

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 13.07.2018

Pronounced on : 14.08.2018

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2213 of 2007

R.Yousuff

.. Appellant/Petitioner

Vs.

1. M/s.Chevro Leather Manufacuter,
Neyveli Road, Sriperundurai,
Kancheepuram District.
2. M/s.United India Insurance Compnay Limited,
C/o.Motor Third party claims office,
No.38, Anna Salai, Chennai-2.

.. Respondents/Respodnents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act,1988, against the judgment and decree made in M.C.O.P.No.3123 of 2004 on the file of the Motor Accident Claims Tribunal, second Judge, Small Causes Court at Chennai, dated 11.07.2006.

For Appellant : Mr.T.G.Balachandran

For Respondents : No appearance for R1
Mr.S.Arunkumar for R2

JUDGMENT

By the present appeal, the appellant seeks for enhancement to the compensation awarded by the Motor Accident Claims Tribunal Chennai, second Judge, Small Causes Court at Chennai, dated 11.07.2006 to Rs.10,59,000/- (Tribunal) as was originally claimed in the claim petition filed before the Tribunal.

2. By the impugned fair and decretal order dated 11.07.2006 in M.C.O.P.No.3123 of 2004. (Impugned order), the Tribunal has awarded a sum of Rs.4,18,102/- together with interest at 7.5% from the date of the claim petition to the appellant-claimant. The details of the amount claimed and awarded are as under:-

	Awarded by the Tribunal	Claimed before the Tribunal
Loss of earnings from 20.05.2004 to 19.05.2005	Rs. 10,000/-	Rs. 48,000/-
Transport to hospital	Nil	Rs. 20,000/-
Extra nourishment	Rs. 3,000/-	Rs. 40,000/-
Damage to clothing	Nil	Rs. 1,000/-
Cost of purchase of medicine bills	Rs. 79,370/-	Rs. 2,50,000/-
Medical expenses	Rs. 40,197/-	Nil
Cost of hospital bills	Rs.2,00,535/-	Nil
Cost of private treatment	Nil	Rs. 2,50,000/-
Compensation for pain and suffering	Rs. 20,000/-	Rs. 50,000/-
Permanent disability	Rs. 65,000/-	Rs. 1,00,000/-
Loss of earning power	Nil	Rs. 3,00,000/-
Total	Rs.4,18,102/-	Rs. 10,59,000/-

3. Briefly the facts are that at about 7.15 p.m. on 20.05.2004, the appellant was hit by a private bus coming from the opposite direction belonging to the 1st respondent insured with the 2nd respondent after breaching the road divider. The appellant was riding his motor cycle at the time of accident. After hitting the appellant, the bus thereafter hit an auto which was behind the appellant and came to halt.

4. The appellant suffered the following injuries:

- i. Head Injury
- ii. Fracture of Right temporal bone
- iii. Hip Fracture
- iv. Fracture of right leg femur
- v. Fracture of right clavical
- vi. Multiple injuries

5. It was alleged that bus was driven in a rash and negligent manner. The appellant suffered the following injuries and took treatments as detailed below

Head Injury	At Balaji Hospital, Chennai from 20.05.2004 to 16.06.2004 as I.P.
Fracture of Right temporal bone	Right temporo parietal craniotomy and Evacuation of EDH and Fracture of Right clavicle tip on 20.05.2004
Hip Fracture	Right hip segmental fracture head of right femur head with dislocation. Open reduction and internal fixation surgery on 24.05.2004 and Right lower limb shortening 2inch. Wound exploration right hip done on 01.06.2004. Secondary closure and SSG was done on 06.06.2004.
Fracture of right leg femur	At Star bone & Joint Hospital, Chennai from 25.06.2004 to 06.07.2004 as I.P.

6. The Tribunal after considering the oral and documentary evidence on record concluded that the accident occurred due to rash and negligence of the speeding bus coming from the opposite direction of the 1st respondent insured with the 2nd respondent.

7. In the present appeal there is no dispute that but for the negligence of the bus driver, the accident would not have taken place. The present appeal is confined to amount of compensation awarded in the impugned order by the Tribunal.

8. The learned counsel for the appellant submitted that though the appellant sustained multiple fractures and was assessed to 85% permanent disability vide Ex.P.15 marked through P.W.2, the Tribunal awarded only Rs.65,000/- towards disability to the claimant by fixing 65% disability.

9. The Tribunal has not awarded any amount towards loss of income on account of the permanent disability on a hawed reasoning that the claim of the appellant was exaggerated and was not supported by the evidence of P.W.2.

10. It is further submitted that the appellant was working

as a sales executive in Madras Engineering Works and earning a sum of Rs.4,000/-per month. However, the Tribunal has awarded a sum of Rs.10,000/- towards loss of income, which sum appears on the lower side.

11. The learned counsel for the appellant further submitted that the appellant sustained injuries on his right temporal bone fracture, right clavical fracture, right hip segmental fracture, right femur dislocation and had undergone several surgeries. Hence prayed for enhancement of compensation.

