



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.06.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CMA(MD)No.1011 of 2013

Kannan

... Appellant/Petitioner

vs.

1)Thangapandian
2)Branch Manager,
Bharti AXA General Insurance Company Ltd.,
Sri Ram Centre,
#180, Ground Floor,
P.P.Chavadi,
Theni main Road,
Madurai.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act 1988, to allow this appeal and enhance the award amount in MCOP.No.125 of 2011 on the file of the Motor Accident Claims Authority, (Chief Judicial Magistrate), Tirunelveli, dated 18.04.2012.

For Appellant : Mr.T.Selvakumaran
R1 : Ex-parte
For R2 : Mr.G.Maruthiah

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 18.04.2012 made in MCOP.No.125 of 2011 on the file of the Motor Accident Claims Authority, (Chief Judicial Magistrate), Tirunelveli.

2.In an accident which occurred on 22.01.2011, the appellant/claimant sustained following injuries:-

1)Lacerated wound with comminuted compound fracture of both bones in the left leg lower 1/3 exposed fracture tibia with external fixation.

2)Lacerated wound left femur exposed of all extensor tendon with skin loss with lateral populatory nerve injury.

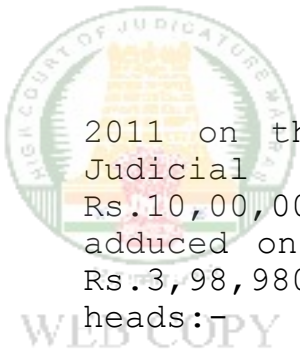
3)Comminuted displaced fracture in left iliac bone.

4)Comminuted fracture of left humerus.

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

5)Multiple injuries all over the body.

For the above said injuries, the appellant filed MCOP.No.125 of



2011 on the file of the Motor Accident Claims Authority, (Chief Judicial Magistrate), Tirunelveli, claiming compensation of Rs.10,00,000/-. After considering the oral and documentary evidence adduced on either side, the learned Judge awarded compensation of Rs.3,98,980/- with 7.5% interest per annum under the following heads:-

Partial loss of income	=	Rs. 9,000/-	
Transport expenses	=	Rs. 4,000/-	
Medial Attendant & extra nourishment	=	Rs. 15,000/-	
Pain and sufferings	=	Rs. 20,000/-	
Medical expenses	=	Rs.2,00,973/-	
Disability	=	Rs.1,50,000/-	

Total	=	Rs. 3,98,973/-	(rounded to
			-----Rs.3,98,980/-)

Not satisfied with the quantum of compensation, the appellant/claimant has filed this appeal seeking enhancement.

3.Learned counsel for the appellant would submit that though the claimant claimed the monthly income as Rs.7,000/-, the learned Judge fixed the same at Rs.3,000/- which is meagre and requires enhancement. Further, as per the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583, the learned Judge ought to have awarded Rs.3,000/- for each percentage of disability instead of Rs.2,000/- awarded. Apart from the above, the compensation under the heads pain and sufferings and transport expenses is meagre and requires enhancement.

4.Perusal of the record shows that though the claimant claimed that prior to the accident, by doing milk vending business, he earned Rs.7,000/- per month, in the absence of proof, the learned Judge fixed the monthly income of the injured at Rs.3,000/- notionally. As regards the monthly income of a labour involved in an unorganised sector, referring to a judgment reported in 2011(13) SCC 236, Ramchandrapa vs. Manager, Royal Sundaram Alliance Co. Limited., the Apex Court in Syed Sadiq vs. United India Insurance Co.Ltd., reported in 2014 (1) TN MAC 459(SC), has held as follows:-

''8.The appellant/claimant in his appeal further claimed that he had been earning Rs.10,000/- p.m. by doing vegetable vending work. The High Court however, considered the loss of income at Rs.3500/- p.m. considering that the claimant did not produce any document to establish his loss of income. It is difficult for us to convince ourselves as to how a labour involved in an unorganized sector doing his own business is expected to produce documents to prove his monthly income. In this regard, this Court, in the case of Ramchandrapa v. Manager, Royal Sundaram Alliance Company Limited, 2011(13)SCC 236, has held as under:



''13. In the instant case, it is not in dispute that the Appellant was aged about 35 years and was working as a Coolie and was earning Rs.4500/- per month at the time of accident. This claim is reduced by the Tribunal to a sum of Rs.3000/- only on the assumption that wages of the labourer during the relevant period viz. in the year 2004, was Rs.100/- per day. This assumption in our view has no basis. Before the Tribunal, though Insurance Company was served, it did not choose to appear before the Court nor did it repudiated the claim of the claimant. Therefore, there was no reason for the Tribunal to have reduced the claim of the claimant and determined the monthly earning a sum of Rs.3000/- p.m. Secondly, the Appellant was working as a Coolie and therefore, we cannot expect him to produce any documentary evidence to substantiate his claim. In the absence of any other evidence contrary to the claim made by the claimant, in our view, in the facts of the present case, the Tribunal should have accepted the claim of the claimant.

