

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2018

CORAM:

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

CMA.No.2255 of 2018

R.Ramachandiran
Rep by Next Friend and Father,
Rajendiran ... Appellant/Petitioner

-vs-

1. K.Balasubramaniam
2. The New India Assurance Co. Ltd.,
No.7, Ramalinga Madalaya Street,
Gugai, Salem 6. ... Respondents/Respondents
Now at Door No. 232, NSC Bose Road
Bombay Mutual Building, Chennai 1.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 28.06.2012 in M.C.O.P. No. 151 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court at Attur.

For Appellant : Ms. Ramya V.Rao
for M/s.A.N.Vishwanatha Rao

For Respondents : Ms. S.R.Sumathi for R2
R1 not Ready Notice

J U D G M E N T

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

The claimant, who was favoured with an award for a sum of Rs.11,31,587/- for the injuries sustained by him in a road accident that occurred on 20.02.2010 has come up on appeal seeking enhancement.

2. According to the claimant, who is represented by his father as next friend, the accident occurred while he was riding a two-wheeler, bearing Registration No.TN.54.Y.1059, on the extreme left side of the Attur Main Road. At about 6.00 p.m., the lorry bearing Registration No.TN.27.Z.6905, belonging to the

1st respondent and insured with the 2nd respondent Insurance Company, driven in a rash and negligent manner by its driver dashed against the motorcycle. As a result of the impact, the claimant and the pillion rider, one Velumurugan, were thrown off the vehicle and both sustained grievous injuries. The claimant would contend that the accident occurred due to the rash and negligent driving of the lorry driver.

3. The claimant sustained fractures on the right side of the skull, resulting in a Brainstem injury, a fracture of the right tibia, right fibula and other grievous injuries. He was an inpatient for 146 days. Even after discharge, due to the Brainstem injury, the claimant is unable to carry on his daily routine without help of others. The claimant was 22 years old at the time of the accident and pursuing final year in B.Sc. Computer Science. As a result of the accident, the claimant was forced to discontinue his education and is now confined to bed. The claimant would further submit that he had suffered huge loss of earning as well as the other amenities. He would quantify the loss at Rs.20,00,000/- before the Tribunal.

4. The claim was resisted by the Insurance Company contending that the accident had occurred due to collision between two vehicles and it was the claimant, who was riding the two-wheeler in a rash and negligent manner, was the cause for the accident.

5. The Insurance Company would also deny the nature of injuries and term the quantum of compensation claimed as excessive.

6. The Tribunal, which heard the Original Petition, on an analysis of the evidence on record concluded that the accident occurred due to the rash and negligent driving of the lorry. In coming to the said conclusion, the Tribunal relied upon the fact that a charge sheet was filed against the driver of the lorry under Ex.A7 and the driver of the lorry had admitted his guilt before the Criminal Court and paid the fine of Rs.2,000/- in STC 1537 of 2010. The judgment in the said case was marked as Ex.P8. The Tribunal also faulted the Insurance Company for non examination of the driver of the lorry. Since the existence of the Insurance cover was admitted, the Tribunal held that the Insurance Company would be liable to satisfy the award.

7. On the quantum, the Tribunal took the notional income of the claimant at Rs.3,000/- per month. The Tribunal concluded

that the disability was 100% and the loss of future earning power was also 100% because of the Brainstem injury which leads to instability. Thus, the Tribunal arrived at the loss of earning power at Rs.6,12,000/-. The Tribunal awarded the following amounts under the other heads.

S.No.	Heads	Amount
1.	Medical Bills	Rs. 4,11,752/-
2.	Transportation	Rs. 10,250/-
3.	Extra Nourishment	Rs. 22,585/-
4.	Pain and Suffering	Rs. 40,000/-
5.	Attender Charges	Rs. 10,000/-
6.	Future Medical Expenses	Rs. 25,000/-

Thus, the Tribunal awarded a total amount of Rs. 11,31,587/- as compensation.

8. We have heard Mrs.Ramya V.Rao, learned counsel appearing for M/s.A.N.Vishwanatha Rao for the claimant/appellant and Ms.S.R.Sumathi, learned counsel appearing for the Insurance Company. Since the dispute relates only due to the quantum of compensation and the liability of the Insurance Company to satisfy the award is admitted, notice to the 1st respondent in this appeal is dispensed with.

