



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	10.09.2018
Date of Judgment	27.09.2018

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THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A (MD) No.966 of 2016
and
CMP (MD) No.8621 of 2016

Branch Manager,
The Oriental Insurance Company Limited,
3607/21, Sathiyamoorthy Road,
2nd Floor, Near Deem Hospital,
Pudukottai.

: Appellant/2nd Respondent**Vs.**

1.Pandian @ Pandithurai : 1st Respondent/Claimant
2.Palanivel : 2nd Respondent/1st Respondent
(2nd respondent remained Exparte
before the Lower Court)

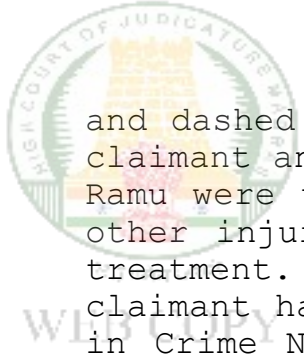
Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award made in MCOP No.5 of 2013, dated 14.09.2015 on the file of the Motor Accident Claims Tribunal-cum-Sub Judge, Pudukottai.

For Appellant : Mr.K.Bhaskaran
For 1st Respondent : Mr.J.Anandha Kumar

JUDGMENT**[Judgment of the Court was delivered by T.KRISHNAVALLI, J]**

The Insurance Company has preferred this appeal challenging the award passed by the Motor Accidents Claims Tribunal (Sub Court), Pudukottai, in MCOP No.5 of 2013, dated 14.09.2015.

2.This is a case of injury. The claimant filed MCOP No.5 of 2013 seeking compensation of Rs.20,00,000/-. The case of the claimant is that on 02.12.2012 at about 09.00 hours, the claimant, Pandiyan @ Pandi Durai along with 3 others were travelling in a three wheeler rickshaw to Antankudi for putting up coconut leaves thatched shed, at that time, a tipper lorry bearing Registration No.TN-55-T-5316 came in a rash and negligent manner from Pudukottai



and dashed behind the three wheeler rickshaw. In that process, the claimant and others sustained injuries. The claimant and the injured Ramu were taking treatment at Pudukottai Government hospital, while other injured persons went to Tanjore Medical College Hospital for treatment. Due to the injuries sustained in the accident, the claimant had sustained permanent disability. In this regard, a case in Crime No.508 of 2012 stands registered under Sections 279, 337 and 338 IPC by the Gandhi Nagar Police Station against the driver of the Tipper Lorry.

3.The claimant has further stated that he was doing sculptor work and was earning Rs.25,000/- per month. However, due to the injuries sustained in the accident, he is unable to perform his duties effectively.

4.The appellant contested the claim by filing counter disputing the averments made in the claim petition and it is further stated that the accident was due to the negligence of the claimant and the claim was excessive.

5.Before the Tribunal, on the side of the claimant, 3 witnesses were examined as PW1 to PW3 and marked 9 documents. On the side of the Insurance Company, no witness was examined and no document was marked.

6.The claimant has deposed reiterating the grounds raised in the claim petition and produced Ex.P7 identity card to prove that he was a Sculptor. PW2 is the employer of the claimant and he deposed that the claimant was working under him and was earning Rs.750/- per day. PW3 Dr.Ravikumar deposed that the claimant has sustained injuries on his right hand shoulder and his right hand was amputated. Ex.P5 Disability Certificate issued by the Government of Tamil Nadu shows that the claimant has suffered 90% permanent disability.

7.The Tribunal, on the basis of the above evidence, fixed the monthly income at Rs.22,500/- and by applying multiplier '18', awarded Rs.48,60,000/- towards permanent disability; Rs.1,00,000/- towards pain and sufferings; Rs.10,000/- towards nutrition; Rs.10,000/- towards transportation; Rs.10,000/- towards attendant charges. In total, the Tribunal awarded a sum of Rs.49,90,000/- along with interest at the rate of 7.5% per annum.

8.Heard both sides and perused the materials available on record.

9.From the perusal of records, it is seen that the claimant was 20 years at the time of accident and he had sustained 90% permanent disability.

