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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.08.2018
DELIVERED ON : 27.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.2321 of 2017

Sridhar

... Petitioner

Vs

1.S.Elangovan

2.The New India Assurance Company Ltd.,
Nagapattinam,
Business at
No.29, Ram Complex,
Paramathy Road
Namakkal Town and District.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Order made in M.C.O.P. No.1078 of 2015 dated 13.6.2016 on the file of the Additional District Court, Namakkal.

For Petitioner : Mr.MA.P.Thangavel

For Respondents : Ms.S.R.Sumathy
for 2nd respondent
R1- Exparte

O R D E R

Being dissatisfied with the quantum of compensation of Rs.1,78,400/- awarded by the Motor Accident Claims Tribunal (Additional District Court), Namakkal, the appellant claimant has preferred this appeal seeking enhancement of compensation to Rs.5,00,000/-.

2. Succinctly put, the facts are as under: On 03.12.2014, at about 08.30 A.M., near Naghar Kovil and Pallar street at Kallichetty patti in Vilaiyapatty to N.Puthukottai main road, when the appellant was riding a bicycle on the left side of the road towards N.Puthukottai from his residence, a lorry bearing registration No.TN-31 AE 4371 driven by its driver in a rash and negligent manner and without noting the traffic rules came behind and hit against the bicycle. Due to the accident, the



appellant was thrown out and sustained multiple grievous injuries and compound fractures in his head, both legs, both hands, chest and also injuries all over the body. Immediately, after the accident, the appellant was admitted to Akshaya Hospital, Namakkal, wherefrom he was taken to Ganga Hospital, Coimbatore, where he had taken treatment as inpatient. Regarding the accident, a criminal case was registered against the driver of the lorry in Crime No.330 of 2014 under Sections 279 and 338 IPC.

3. At the time of accident, the appellant was 20 years old and was a first year student of Sri Renkeshwara Polytechnic College, N.Pudhukottai. At the time of accident, the lorry bearing registration No.TN-31 AE 4371 was insured with the second respondent insurance company. Stating that the accident was due to rash and negligent driving of the driver of the lorry and due to the accident, the appellant sustained multiple grievous injuries all over the body, he filed the claim petition claiming compensation of Rs.10,00,000/-.

4. Resisting the claim petition, the second respondent insurance company filed counter contending that the driver of the lorry bearing registration No.TN-31 AE 4371 was not responsible for the accident and the petitioner was solely responsible for the accident. The appellant has to prove the injuries sustained by him in the accident with documentary evidence. It is stated that the injuries sustained by the appellant were simple in nature and the medical expenses claimed by the appellant are highly excessive.

5. Before the Tribunal, the appellant examined himself as P.W.1 and Dr.Kathiravan was examined as P.W.2 and Exs.P1 to P10 were marked. No oral and documentary evidence was produced on the side of the contesting second respondent.

6. Upon consideration of the oral and documentary evidence produced before it, the Tribunal awarded total compensation of Rs.1,78,400/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and the said amount was directed to be paid by the second respondent insurance company within a period of three months. Assailing the same, the appellant has filed the present appeal seeking enhancement of compensation to Rs.5,00,000/-.

7. It is not necessary for this Court to narrate entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant and secondly, none of those findings are under challenge. Only quantum of compensation is under challenge.



8. The learned counsel for the appellant submitted that the quantum of compensation awarded by the Tribunal is very low and the same needs to be enhanced. He would submit that the Tribunal ought to have considered that at the time of accident, the appellant was aged 21 years and was studying in Polytechnic College and due to the impact of the grievous injuries and prolonged treatment, he was unable to continue his study. Therefore, it is a fit case to apply multiplier method instead of granting Rs.2,000/- for each percentage of disability. According to the learned counsel, the Tribunal has reduced the disability percentage from 40% to 30% without any basis. The Tribunal ought to have fixed the notional monthly income of the injured at Rs.20,000/- to meet ends of justice. It was submitted that the Tribunal has failed to award future medical expenses. In support, the learned counsel relied upon the decision of the Delhi High Court in National Insurance Co. Ltd. v. Salma Farheen and others, reported in 2015 (2) TN MAC 341 (Del.).

9. Drawing my attention to the award of the Tribunal, the learned counsel for the second respondent Insurance Company submitted that the total quantum of compensation awarded by the Tribunal was just and reasonable and there is no need to interfere with the same.