12. The counsel for the appellant submitted that the appellant was entitled for a higher compensation.

13. Per contra, the learned counsel for the 2nd respondent defends the impugned order and submitted that the appellant has not produced any medical records for further treatment after he was discharged from the hospital and was therefore not entitled for further compensation.

14. The counsel further submits that the appellant has also not placed any medical records to show that the fractures sustained by him caused physical disablement and loss of earning capacity.

15. It was further submitted that P.W.2 was only a General Surgeon and not an Neurologist or Orthopaedician possessing special and expert knowledge to assess the disability to assist the Tribunal/Court to determine the loss of earning capacity.

16. The learned counsel for the 2nd respondent-insurance company further submitted that the appellant claimed to be a sales representative based on Ex.P.14 salary certificate without actually submitting bank statement or income tax returns to prove that he was earning in the aforesaid said sum of Rs.4,000/-. Hence, submitted that the appellant was not entitled for enhancement of the compensation and therefore prayed for dismissal of the appeal.

17. Heard the learned counsel for the appellant and the 2nd respondent and perused the pleadings, documents marked as exhibits and the grounds of appeal.

18. After pursuing the records, which includes pleadings before the tribunal, the evidence on record, deposition and the impugned order, it is noticed that the appellant has sustained multiple fractures on his skull, legs, hips and was assessed to 85% permanent disability by P.W.2- Dr.Thiyagarajan vide Ex.P.15.

19. Ex.P.15 contains scribbling which are not legible. Only

after reading the content of the deposition of P.W.2 it can be ascertained that the appellant has been assessed to 85% disability. Exs.P1 and P2 discharge summery indicate the extent of injuries suffered by the appellant and treatment given. As per Ex.P1, the appellant has undergone 4 surgeries starting from 24.05.2004 to 06.06.2004. Again the appellant on 26.06.2004 has undergone further surgeries at star bone and joint centre.

20. Ex.P.15. Permanent disability certifies total disability at 85%. While the Tribunal has assessed the same as 65%. As per Ex.P.15 the permanent disability as follows:

- i) Head Injury and Right clavicle 30%
- ii) Right hip 30%
- iii) Right foot 25%

Whole body disability has been arrived at 50%.

21. The appellant has been denied the just compensation. Though the evidence of P.W.2 has assessed 85% permanent disability there is no scope of variation in the opinion.

22. The Tribunal erred that the claim of the appellant was high exaggerated from a skewed reading of the deposition of P.W.2. The Tribunal has awarded only a sum of Rs.65,000/- towards permanent disability and Rs.10,000/- towards the loss of income during treatment and has not awarded any amount towards loss of earning power. in concluding Therefore, the counsel for the appellant submitted that the appellant was entitled for a higher compensation.

23. The Tribunal has also dis-believed the salary certificate vide Ex.P.14 given the appellant in absence of any other independent corroborative evidence like income tax returns.

24. Barring loss of earning for a year at Rs.10,000/-, extra nourishment of Rs.3,000/- and Rs.65,000/- towards permanent disability, the Tribunal has merely awarded the actual amount incurred by the appellant for his treatment as compensation. Only in respect of these three items the Tribunal has exercised its discretion.

25. The question is to be examined is whether:

(i) The Tribunal has awarded just compensation to the appellant in the facts of the case. As per the decision in the Hon'ble Supreme Court in Nagappa vs. Gurudayal Singh & Others, 2004(2) TN MAC 398 (SC)? And

(ii) Whether the Tribunal was right in concluding that the permanent disability had no impact on the earning capacity of the appellant?

26. As per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC 343 Tribunal has to assess the permanent disability and its impact on the earning capacity. This exercise has not been carried out by the Tribunal properly. Instead, it has casually concluded the injury did not impact the earning capacity of the appellant even though the appellant had suffered grievous injury and was under treatment for almost a year.

27. There is no point in remitting the case back to the Tribunal to reassess the extent of injury suffered and its impact on the earning capacity of the appellant as the accident took place almost nine years back.

28. After considering the evidence on record and the pleading the amount of Rs.2,50,000/- claimed by the appellant as the amount spent for private treatment cannot be entertained as there is no evidence by the appellant to substantiate the same. Therefore, the claim is rejected.

29. The appellant was a sales person earning a sum of Rs.4,000/- per month and had to undergo repeated treatment and therefore lost his livelihood for a considerable period of time.

30. Therefore, amount of Rs.10,000/- awarded towards loss of income for total period one year is very low and is to be enhanced. The evidence on record, clearly establish the appellant was undertaking treatment during this period between 20.05.2004 and 19.05.2005. Therefore, the amount of compensation awarded is enhanced to Rs.48,000/- (Rs.4,000/- X 12) from Rs.10,000/- The 2nd respondent shall therefore additionally pay a sum of Rs.38,000/- together with interest awarded by the Tribunal from the date of claim till date of payment towards loss of income during the period of treatment.

