the functional disability caused is about 45% and the Tribunal was not justified in not awarding any amount towards loss of earning capacity. The learned counsel would also contend that the Tribunal was not justified in rejecting the medical bills and awarding only a sum of Rs.1,04,000/-, when there is overwhelming evidence to show that 9 surgeries

were performed. Further arguing, the learned counsel would submit that the award for attender charges, pain and suffering, extra nourishment, transport expenses are very low compared to normal standards. He would also fault the Tribunal for not awarding any amount towards loss of amenities, loss of marriage prospects and future medical expenses.

8. We have gone through the oral and documentary evidence on record, we are in entire agreement with the learned counsel for the appellant. We find that the award of the Tribunal is wholly unjust and unreasonable. The Tribunal has chosen to reject the valid documentary evidence which would show that the injuries had resulted in amputation of the right foot of the appellant which would definitely have a bearing on his future earning capacity. The claimant was only 24 years at the time of the accident. Therefore, the amputation would impair his marital prospects and would also result in loss of amenities. There is also evidence to show that the claimant would require future treatment for the injuries suffered by him in the accident. We are therefore of the considered opinion that the award of the Tribunal needs to be modified and the same is modified as follows:-

The disability certificate issued by the Authorities would show that the permanent disability suffered by the appellant is 60%. Of course, the entire permanent disability may not transform into functional disability resulting in loss of earning power. Considering the nature of the injuries and surgeries undergone, we fix the functional disability at 45%. The deceased was a Master of Engineering at the time of the accident and he was earning about Rs.17,000/- per month as per the salary slips produced as Ex.P33, P45 and P46. PW3 has been examined to prove the salary certificate. Therefore, we fix the monthly income at Rs.17,000/- as evidenced by the salary certificate produced. Adding 40% towards future prospects, the monthly income for the purpose of calculating the loss of earning power would be Rs.23,800/-. The appellant was aged about 24 years at the time of the accident, therefore, the multiplier applicable would be '18'. Thus calculated, the loss of earning capacity would be Rs.23,800/- x 12 x 18 x 45% = Rs.23,13,360/-. The medical expenses as per the bills produced works out to Rs.14,32,000/-, out of which Rs.4,00,000/- has been reimbursed by medical insurance, hence, the balance of Rs.10,32,000/- is awarded towards medical expenses.

9. Admittedly, the claimant was an inpatient for nearly 16 days and from Exs.P18, P20, P22, P41, P57, P58, P59, it is seen that the claimant was under continuous treatment as outpatient. This demonstrates that he would have incurred certain expenses towards attender charges as he is unable to move about independently. Therefore, we award a sum of Rs.1,00,000/-

towards attender charges. The Tribunal awarded Rs.10,000/- towards pain and suffering. The medical records available demonstrates that the claimant had undergone nearly 9 surgeries and a portion of right foot has been amputated. We therefore, award a sum of Rs.1,50,000/- towards pain and suffering as the suffering would continue till the life time of the appellant. The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transport expenses. Bills have been produced to show the expenses incurred towards transportation. It is also seen that the claimant would require extra nourishment, we therefore award a sum of Rs.1,00,000/- on these two heads.

10. The claimant had suffered disfigurement of right leg in view of the amputation, this will definitely result in loss of marital prospects as well as loss of amenities. We are of the considered opinion that a sum of Rs.3,00,000/- can be awarded towards these two heads. As already stated the claimant has been undergoing treatment for more than 3 years from the date of the accident and there is enough and more evidence to show that he would require further treatment. Hence, we award a sum of Rs.2,00,000/- towards future medical expenses. In view of the above, the award of the Tribunal is set aside and we make the following award:-

Award towards	Amount
Loss of earning capacity	: Rs.23,13,360/-
Medical expenses	: Rs.10,32,000/-
Attender charges	: Rs.1,00,000/-
Pain and suffering	: Rs.1,50,000/-
Extra nourishment and Transport expenses	: Rs.1,00,000/-
loss of marital prospects and loss of amenities	: Rs.3,00,000/-
Future medical expenses	: Rs.2,00,000/-
Total	: Rs.41,95,360/-

11. The same is rounded off to Rs.41,95,000/- with interest at 7.5% per annum from the date of petition till date of payment. The Insurance Company is directed to deposit the balance amount as per the modified award within six (6) weeks from the date of receipt of the copy of the judgment. On such deposit, the claimant is permitted to withdraw the same.

12. In fine, the appeal is partly allowed as indicated above. No costs.

Sd/-
Assistant Registrar (CS-VIII)

//True copy//

Sub Assistant Registrar

dsa

To

The Motor Accident Claims Tribunal,
II Small Causes Judge, Chennai.

Copy To

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

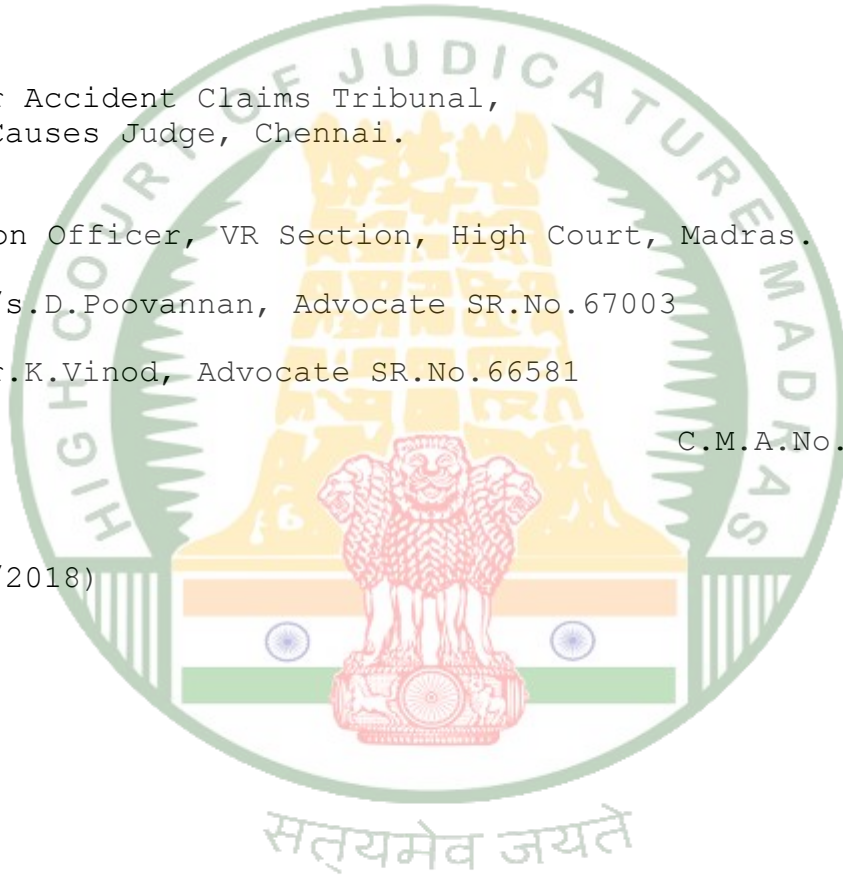
+2cc to M/s.D.Poovannan, Advocate SR.No.67003

+1cc to Mr.K.Vinod, Advocate SR.No.66581

C.M.A.No.730 of 2018

SAI (CO)

GMV (01/11/2018)



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