

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

CMA.No.2937 of 2008

Ashok Kumar ... Appellant/Claimant

Vs.

1. Natesan
2. The New India Assurance Company Limited,
represented by its Regional Manager,
No.2, Paramathi Road,
Namakkal District.
3. Sivakumar
4. National Insurance Company Limited,
represented by its Branch Manager,
Thanjavur. Respondents/Respondents

Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the orders passed by the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Tiruvarur in MCOP No.96 of 2003 on 24.06.2006.

For Appellant : Mr. A.E.Ravichandran
For 2nd Respondent : Mr.M.Krishnamoorthy
Appeal against Res. 3 and 4 : Given up
First Respondent : No appearance

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.96 of 2003 on the file of the Subordinate Judge, Motor Vehicle Accidents Claims Tribunal, Tiruvarur and he filed the said claim petition under Section 166 of the Motor Vehicles Act seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident that took place on 12.06.2000.

2. The brief case of the claimant is as follows: On 12.06.2000, when the claimant was travelling as a pillion rider in a Hero Honda motorcycle bearing registration No.TN-49-E-5419, belonging to the 3rd respondent on Tiruvarur-Tanjavur main road, a speeding tanker lorry bearing registration No.HR-46-7383

belonging to the first respondent hit the two wheeler bearing registration No.TN-49-E-5419, as a result of which, the appellant/ claimant sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the tanker lorry bearing registration No.HR-46-7383 was the cause of the accident and that since the first respondent insured his vehicle with the 2nd respondent, both of them are jointly and severally liable to pay compensation to him.

3. The first and third respondent remained absent before tribunal and therefore, they were set exparte. The 2nd and 4th respondents contested the claim petition.

4. After analysing the evidence on record, the tribunal awarded a compensation of Rs.1,99,000/- together with interest at the rate of 9% p.a. from the date of claim petition till the date of disposal. Not satisfied with the quantum of compensation, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act seeking enhancement of compensation amount.

5. Mr.A.E.Ravichandran, learned counsel appearing for the appellant would contend that the appellant was an agriculturist and was also running a tutorial at Kulikarai earning a sum of Rs.10,000/- per month. His specific contention is that the tribunal did not fix the monthly income of the appellant/claimant and no amount was awarded towards "loss of income", even though the appellant/claimant was admitted as an inpatient for a period of 75 days on three different occasions. He would further contend that when the appellant/claimant has sustained the following injuries,

1. Compound comminuted intercondylar fracture in his L/3 of right humerus.
2. Fractures of both bones in his left forearm.
3. Compound complete rupture of left Quadriceps tendon.
4. Compound fracture in shaft of left 5th Metatarsal,
5. Partial amputation of 3rd and 4th toes in his left foot.
6. Trochanteric fracture in his left femur.

and Dr.S.A.H.Ansari (PW7) has assessed the partial permanent disability suffered by the appellant as 65%, the tribunal has failed to apply multiplier method in the instant case.

6. A perusal of medical records shows that Dr.S.A.H.Ansari (PW7) has observed in the Disability Certificate Ex.P30 thus.

On perusal of his (claimant) medical records, wound certificate and x-rays and on my clinical examination I found that

1. Compound comminuted intercondylar fracture in

his L/3 of right humerus.

2. Fractures of both bones in his left forearm.
3. Compound complete rupture of left Quadriceps tendon.
4. Compound fracture in shaft of left 5th Metatarsal,
5. Partial amputation of 3rd and 4th toes in his left foot.
6. Trochanteric fracture in his left femur.

The intercondylar fracture in Right humerus, the fracture of both bones in Left forearm and the trochanteric fracture in left femur were united by implanting metal plate and screws and with bone grafting by doing some surgeries. But even then all the above fractures are malunited.

Because of the fracture and malunion of intercondylar bone in right humerus with muscles wastage and muscle contraction, the movement of right elbow is restricted by 20%.

It is very difficult for him to rotate and bend his right upper arm. He cannot lift a weighty object and it is difficult for him to write on the black board or on the note book by using his right upper limb. His right upper limb became useless due to the above said deformity.

Because of the fracture and malunion of both bones in his left forearm with muscle wastage and muscle contracture of muscles, it is difficult for him to sit on floor or to run, squat, climb on stairs, kneel and to cross-leg. He cannot walk without the support of crutches.

