

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 16.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

C.M.A. No.420 OF 2013
&
MP.1/2013

The New India Assurance Company Ltd.,
Garden Apartments,
No.68, Purasaiwalkam High Road,
Chennai - 600 007.

.. appellant / 2nd respondent

versus

1.R.Nagaraj .. 1st respondent / petitioner

2.M/s.A.R.Enterprises,
Old No.75, New No.40,
Kumarappa Street,
Nungambakkam,
Chennai - 600 034.

.. 2nd respondent / 1st respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the order and decree dated 07.08.2012 made in M.C.O.P.No.3197 of 2010 on the file of the Motor Accident Claims Tribunal [II Court of Small Causes], Chennai.

For Appellant : Mr.R.Neethi Perumal

For Respondent No.1 : Mr.K.Varadhakamaraj

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 Insurance Company as against the award of Rs.20,93,500/- as compensation to the first respondent, who sustained injuries, in

the accident which occurred on 05.12.2009 leading to amputation of both legs below hip.

2. The case of the claimant is that he was travelling as a Cleaner-cum-Loadman in the Mini Lorry bearing Registration No.TN-01-Z-5104 from Hosur to Bangalore. The driver of the Mini Lorry drove rashly and negligently and hit a Karnataka Transport Corporation Bus bearing Registration No.KA-01-F-3658, a motor cycle and another Karnataka Transport Corporation Bus bearing Registration No.KA-01-F-4652. In the accident, the first respondent/claimant sustained severe injuries in both the legs, resulting in amputation of both legs and hence, the claim petition.

3. Heard Mr.R.Neethi Perumal, learned counsel appearing for the appellant and Mr.K.Varadhakamaraj learned counsel appearing for the first respondent/claimant and perused the records.

4. The only question to be decided is with regard to the quantum and therefore, this Court is considering the quantum aspect alone.

5. Though Mr.R.Neethi Perumal, learned counsel appearing for the appellant would submit that the amounts awarded by the Tribunal are on the higher side, the Tribunal took only Rs.9,000/- as monthly income of the first respondent, who was working as Cleaner-cum-Loadman. The first respondent/claimant, who deposed as P.W.1, stated that he was earning a sum of Rs.9,000/- per month and there was no rebuttal evidence on the side of the appellant. Moreover, the employer was also examined as P.W.2 and he had also deposed about payment of Rs.9,000/- as salary to the claimant and Ex-P.9 Salary Certificate had also been marked. Therefore, taking into consideration, the unimpeachable evidence of P.W.1, namely, the victim, who lost both his legs as well as the evidence of the employer and Ex-P.9, the Tribunal rightly determined the monthly income of the claimant at Rs.9,000/-.

6. No amount was awarded towards "Future Prospects". Therefore, following the judgment of the Constitution Bench of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and Others reported in 2017 ACJ 2700, this Court adds 40% towards "Future Prospects", as the claimant was self-employed and aged about 32 years. Therefore, total monthly income of the victim comes to,

Total Monthly Income ::	Rs.9000/- (+) 40% (Rs.9,000/-)
::	Rs.9,000/- (+) Rs.3,600/-
::	Rs.12,600/-

7. The age of the claimant has been determined by the Tribunal as 32 years. Therefore, applying multiplier 16, "Loss of Income" due to disability is,

Loss of Income due to disability :: Rs.12,600 x 12 x 16
:: Rs.24,19,200/-

Hence, the compensation awarded by the Tribunal under the said head is enhanced to Rs.24,19,200/-.

8. Since both the legs have been amputated, the first respondent would not be in a position to move on his own and he would not be able to enjoy his life. Therefore, Rs.50,000/- awarded towards "Loss of Amenities" is enhanced to Rs.1,50,000/-. The sum of Rs.25,000/- awarded towards "Pain and Suffering" is too low as he would have undergone pain and suffering at the time of accident as well as during surgery. Therefore, the sum of Rs.25,000/- is enhanced to Rs.1,00,000/-. The sum of Rs.10,000/- awarded towards "Extra Nourishment" is very negligible and the same is enhanced to Rs.50,000/-. The amount awarded by the Tribunal, to the tune of Rs.2,15,000/- towards "Medical Expenses" based on Ex-P.4, Medical Receipts is confirmed. So also, the amount of Rs.1,000/- towards "Damage to Clothes"; Rs.10,000/- towards "Transport Charges" and Rs.54,600/- towards "Loss of Income during treatment period" are confirmed.

