



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.07.2018
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

WEB COPY

CMA(MD)No.796 of 2013

Moorthy

... Appellant/Claimant

vs.

1)Thiru.O.N.Guganbabu

2)Branch Manager,

M/s.ICICI Lombard General Insurance Company Ltd.,

Swaranamigal Plaza,

S.F.No.6/5, Block No.7, Ward-C,

Omalur Main Road,

Salem-636 001.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 08.11.2012 made in MCOP.No.113 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul.

For Appellant : Mr.A.Hariharan

For R2 : Mr.S.Srinivasa Raghavan

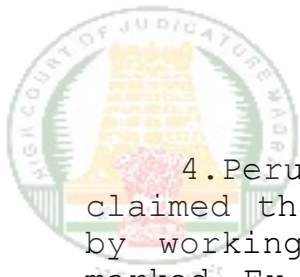
For R1 : Ex-parte

JUDGMENT

This appeal has been filed against the award dated 08.11.2012 made in MCOP.No.113 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul.

2.In an accident which occurred on 27.07.2008, the appellant sustained crush injury on the left leg and injury on the right knee. Due to crush injury, the left leg of the appellant from the left ankle was amputated. He made a claim in MCOP.No.113 of 2008 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Dindigul. Resisting the claim petition, the 2nd respondent filed counter disputing the manner of accident. They also disputed the age, income, avocation of the injured and the compensation claimed under various heads.

3.Considering the oral and documentary evidence adduced on either side, the Tribunal directed the 2nd respondent who is the insurer of the offending vehicle, to pay compensation of Rs.2,17,000/- to the appellant/claimant with 7.5% interest per annum from the date of claim. Not satisfied with the quantum of compensation, the claimant has filed this appeal.



4. Perusal of the record shows that the appellant/injured claimed that prior to the accident, he earned Rs.6,000/- per month by working as a loadman. In support of the same, the claimant marked Ex.P7-Loadman badge Ex.P8-Membership Identity Card of the claimant issued by Anna Thozhir Sangam. Though the claimant produced evidence towards his salary, considering some discrepancy in the above documents, the Tribunal fixed the income of the claimant at Rs.3,000/- relying upon the judgment in Subbaiah vs. National Insurance Company and another reported in 2012 (1) TNMAC 124. Due to crush injury, left leg of the appellant from left ankle was amputated and though PW2 Doctor determined the percentage of disablement sustained by the appellant at 60%, the Tribunal fixed the same at 50% and awarded compensation of Rs.1,00,000/- towards disability by awarding Rs.2,000/- for each percentage of disability. Apart from the above, the Tribunal awarded Rs.50,000/- towards future loss of earning, Rs.12,000/- (Rs.3000x4) for loss of income during treatment period, Rs.10,000/- towards nutrition, Rs.20,000/- towards medical expenses and Rs.25,000/- towards pain and suffering. Altogether, a sum of Rs.2,17,000/- was awarded as compensation.

5. The claimant is a load man by avocation. He suffered amputation of left leg from the left ankle and therefore, his losses are worse than a person who has lost his beloved. His entire life has been doomed. Therefore, in my considered opinion, multiplier method has to be adopted. Even for agricultural coolie, the Court has fixed Rs.4,500/- as monthly income where there is no proof of income. In the present case, the injured was a load man and therefore, as per the decision in New India Assurance Company Limited vs. Smt.Kalpna reported in 2007 (1) TN MAC 1(SC), the monthly income of the claimant is fixed at Rs.4,500/-. PW2 Doctor has assessed the percentage of disability at 60%. However, the Tribunal without giving any reason, has reduced the same to 50%. Needless to say, opinion of experts cannot be found fault with unless evidence contrary thereto is adduced. In the present case, there is no such evidence. Therefore, the disability assessed by PW2 Doctor at 60% is sustained. Accordingly, taking the monthly income of the injured at Rs.4,500/- and applying 15 multiplier according to the age of the deceased namely, 37, the compensation towards disability works out to Rs.4,86,000/- (Rs.4500x12x60/100). Consequently, the award of Rs.1,00,000/- towards disability is enhanced to Rs.4,86,000/-. Since the claimant is awarded disability compensation by applying multiplier method, the award of the Tribunal at Rs.50,000/- towards future loss of earning is set aside. The award of Rs.12,000/- towards loss of income during treatment period is enhanced to Rs.18,000/- (Rs.4500x4). Due to the injuries, left leg of the appellant from the left ankle was amputated and he would have experienced severe pain and suffering and therefore, the award of Rs.25,000/- towards pain and suffering is enhanced to Rs.1,00,000/-. Considering the nature of injuries, the award of Rs.20,000/- towards nutrition is increased to Rs.25,000/-. Further, a sum of Rs.20,000/- towards attendant charges and Rs.25,000/-



towards loss of amenities are hereby awarded. Accordingly, the total compensation is modified and apportioned as hereunder:-

Loss of income	=	Rs.4,86,000/-
Nutrition	=	Rs. 25,000/-
Pain and suffering	=	Rs.1,00,000/-
Medical expenses	=	Rs. 20,000/-
Attendant charges	=	Rs. 20,000/-
Loss of amenities	=	Rs. 25,000/-
Loss of income during treatment period	=	Rs. 18,000/-
Total	=	Rs.6,94,000/-
(Less) Amount awarded by the Tribunal	=	Rs.2,17,000/-
Enhanced compensation	=	Rs.4,77,000/-

6.The appellant/claimant is entitled to compensation of Rs.6,94,000/- with 7.5% interest per annum from the date of petition till the date of deposit. The 2nd respondent insurance company is directed to deposit Rs.6,94,000/- with 7.5% interest per annum from the date of petition till the date of deposit, less the amount already deposited, if any, to the credit of the claim petition within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the same without filing any formal application before the Tribunal.

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

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar(CS-I)

To
The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dindigul.

+1CC to Mr.A.Hariharan, Advocate, SR.No.73108

+1CC to Mr.S.Srinivasa Raghavan, Advocate, SR.No.73110

CMA(MD)No.796 of 2013

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ES/SKN/RSK/SAR 1/17.09.2018/3P/4C