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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.08.2017

Pronounced on : 27.04.2018

CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CMA (MD) No.1219 of 2015

Kanthi @ Kanthiraja

... Appellant

Vs.

1. Boominathan

2. The Branch Manager,
Oriental Insurance Company,
64, Mela Veli Veedhi,
Madurai.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 22.01.2015 made in MCOP No.100 of 2012 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai.

For Appellant : Mr.S.Pugalendhi

For Respondents : Mr.K.Bhaskaran for R2

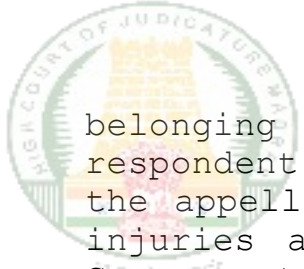
R1 - Exparte.

JUDGMENT

(Judgement of the Court was delivered by G.R.SWAMINATHAN, J.)

The appellant in this appeal was the claimant in MCOP.No.100 of 2012 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai.

2.The case of the appellant is that he was working as a Mason in Singapore. He had come down to India in October 2011 for getting married. On the fateful day, namely, 19.11.2011 at about 08.15 P.M he and his brother were chatting in a roadside tea shop. At that time, the Indica car bearing Registration No. TN 55 Z 7810



belonging to the first respondent and insured with the second respondent driven in a rash and negligent manner dashed against the appellant. In the resulting accident, the appellant suffered injuries all over the body. The appellant was rushed to the Government Hospital, Karaikudi and considering the nature of injuries suffered by the appellant, he was referred to Government Rajaji Hospital, Madurai. He was an in-patient from 19.11.2011 to 01.01.2012. Surgery was performed on him for bone fractures on 22.11.2011. Thereafter, the claimant was taking treatment in a private hospital. The claimant is said to have spent a sum of Rs.4.00 Lakhs towards medical expenditure alone.

3.The claimant had come down to India in connection with his marriage. The accident in question took place within 20 days from the date of his marriage. The appellant had already made arrangements for return to Singapore. Because of the accident, his matrimonial life had been ruined and he has also not been able to go back to his overseas employment. The income earned by him as a mason at Singapore would be equivalent to Rs.60,000/- in Indian rupees. Even though the claimant sought a sum of Rs.20.00 lakhs towards compensation, the Tribunal awarded a meagre sum of Rs.2,81,700/- by the impugned award dated 22.01.2015. Seeking enhancement of the compensation, the present appeal has been filed.

4.Heard the learned counsel for the appellant as well as the learned standing counsel for the second respondent insurance company.

5.The learned standing counsel for the second respondent would submit that the claimant has not adduced any proof for the income said to have been earned by him. Since the accident in question took place in the year 2012, this Court can fix the claimant's monthly income on notional basis at Rs.6,000/- per month. He would also point out that since the disability suffered by the claimant had been assessed at 47%, this Court can award compensation at the rate of Rs.3000/- per percentage of disability. He would also submit that the award passed by the Tribunal does not call for any major interference.

6.This Court went through the entire materials on record. The facts are not in dispute. The claimant was aged around 31 years when the accident took place. He was working as a mason at Singapore. It is true that there is no proof forthcoming with regard to the income earned by him abroad. But then, it would be safe to conclude that even if he was in India, he would earn a sum of not less than Rs.10,000/- per month. The appellant was an in-patient in the Government Rajaji Hospital, Madurai from 19.11.2011



7.The fact that he was an in-patient for more than 42 days in a Government Hospital itself demonstrates the seriousness of the injuries suffered by the claimant. The claimant had also taken treatment for the subsequent period at Appollo Hospital, Karaikudi. The claimant suffered injuries on his head as well as his private parts. He has difficulties in passing urine. His kidney has been affected. He also suffered bone injuries. The ribs from 1 to 7 got broken. His spleen had been removed. There has also been a damage to his intestine. The injury suffered by the claimant has completely incapacitated him. He can no longer find employment as a mason.

