

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 04.04.2019

PRONOUNCED ON: 29.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NOS.724 & 725 OF 2006

M.Selvam

...Appellant/Petitioner  
in C.M.A.No.724 of 2006

K.V.Kuppusamy

...Appellant in  
C.M.A.No.725 of 2006

vs.

1. P.Vasantha  
(R1 was set exparte in Trial Court)

2. United India Insurance Co. Ltd.,  
Motor Third Party Claims Office,  
No.15, Anna Salai, Chennai - 2.

... Respondents/Respondents  
in both C.M.A's

Prayer:

Civil Miscellaneous Appeals filed under Section 173 of Motor Vehicle Act, 1988, against the judgement and decree dated 19.09.2005 made in M.A.C.T.O.P.Nos.4839 & 4840 of 2002, on the file of Motor Accidents Claims Tribunal, III Judge, Small Causes Court, Chennai.

(In Both C.M.A's)

For Appellant

: Mr.R.Arundattan

for Mr.C & K. Law Firm

For Respondents

: Mr.C.Paranthaman for R2

R1 Exparte

COMMON JUDGMENT

These two appeals are filed by the respective claim petitioner who had filed the claim petition in M.C.O.P.No.4839 & 4840 of 2002 seeking enhancement of compensation.

2.The claim petitioner/appellant in M.C.O.P.No.4839 of 2002 filed the C.M.A.No.724 of 2006 and the appellant in M.C.O.P.No.4840 of 2002 filed the C.M.A.No.725 of 2006 against the award passed the Tribunal, claiming compensation for the accidental injuries sustained by him in the accident that taken place on 26.10.2002.

3.As both the claim petitioner arising out of the same accident, common trial was conducted and common judgment was rendered by the Tribunal. The claim petitioner in M.C.O.P.No. 4839 of 2002 (C.M.A.No.724 of 2006) has examined himself as P.W.1, the claim petitioner in M.C.O.P.No.4840 of 2002 (C.M.A.No.725 of 2006) has examined himself as P.W.2, the employer was examined as P.W.3, doctor was examined as P.W.4 and Exs.P1 to P19 were marked. On behalf of the respondent no oral evidence or documentary evidence has been filed. The Tribunal on considering the oral and documentary evidence, came to the conclusion that accident has taken place due to the rash and negligent driving by the driver of the 1<sup>st</sup> respondent vehicle which was insured with the 2<sup>nd</sup> respondent/Insurance Company and thus held that both the respondents 1 and 2 are jointly and severally liable to pay the compensation. Accordingly the Tribunal awarded a sum of Rs.5,40,000/- as compensation for the appellant in M.C.O.P.No.4839 of 2002 and a sum of Rs.2,64,000/- as compensation for the appellant in M.C.O.P.No.4840 of 2002. As stated supra, these appeals are filed for enhancement of compensation.

4.In M.C.O.P.No.4839 of 2002, P.W.4/Doctor, who had issued disability certificate/Ex.P17 fixed the disability of the claim petitioner/appellant at 60%. As per the discharge summary/Ex.P1 issued by the Government Hospital, Royapettah, it is seen that the claim petitioner/appellant had suffered compound fracture on his left leg and amputation was carried out. Taking into consideration the amputation in the leg and also the nature of his avocation it is found that the claim petitioner/appellant could not perform his duties as before. As he said to have been carried on avocation of plumber, the tribunal has arrived the notional monthly income of the claim petitioner at Rs.4,000/-. The notional income fixed by the Tribunal cannot be treated as excessive and accordingly, taking into consideration the judgment of the Supreme Court in ACJ 2011 Volume I Rajkumar vs. Ajay Kumar, I am of the considered view that the application of multiplier method or assessment of the disability suffered by the claimant/appellant under the functional disability, the criteria stated in the said judgment being satisfied on the above factual matrix of the case. The multiplier method adopted by the Tribunal is just and fair. Following the judgment reported in 2017 ACJ 2700 / 2017(2)TNMAC 609 (SC) National Insurance Company v. Pranay Sethi & Others the

claimant/appellant is entitled for 20% future prospects. Considering the age of the appellant multiplier 12 is adopted. Accordingly the pecuniary loss sustained by the appellant is reassessed as under:

$\text{Rs.4,000} + (20\% \text{ of } 4,000) \times 12 \times 12 \times 60/100 = \text{Rs.4,14,720/-}$   
Considering the fact that after surgery the claimant/appellant has taken treatment as in-patient for 48 days which could be seen from Exs.P1, P3 and P4. A sum of Rs.15,000/-, Rs.10,000/- and Rs.20,000/- awarded by the Tribunal towards attender charges, medical expenses and pain and sufferings respectively are confirmed. The Tribunal has not awarded any sum towards loss of amenities and a sum of Rs.10,000/- granted towards loss of amenities.