10. Qua quantum of compensation, the Tribunal observed that at the time of accident, the appellant was aged 21 years and though he stated that he was studying first year in Polytechnic, nothing has been produced to prove the same. Therefore, the Tribunal arrived at a conclusion that there was no loss of income, however, fixed the notional income at Rs.15,000/- per annum.

11. To prove that at the time of accident, the appellant was a first year student of Sri Rengaswarar Polytechnic College in Civil Engineering (Full Time), he had produced the first semester mark sheet, wherein the date of birth of the appellant is shown as 15.05.1994 and the month and year of examination is stated as October 2014. Thus, from the combined mark sheet, it is evident that at the time of accident the appellant was aged 21 years and was studying in the Polytechnic College.

12. Placing reliance upon the decision of the Delhi High Court in National Insurance Co. Ltd. v. Salma Farheen and others, supra, the learned counsel for the appellant contended that being a student, his notional income has to be fixed at Rs.20,000/- per month and the Tribunal has failed to fix the notional monthly income, instead it has fixed the notional income of the appellant at Rs.15,000/- per annum.



13. Since the claimant in *National Insurance Co. Ltd. v. Salma Farheen*, supra, was pursuing professional course at the time of accident, the Delhi High Court has taken into account the loss of earning capacity and fixed the monthly income at Rs.20,000/-. Here, in the case on hand, at the time of accident, the appellant was studying in first year diploma course. Therefore, the said decision cannot be applied to the case on hand. Moreover, in the above referred case, the claimant had sustained 100% disability and that was the reason the Delhi High Court applied multiplier method. The appellant cannot rely upon the said decision and seek to apply multiplier method in the present case by taking into account the monthly income of the appellant at Rs.20,000/-.

14. The learned counsel for the appellant next contended that by taking the monthly income of the appellant at Rs.8,000/- and future prospects and also applying multiplier method, the High Court can enhance the compensation. It was submitted that though the appellant restricted his claim to Rs.5,00,000/- in the appeal, he prayed for total compensation of Rs.11,01,129/-. In support, the learned counsel relied upon the decision of the Hon'ble Supreme Court in *Nagappa v. Gurudayal Singh and others*, reported in (2003) 2 SCC 274 : 2004 (2) TN MAC 398 (SC) and he had also submitted a synopsis showing the heads under which the compensation needs to be enhanced.

15. In *Nagappa v. Gurudayal Singh and others*, supra, the Hon'ble Supreme Court held that there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record, if the Tribunal/Court considers that the claimant is entitled to get more compensation than claimed, the Tribunal may pass such an Award. The Hon'ble Supreme Court said that the only embargo was that it should be just compensation, that is to say, it should be neither arbitrary or fanciful nor unjustifiable.

16. From the above, it is clear that if the claimant is able to produce evidence to show that he/she is entitled to get more compensation than claimed, then the Court can award more amount and there should not be any restriction.

17. In the case on hand, though the appellant, in his original petition claimed compensation of Rs.10,00,000/-, in the appeal, he himself restricted the claim to Rs.5,00,000/- and in fact, he has not paid court fee for the amount claimed in the appeal, which would show that the appellant himself was not sure that he is entitled to get more than Rs.5,00,000/- in this appeal. Though the High Court is empowered to grant adequate



compensation so as to do substantial justice between the parties, there must be some evidence to be brought on record by the claimant to show that he is entitled to get more amount than one claimed. In this case, there is total absence of such evidence. In such view of the matter, this Court can deal with the appeal for the amount of Rs.5,00,000/- claimed in the appeal and not beyond that.

18. As far as the disability sustained by the appellant is concerned, the victim deposed that in the accident he had sustained multiple grievous injuries and compound fracture in his both legs, both hands, head and also other injuries all over the body. To prove that the appellant had taken treatment as inpatient in Ganga Medical Centre & Hospitals Private Limited, Coimbatore, he had produced Ex.P5-discharge summary, Ex.P6-medical bills, Ex.P8-prescription chits and Ex.P9-Xray.

19. It is pertinent to note that by way of additional typed set of papers, the petitioner has produced the medical certificate issued by Ganga Medical Centre and Hospitals Private Limited, Coimbatore, wherein it has been stated that the appellant was suffering from lacerated wound right cubital region and right palm with degloving of skin around elbow region and was advised to take medical leave from 03.12.2014 to 20.01.2015. From the above, it is evident that the petitioner had sustained grievous injuries.