9. Mrs.Ramya V.Rao, learned counsel appearing for the claimant would contend that the Tribunal erred in fixing the monthly notional income at Rs.3,000/-. The accident had occurred in the year 2010 and it is not in dispute that the claimant was pursuing his final year Under Graduation in Computer Science at the relevant point of time. Once qualified as an under graduate in Computer Science, the claimant would have earned not less than Rs.10,000/- per month. She would also submit that having found that the disability is 100%, the Tribunal erred in granting a sum of Rs.6,12,000/- towards loss of future earning power. Mrs.Ramya V.Rao, learned counsel would also contend that the awards made by the Tribunal under the head of pain and suffering, attender charges, loss of amenities and future medical expenses are too low. She would submit that due to the injuries, particularly the Brainstem injury, the claimant has lost his mental stability and he needs assistance even to take his food. Therefore, according to her, the Tribunal should have awarded more amounts towards loss of amenities, attender charges and pain and suffering.

10. Contending contra Ms.S.R.Sumathi, learned counsel appearing for the Insurance Company would submit that the injured claimant being a student only, notional income could be taken and the Tribunal was justified in taking Rs.3,000/- per month as his notional income.

11. We have considered the rival submissions.

12. We may straightway point out that the adoption of notional income at Rs.3,000/- for a final year Under Graduate student in Computer Science in the year 2010 cannot at all be justified. Even an unskilled labourer would earn such sum during the relevant period. We are therefore of the opinion that the award of the Tribunal under the head of Loss of Future earning capacity requires modification. Taking into account the prevailing economic situation, we are of the view that the monthly notional income could be taken at Rs.8,000/- per month and adding 40% towards future prospects, the monthly notional income for the purposes of determining the loss of future earning capacity would be Rs.11,200/-. The claimant was aged 22 years and therefore the multiplier applicable would be 18. Thus, calculated the loss of earning power would be

$$\text{Rs.8,000/-} + 3,200/- \times 12 \times 18 = \text{Rs.24,19,200/-}.$$

13. The Tribunal has found the disability at 100% and no circumstances has been brought to our notice to interfere with such determination of disability by the Tribunal. Apart from the above, the claimant would be entitled to a compensation for the permanent disability, extra nourishment, pain and suffering, attender charges and loss of earning capacity. Considering the nature of the injuries and the fact that the claimant is totally bed ridden and he requires assistance of others even to carry out his daily routine, we award the following amounts as compensation.

S.No.	Heads	Amount
1.	Loss of earning capacity	Rs.24,19,200/-
2.	For permanent disability 100 x 1000	Rs. 1,00,000/-
3.	Medical Bills	Rs. 4,11,752/-
4.	Transportation	Rs. 25,000/-
5.	Extra Nourishment	Rs. 50,000/-
6.	Pain and suffering	Rs. 2,00,000/-

S.No.	Heads	Amount
7.	Attender charges	Rs. 1,00,000/-
8.	Loss of Amenities	Rs. 1,00,000/-
9.	Future Medical Expenses	Rs. 50,000/-
	Total	Rs.34,55,952/-

Thus, in all the total award works out to Rs.34,55,952/-, the same is rounded of Rs.34,56,000/-

14. The sum of Rs.50,000/- granted towards future medical expenses will not carry any interest. The remaining amount of Rs.34,06,000/- will carry interest at 7.5%, from the date of petition till date of payment.

15. For the foregoing reasons, the appeal is partly allowed with proportionate costs. The compensation is enhanced to Rs.34,56,000/-.

16. It is seen that the claimant has claimed Rs.20,00,000/-, before the Tribunal and the same is amended to Rs.30,00,000/-, at the time of the filing of the appeal. Considering the peculiar circumstances and the nature of the injuries, we exercise our power under Order 41 Rule 33 of code of Civil Procedure, in granting just and reasonable compensation. The claimant shall pay the Court Fee for a sum of Rs.4,56,000/- within a period of four weeks from the date of receipt of the judgment.

17. The Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant/ the appellant will be entitled to withdraw the compensation.

s/d-

Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

To

1. The Subordinate Judge
Motor Accidents Claims Tribunal,
Sub Court at Attur.

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

+2 Ccs to Mr.A.N. Viswanatha Rao, Advocate sr 74560.

+1 CC to Ms.S.R.Sumathi, Advocate sr 74657

CMA.No.2255 of 2018

BR(CO)
SP(27/12/2018)



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