9. The first respondent/claimant is directed to be present before this Court and he is also present before this Court. He is seated in the wheel chair. Both the legs have been amputated. He cannot do any work on his own. Therefore, necessarily for each and every work even for attending the nature calls, he has to depend upon an attender. As far as "Attendant Charges" is concerned, the Honourable Supreme Court, in case of amputation of both arms of a boy, awarded a sum of Rs.10,00,000/- towards Attendant/Nursing Expenses. In an endeavour to do justice, this Court is inclined to grant a sum of Rs.10,00,000/- towards "Attendant Charges" as the claimant has to depend on others throughout his life, even for answering the call of nature. Since both the legs have been amputated, the claimant cannot discharge his marital obligations to his wife and therefore, his wife has to be awarded compensation for loss of marital pleasure from her husband. Hence, a sum of Rs.5,00,000/- is awarded to his wife for lack of the marital pleasure.

10. Hence, the total compensation to be awarded in this case is Rs.45,00,000/-.

Head	Amount (Rs.)
Total loss of income	24,19,200.00
Loss of amenities	1,50,000.00
Pain and suffering	1,00,000.00

Head	Amount (Rs.)
Extra Nourishment	50,000.00
Medical Expenses	2,15,000.00
Damage to Clothes	1,000.00
Transport Charges	10,000.00
Loss of income during treatment	54,600.00
Attendant Charges	10,00,000.00
Matrimonial Pleasure	5,00,000.00
Total	44,99,800.00
Rounded off	45,00,000.00

11. The rate of interest awarded by the Tribunal at 7.5 % per annum remains unaltered. Though the Insurance Company has filed the appeal, the facts and circumstances enable this Court to enhance the compensation. Accordingly, award of the Tribunal (i.e.,) Rs.20,93,500/- is enhanced to Rs.45,00,000/- invoking Order 41 Rule 33 of CPC and Section 151 and Article 227 of Constitution of India. The provisions of the Motor Vehicles Act are beneficial in nature and what is required to be awarded is just and reasonable compensation. Therefore, even in the absence of appeal/cross-appeal by the claimant, this Court has got power and jurisdiction to enhance the compensation, which has been recognised by the Honourable Supreme court in Nagappa V. Gurdayal Singh reported in 2004 (2) TN MAC 398 (SC).

12. The first respondent is directed to pay the additional court fee within a period of one week from the date of receipt of a copy of this order.

13. The appellant/Insurance Company is directed to deposit the entire award amount along with interest and costs after deducting the amount already paid, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the said amount to the Bank Account of the first respondent/claimant through RTGS within a period of one week.

14. In the result, the Civil Miscellaneous Appeal is disposed of enhancing the compensation of Rs.20,93,500/- to Rs.45,00,000/- suo motu in the appeal filed by the insurance company even in the absence of appeal/cross-appeal by the claimants. Consequently connected Miscellaneous Petitions are closed. No costs.

This appeal having been listed on Thursday the Nineteenth day of June 2018 order the caption "for being mentioned " pursuant to the earlier order dt 16.04.2018 and made in CMA.420/2013 and in the presence of Mr.Neethiperumal Advocate for the Appellant and of Mr.K.Varadhakamaraj Advocate for the 1st respondent, this Court made the following order:-

"The Matter is listed today under the caption for being mentioned. There is nothing to be clarified."

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

The Judge,
The Motor Accident Claims Tribunal
[II Court of Small Causes],
Chennai.

copy to

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

+1cc to Mr.K.Varadha Kamaraj, Advocate, S.R.No.28208

+1cc to Mr.R.Neethi Perumal, Advocate, S.R.No.28289

C.M.A.No.420 of 2013

VGI (CO)
GSP (29/06/2018)

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