20. P.W.2-doctor, examined the appellant and issued Ex.P10-disability certificate assessing the disability at 40%. But the Tribunal has reduced the disability to 30% without any basis. It is pertinent to note that only after examination of the injured, Doctors are giving disability certificate and therefore, it is not known how the Tribunal without any basis could reduce the disability to 30%. Taking note of the evidence of P.W.2-doctor and Ex.P10-disability certificate, this Court holds that the appellant sustained 40% disability due to the injuries sustained in the accident and accordingly the 40 X 3,000 since the accident took place in the year 2014 one percentage to be calculated at Rs.3,000/- and he is entitled to get a sum of Rs.1,20,000/- towards permanent disability.

21. As far as medical expenses is concerned, the appellant had produced Ex.P6-medical bills for a sum of Rs.83,449/- and the Tribunal has also awarded the said amount towards medical expenses. Nothing more has been filed by the appellant. Hence, the amount of Rs.83,449/- awarded by the Tribunal towards medical expenses is maintained.

22. The Tribunal has not awarded any amount towards future medical expenses. Considering the nature of injuries sustained



by the appellant and also the future treatment required to be taken by him, this Court deem it appropriate to award a sum of Rs.1,00,000/- towards future medical expenses.

23. Insofar as the compensation under the head attendant charges is concerned, the Tribunal awarded Rs.5,000/-, which is admittedly on the lower side. Considering the period of treatment undergone by the appellant, the same is enhanced to Rs.10,000/-. The Tribunal awarded Rs.10,000/- towards pain and suffering. Taking note of the injuries sustained by the appellant in the accident and the period of treatment undergone by the appellant and also the leave applied by the appellant from 03.12.2014 to 20.01.2015 , Rs.10,000/- awarded by the Tribunal towards pain and suffering is enhanced to Rs.1,00,000/-.

24. The Tribunal awarded Rs.10,000/- towards loss of estate. Considering the age of the appellant and the injuries sustained by him, the same is enhanced to Rs.50,000/-. The Tribunal also awarded Rs.5,000/- towards transport charges and another Rs.5,000/- towards extra-nourishment. It is to be noted that immediately, after the accident, the appellant was admitted to Akhshaya Hospital, Namakkal, where from he was taken to Ganga Hospital, Coimbatore, where he had taken treatment as inpatient for 13 days as per the discharge summary. Considering the period of treatment undergone by the appellant, Rs.5,000/- each awarded by the Tribunal towards extra-nourishment and transport charges are enhanced to Rs.25,000/- to the Extra-nourishment and Rs.10,000/- towards transport charges.

25. Taking note of the fact that due to accident, the appellant has caused inconvenience and hardship and also mental stress, this Court deem it appropriate to award a sum of Rs.50,000/- towards inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life towards the injuries sustained in the accident. Thus, the total compensation of Rs.1,78,400/- awarded by the Tribunal is enhanced to Rs.5,48,449/- as under:

Permanent disability	..	Rs.1,20,000.00
Medical expenses	..	Rs. 83,449.00
Future Medical Expenses	..	Rs.1,00,000.00
Attendant Charges	..	Rs. 10,000.00
Pain and Sufferings	..	Rs.1,00,000.00
Loss of Estate	..	Rs. 50,000.00
Transport Charges	..	Rs. 10,000.00
Extra-nourishment	..	Rs. 25,000.00
Compensation on account of Inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life	..	Rs. 50,000.00



Total

.. Rs.5,48,449.00

Rounded off to Rs.5,48,500/-

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26. In the result, the Civil Miscellaneous Appeal is allowed and the award of the Tribunal dated 13.06.2016 passed in M.C.O.P.No.1078 of 2015 is enhanced to Rs.5,48,500/-. The second respondent/Insurance Company is directed to deposit the entire award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of realisation within a period of twelve weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the said amount.

27. It is stated that the appellant has not paid the full court fee for the claim made in the appeal and he had only paid Rs.75/- and the total court fee for the value of the appeal is Rs.4,373/-. Therefore, the appellant is directed to pay the requisite court fee before drafting of decree in the appeal. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

vs

To

The Additional District Judge,
Namakkal.

Copy TO

The Section Officer,
V.R. Section, High Court,
Madras.

C.M.A.No.2321 of 2017

PPA(CO)
GN(10/12/2018)