10.According to the learned counsel for the appellant, even as per the evidence of PW1, after the accident he was continuing in his



employment and therefore, there is no loss of earning capacity. Hence, the multiplier adopted by the Tribunal has to be set aside. The learned counsel for the appellant fairly submitted that the award of the Tribunal on the other heads are reasonable.

11. According to the claimant, he was a Sculptor and was earning Rs.22,500/- per month. The Tribunal fixed Rs.22,500/- towards monthly income and by applying multiplier '18', awarded Rs.48,60,000/- (Rs.22,500/- x 12 x 18) towards permanent disability.

12. The learned counsel for the appellant Insurance Company submitted that the loss of income has to be fixed in accordance with the disability sustained by the claimant, but the Tribunal for arriving at the loss of income had taken 100% disability. Hence, the loss of income determined by the Tribunal is not correct. He would further submit that the loss of income is to be determined in proportionate to the disability sustained by the claimant. In support of the above contention, learned counsel for the appellant relied on the following decisions:-

1. 2018(1) TNMAC 281 (SC) (*Halappa Vs. Malik Sab*);

2. 2018(1) TN MAC 577 (SC) (*Jagdish Vs, Mohan and others*);

3. (2013)14 SCC 15 ((*Neerupam Mohan Mathur Vs. New India Assurance Company Limited*);

4. (2014)5 SCC 330 (*Sanjay Kumar Vs. Ashok Kumar and another*);

5. (2014)11 SCC 178 (*V.Mekala Vs. M.Malathi & another*);

6. (2014)9 SCC 241 (*Dinesh Singh Vs. Bajaj Allianz General Insurance Company*); and

7. (2015)7 SCC 252 (*Jakir Hussein Vs. Sabir and others*).

13. On perusal of the above citations, it is held that the loss of income is to be proportionate to the disability. But in this case, the permanent disability on a perusal of the award of the Tribunal, it is seen that for arriving at loss of income, 100% disability was taken into account. But as per the evidence of PW3 Doctor, the claimant has sustained only 90% permanent disability. Hence, 100% disability for arriving at the loss of income by the Tribunal is not correct. Therefore, 90% disability is to be taken into account.

14. In the case on hand, it is not in dispute that the claimant was a Sculptor and he was working under PW2. It is seen from the

records that the claimant had sustained injury and his right hand was amputated and he sustained 90% of permanent disability, for which Disability Certificate has been issued which is marked as Ex.P9. PW3 Doctor who examined the claimant/injured has also deposed that due to the injuries sustained by the claimant, his right hand shoulder was amputated. As the said injury would definitely affect the earning capacity of a Sculptor, this Court is inclined to apply the multiplier method, by awarding a sum of Rs.46,17,000/- (Rs.22,500/- x 19 x 12 x 90/100) by fixing his disability at 90 per cent and adopting the multiplier 19 since the injured was aged about 20 years at the time of the accident. However, this Court is not inclined to modify the compensation awarded under other heads. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Permanent disability	48,60,000/-	46,17,000/-
2.	Pain and Sufferings	1,00,000/-	1,00,000/-
3.	Nutrition	10,000/-	10,000/-
4.	Transport	10,000/-	10,000/-
5.	Attender Charges	10,000/-	10,000/-
	Total	49,90,000/-	47,47,000/-

15. In the result, the appeal is **partly allowed** and the award of Rs.49,90,000/- is reduced to **Rs.47,47,000/-**. The interest at the rate of 7.5% per annum awarded by the tribunal is maintained. The appellant Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the claimant is permitted to withdraw the entire amount, less the amount already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-IV)



To

1. The Subordinate Judge,
Motor Accident Claims Tribunal,
Pudukottai.

2. The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+ 1 CC TO Mr.J.ANAND KUMAR, ADVOCATE IN SR No. 87284

+ 2 CC TO Mr.K.BASKARAN, ADVOCATE IN SR No. 87797

ER

TE/RSK/SAR-4 : 10/12/2018 : 5P/7C

Judgment made in
C.M.A(MD)No.966 of 2016
27.09.2018