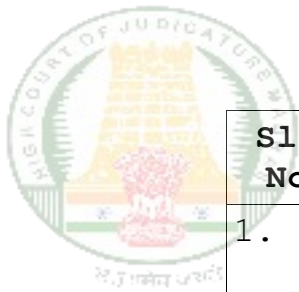
8.This is a case of functional disability. Therefore, this Court ought to adopt only multiplier method. The claimant was aged 31 years during the relevant time. Therefore, as per the decision of the Hon'ble Supreme Court in Sarla Verma case, multiplier 16 ought to be adopted. This Court quantifies the loss of income at **Rs.9,02,400/-**. (10,000x12x16x47/100).

9.The specific case of the claimant is that he has been completely rendered unfit for matrimonial life. In this case, apart from enormous physical sufferings, the claimant continues to suffer emotional pain also. Therefore, for the pain and sufferings, the claimant would be entitled to a sum of **Rs.2,00,000/-**. For transportation following the accident and again for taking subsequent treatment, the claimant would have incurred a sum of **Rs.25,000/-**. The claimant has pointed he is unable consume solid food. Hence, he will require special nourishment. This Court therefore awards a sum of **Rs.25,000/-** under that head. The claimant has produced medical bills to the tune of **Rs.58,147/-**. Since the claimant will have to continue to take treatment, this Court awards a sum of **Rs.1,00,000/-** under that head. It is pertinent to note that the claimant had claimed to have incurred a sum of Rs.4.00 lakhs for medical treatment alone. But there is no sufficient proof. Hence, this Court is in a position to award only to the extent of **Rs.1,00,000/-**.

10.The Hon'ble Supreme Court has held that where disability has been suffered by the claimant, the Tribunal would be justified in awarding compensation not only for the loss of income but also for disability per se. This Court has been consistently awarding the sum of **Rs.3,000/-** per percentage of disability. In this case, since the disability suffered by the claimant was assessed at 47%, a sum of **Rs.1,41,000/-** is awarded under that head. A sum of **Rs.1,00,000/-** is awarded towards loss of amenities.

11.The claimant would therefore be entitled to compensation as quantified below :

<https://hcservices.ecourts.gov.in/hcservices/>



Sl. No	Head	Rupees in Amounts
1.	Loss of income (10000x12x16x47/100)	Rs.9,02,400/-
2.	Transportation charges	Rs.25,000/-
3.	Special nourishment	Rs.25,000/-
4.	Pain and sufferings	Rs.2,00,000/-
5.	For Medical expenditure	Rs.1,00,000/-
6.	Loss of amenities	Rs.1,00,000/-
7.	Disability Compensation	Rs.1,41,000/-
	Total	Rs.14,93,400/-

12.The Tribunal having correctly noted the physical condition of the claimant was inexplicably stingy in the matter of awarding compensation. The victim of an accident is as a matter of right entitled to compensation quantified as per the provisions of the Motor Vehicles Act and in the light of the various judgments of the Hon'ble Supreme Court and this Court. The Tribunal did not even bother to apply those relevant principles. A sum of Rs.2,81,700/- was alone awarded. The Tribunal fell into an error, because, it did not take note of the functional disability suffered by the claimant. Hence, we enhance the compensation payable to the claimant from Rs.2,81,700/- to 14,93,400/-

13.The award dated 22.01.2015 made in MCOP.No.100 of 2012 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Sivagangai is modified.

13.The second respondent insurance company is directed to deposit the entire compensation amount with interest at the rate of 7.5% per annum from the date of petition till the date of realization and costs within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited if any. On such deposit, the claimant is entitled to withdraw the same by filing proper application before the Tribunal, less the amount already withdrawn by him if any.

14.This Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (RTI)

/True Copy/



To

1. The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Sivagangai.

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

+ 1 cc TO Mr.K.Bhaskaran , Advocate in SR No. 63890

skm

AE/SV MMS/SAR2/11.06.2018/5P/5C

**Judgment in
CMA (MD) No.1219 of 2015
27.04.2018**