14. We hasten to add that in all cases and in all circumstances, the Tribunal need not accept the claim of the claimant in the absence of supporting material. It depends on the facts of each case. In a given case, if the claim made is so exorbitant or if the claim made is contrary to ground realities, the Tribunal may not accept the claim and may proceed to determine the possible income by resorting to some guess work, which may include the ground realities prevailing at the relevant point of time. In the present case, Appellant was working as a Coolie and in and around the date of the accident, the wage of the labourer was between Rs.100/- to Rs.150/- per day or Rs.4500/- per month. In our view, the claim was honest and bonafide and, therefore, there was no reason for the Tribunal to have reduced the monthly earning of the Appellant from Rs.4500/- to Rs.3000/- per month. We, therefore, accept his statement that his monthly earning was Rs.4500/-."

9. There is no reason, in the instant case for the Tribunal and the High Court to ask for evidence of monthly income of the appellant/claimant. On the other hand, going by the present state of economy and the rising prices in agricultural products, we are inclined to believe that a vegetable vendor is reasonably capable of earning Rs.6,500/- per month.''

5. Following the above judgment, this Court is inclined to fix the monthly income of the appellant as Rs.6,000/-. Considering the nature of injuries and the percentage of disablement which is 75%, this Court is inclined to award Rs.3,000/- for each percentage of disability as per the judgment of this Court in National Insurance Company Limited vs. G.Ramesh, reported in 2013 (2) TN MAC 583. Accordingly, the disability compensation works out to Rs.2,25,000/- (Rs.3,000 X 75%) as against Rs.1,50,000/- awarded by the Tribunal.



6. Perusal of Ex.P5 certified copy of Accident Register issued by Tirunelveli Medical College, in which, the appellant was treated, shows that the appellant sustained following injuries:-

1. Deformity terribirus of left arm.
 2. Abrasion 7x5 cm left frontal region.
 3. Laceration 8x5 bone depth left leg.
 4. Laceration 1.5x10 cm x bone depth left foot
 5. Abrasion 5x4 cm over left knee
 6. Abrasion 3x5 cm over upper lip
 7. Abrasion 2x5cm left humerus region
 8. Tenderness in left hip
- fracture of 2nd and 3rd metatarsal bones.

7. Due to the injuries, the appellant would not have been able to work at least for a period of three months. Therefore, a sum of Rs.18,000/- (3 x Rs.6,000/-) is awarded under the head partial loss of income as against Rs.9,000/- awarded by the learned Judge. Due to the injuries, the appellant would have experienced severe pain, for which, Rs.20,000/- is awarded by the learned Judge which is inadequate. Therefore, the said award is increased to Rs.50,000/-. The award of Rs.4,000/- towards transport expenses is also inadequate and the same is increased to Rs.10,000/-. Except the above, the award under other heads are not disputed and the same are confirmed. Accordingly, the total compensation is modified as apportioned hereunder:-

Partial loss of income	=	Rs. 18,000/-
Transport expenses	=	Rs. 10,000/-
Medial Attendant & extra nourishment	=	Rs. 15,000/-
Pain and sufferings	=	Rs. 50,000/-
Medical expenses	=	Rs.2,00,973/-
Disability	=	Rs.2,25,000/-

Total	=	Rs.5,18,973/-
(Less) Amount awarded by the Tribunal	=	Rs.3,98,980/-

Enhanced compensation	=	Rs.1,19,993/-

8. The appellant/claimant is entitled to enhanced compensation of Rs.1,19,993/- in addition to Rs.3,98,980/- awarded by the Tribunal. The 2nd respondent insurance company is directed to deposit the modified compensation of Rs.5,18,973/-, less the amount already deposited, if any, with interest at 7.5% per annum from the date of petition till the date of deposit, to the credit of the claim petition within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same by filing appropriate application before the learned Judge.



Accordingly, this Civil Miscellaneous Appeal is allowed in part. No costs.

Sd/-

Assistant Registrar(RTI)

WEB COPY/True Copy/

Sub Assistant Registrar(CS-IV)

To

The Chief Judicial Magistrate,
Motor Accident Claims Authority,
Tirunelveli.

COPY TO:

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

+1cc to M/S.G.Maruthiah, Advocate SR.No. 68747

+1cc to M/S.T.Selvakumaran, Advocate SR.No. 68714

CMA(MD)No.1011 of 2013
18.06.2018

bala

JM/SKN RSK/SAR 4/30.07.2018/5P/6C