31. No transportation cost has been awarded even though, the evidence indicates that the appellant has been shifted from different hospitals and has undergone prolonged treatment. He would have visited the hospital and clinics even after discharge for follow up. Therefore, the appellant is entitled for compensation. Therefore, an amount of Rs.1,000/- per month is awarded for one year. The 2nd respondent shall therefore additionally pay a sum of Rs.12,000/- together with interest awarded by the Tribunal from the date of claim till date of payment.

32. The appellant has undergone life threatening treatment and surgery as is evident from Ex.P.1. The Tribunal has awarded only a sum of Rs.20,000/- as against a sum of Rs.50,000/- claimed by the appellant towards pain and suffering. The amount is enhanced to the amount as claimed by the appellant.

33. The 2nd respondent shall therefore additionally pay a sum of Rs.30,000/- together with interest awarded by the Tribunal from the date of claim till date of payment.

34. The Tribunal has awarded only a sum of Rs.65,000/- at 1% on the permanent disability determined by it at 65% despite the fact that the appellant had several injuries to his body and skull due to damage to 7th nerve his facial movement has been compressed and injuries to his legs have been impaired his movement. Considering the nature of injury and the prolonged period of treatment undergone, the amount is increased to the amount claimed to Rs.1,00,000/-.

35. The 2nd respondent shall therefore additionally pay a sum of Rs.35,000/- together with interest awarded by the Tribunal from the date of claim till date of payment.

36. Despite Ex.P.15-Permanent Disability Certificate of P.W.2, the Tribunal has concluded that the appellant has suffered no loss on the future income even though there was fracture to his skull, permanent injury to his 7th nerve, to his facial muscle, with saliva dripping from his mouth and his physical movements were impaired on account of injury to his legs and the appellant had to wear special shoes to walk.

37. These injuries suffered indeed impact the earning capacity of a person. The trauma undergone by an accident victim impacts the earning capacity of a person. In the present case, the appellant has merely claimed a sum of Rs.3,00,000/-. The Tribunal has not awarded any amount towards loss of earning power, even though, the appellant's skull was fractured, fracture to clavicle bone, legs and hips and had injury facial muscle apart from other injuries on account of the accident.

38. Failure to award compensation despite overwhelming evidence on record has resulted in gross injustice to the appellant.

39. The appellant had prayed for Rs.3,00,000/- only. The Tribunal has rejected the prayer on a skewed reading of the deposition of P.W.2-Doctor though Ex.P.15-Permanent Disability has been accepted.

40. In the light of the overwhelming evidence on record, it is to be held that the appellant is entitled for compensation towards loss of earning. Though as per the decision of the Hon'ble Supreme Court in Sarla Verma vs. Delhi Transport Corporation, (2009) 6 SCC 12 and the decision of the Constitution Bench of the Hon'ble Supreme Court in National Insurance Company limited vs. Pranay Sethi and others, 2017 (2) TN MAC 690, the appellant may be entitled to a higher compensation, in absence of cross objection, only the disability amount claimed is awarded.

41. The 2nd respondent shall further pay to the appellant the following differential amount together with interest at 7.5% per annum from the date of claim:-

1	Loss of income during treatment	Rs. 38,000/-
2	Towards transportation	Rs. 12,000/-
3	Extra nourishment	Rs. 12,000/-
4	Pain and sufferings	Rs. 30,000/-
5	Toward permanent disability	Rs. 35,000/-
6	Loss of earning	Rs.3,00,000/-
	Total	Rs.4,27,000/-

42. In the result, it is order as follows:

i) The Civil Miscellaneous Appeal is partly allowed.

***ii)**

iii) The 2nd respondent/insurance company shall deposit a further sum of Rs.4,27,000/- less the amount

already deposited if any with interest at the rate of 7.5% per annum from the date of petition till the date of realisation within a period of eight weeks from the date of receipt of a copy of this order

iv) On such deposit, the appellant/claimant is permitted to withdraw the award amount, after adjusting the amount, if any, already withdrawn. No cost.

-s/d-

Assistant Registrar (CS-II)

28.11.2018

***ii) Deleted as per Order of
this Court dated 12.07.2019
made in CMA.No.2213 of 2007**

Sd/-

Assistant Registrar(Insp.Cell)

Dated:-16.07.2019

True Copy

Sub-Assistant Registrar

kkd/ia

To

1. The Motor Accident Claims Tribunal,
second Judge,
Small Causes Court, Chennai.

2. The Section officer
VR Section, High Court,
Madras 104(2 copies)

**To be substituted
to the Order Already
Despatched on 02.01.2019**

+1 CC to Mr.T.G.Balachandran, Advocate sr 55981.

+1 CC to Mr.S.Arunkumar, Advocate sr 56223

SP(03/12/2018)

CS/17/07/2019

C.M.A.No.2213 of 2007

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