| S.No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Loss of Income     | 3,80,000                        | 4,14,720                          | Enhanced                               |
| 2.   | Transportation     | 5,000                           | 5,000                             | Confirmed                              |
| 3.   | Extra Nourishment  | 10,000                          | 10,000                            | Confirmed                              |
| 4.   | Pain and Suffering | 20,000                          | 20,000                            | Confirmed                              |
| 5.   | Disability         | 1,00,000                        | 1,00,000                          | Confirmed                              |
| 6.   | Medical Bills      | 10,000                          | 10,000                            | Confirmed                              |
| 7.   | Attender Charges   | 15,000                          | 15,000                            | Confirmed                              |
| 7.   | Loss of Amenities  | -                               | 10,000                            | Granted                                |
|      | Total              | Rs.5,40,000/-                   | Rs.5,84,720/-                     | Enhanced by Rs.44,720/-                |

5. In M.C.O.P.No.4840 of 2002 (C.M.A.No.725 of 2006), P.W.3/Doctor has stated that the claim petitioner/appellant had suffered fracture on the left knee and left ankle and he was taken treatment in Government Hospital, Royapettah, as in-patient from 26.10.2002 to 18.03.2003 and thereafter has taken treatment as in-patient at Hindu Mission Hospital for 35 days which could be seen from Exs.P10 to P12 and P14. P.W.3/Doctor has stated in his evidence that after the knee fracture on the left leg and removal of decomposed bones it would be difficult

for him to stand, walk and to lift things and assessed 55% disability and issued disability certificate/Ex.P18 for the said Kuppusamy.

6. Taking into consideration the medical evidence issued by the Doctor and nature of injuries, being the compound fracture resulted in removal of bones and also other materials placed before this Court, I find that essential criteria fixed by the Hon'ble Apex Court in ACJ 2011 Volume I Rajkumar vs. Ajay Kumar, adoption of multiplier method in respect of functional disability is being satisfied and therefore adoption of multiplier method by the Tribunal cannot be found fault with. The Tribunal has fixed the notional income of the claimant/appellant at Rs.3,000/- and reassessment of the same is as under:

$$\begin{aligned} \text{Rs.3,000} + (30\% \text{ of } 3,000) &= \text{Rs.3,900/-} \\ \text{Rs.3,900} \times 12 \times 5 \times &= \text{Rs.2,34,000/-} \\ \text{Rs.2,34,000/-} \times 55/100 &= \text{Rs.1,28,700/-} \end{aligned}$$

Considering the Exs.P12, P14 and P16/ medical bills and discharge summary a sum of Rs.45,000/- awarded by the Tribunal towards medical bills is confirmed. The amounts awarded by the Tribunal towards transportation, extra nourishment, disability, attender charges, pain and suffering and mental agony are just and reasonable and they are hereby confirmed. Thus, the amounts awarded by the Tribunal are modified as follows:

| S.No | Description        | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|------|--------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.   | Loss of Income     | 1,14,000                        | 1,28,700                          | Enhanced                               |
| 2.   | Transportation     | 5,000                           | 5,000                             | Confirmed                              |
| 3.   | Extra Nourishment  | 10,000                          | 10,000                            | Confirmed                              |
| 4.   | Pain and Suffering | 15,000                          | 15,000                            | Confirmed                              |
| 5.   | Disability         | 55,000                          | 55,000                            | Confirmed                              |
| 6.   | Medical Bills      | 45,000                          | 45,000                            | Confirmed                              |
| 7.   | Attender Charges   | 10,000                          | 10,000                            | Confirmed                              |
| 8.   | Mental Agony       | 10,000                          | 10,000                            | Confirmed                              |
|      | Total              | Rs.2,64,000/-                   | Rs.2,78,700/-                     | Enhanced by Rs.14,700/-                |

9. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal at Rs.5,40,000/- in M.C.O.P.No.4839 of 2002 is hereby enhanced to Rs.5,84,720/- and compensation awarded by the Tribunal at Rs.2,64,000/- in M.C.O.P.No.4840 of 2002 is hereby enhanced to Rs.2,78,700/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary court fee, if any, on the enhanced compensation. The respondent/Insurance Company is directed to deposit the enhanced award amount in both the civil miscellaneous appeals along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellants are permitted to withdraw the enhanced award amount on the basis of apportionment fixed by the Tribunal along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The III Judge,  
Small Causes Court, Chennai.
2. The Section Officer, VR Section,  
Madras High Court.

+1cc to Mr.C.Munusamy and Mr.C& K.Law Firm,Advocate,S.R.65145  
+2cc to Mr.C.Paranthaman, Advocate, S.R.No.64497, 64498

C.M.A.Nos.724 & 725 of 2006

JP(CO)  
CS/27/11/2019

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