The movement in his left lower limb is painful and restricted to 50%. Because of the malunion, the left lower limb is shortened by 1/2 inch than the right lower limb. Hence, he cannot walk on the fields and ridges. The compound complete rupture of left quadriceps tendon causing pain in the left knee and makes difficulty to bend his left knee.

Because of the fracture and malunion of shaft of left 5th metatarsal and partial amputation of 3rd and 4th toes in his left foot, he could not bear his body weight on the left foot. Due to the deformities in his left foot and in his left femur, he could not bear his body weight on his left lower limb. Hence, his entire body weight falls on his right lower limb. If it goes on like this his right leg will also be affected soon as it bears overloading. Both the upper limbs and the left lower limb are affected by the above said deformities particularly in his left lower limb the

upper thigh region, the left knee and the left foot are very much affected. It is difficult for him to bend his body at the hip level and could not lay on bed on sides and could not use public vehicles for his journey.

Since both the upper limbs and the left lower limb is affected, he cannot do his day to day work without the assistance of others. All the above said deformities totally incapacitated him to do his avocation of running a tutorial college, taking classes for the students and doing agricultural and fishery work and also doing canvassing work or collection work in the field of LIC and small savings."

7. As far as the present case is concerned, the appellant/claimant has suffered disability at 65% and he is not able to carry out his work as an agriculturist, as is clear from the evidence adduced by him. In the decision in Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343, it has been held thus:-

6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated

in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such permanent disability on his earning capacity. ...

9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

In the instant case, the appellant/claimant is an agriculturist, who suffered disability to the extent of 65%. Therefore, applying multiplier method is warranted. As per the decision in Sarla Verma and other Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier applicable in this case is '15', since the appellant was aged 40 years on the date of accident. Though the appellant/claimant has contended that he was earning more than Rs.10,000/- per month, no documentary evidence was adduced to substantiate his contentions. Hence, in the absence of proof of income, notional income is fixed at Rs.4,500/- and 'loss of earning capacity' is calculated as follows.

Calculation for loss of earning capacity
Notional income fixed - Rs.4,500

Proper multiplier - 15
Disability suffered by appellant - 65%
Loss of earning capacity - $4,500 \times 12 \times 15 \times 65/100 = 5,26,500$.

On account of accident, the appellant was admitted as inpatient for a period of 75 days on three different occasions and hence, definitely he would not have been in a position to attend to his work continuously atleast for 6 months. Thus, a sum of Rs.27,000/- ($4500 \times 6 = 27,000$) is awarded towards loss of income.

8. Apart from the above amounts, considering the facts and circumstances of the case, the appellant is also entitled to Rs.25,000, Rs.10,000, Rs.15,000, Rs.10,000, Rs.5,000, Rs.90,529 towards "pain and sufferings", "extra nourishment", "loss of amenities", "transportation charges", "attender's charges", and "medical bills" respectively. The following is the tabular column which would show the enhanced award under various heads.

Sl No	Heads	Amount in Rs.
1	Loss of earning capacity	5,26,500
2	Loss of income	27,000
3	Pain and sufferings	25,000
4	Extra nourishment	10,000
5	Loss of amenities	15,000
6	Transportation charges	10,000
7	Attender's charges	5,000
8	Medical bills	90,529
	Total	7,09,029

The said amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

9. In the result,

(i) The appeal is allowed. No costs. The quantum of compensation awarded by the tribunal is enhanced to Rs.7,09,029/- from Rs.1,99,000/-.

(ii) The appellant is entitled to the compensation of Rs.7,09,029/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and the appellant is directed to pay necessary court fee for the enhanced compensation amount.

(iii) The 2nd respondent is directed to deposit the enhanced compensation of Rs.7,09,029/- along with interest, less the amount already deposited, within a period of four weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the 2nd respondent, the petitioner is entitled to withdraw the entire amount together with interest forthwith, after following the due process of law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mst

To

The Subordinate Judge,
Motor Accidents Claims Tribunal, Tiruvarur.

Copy to

The Section Officer,
VR Section, High Court, Madras-104.

+1cc to Mr.A.E.Ravichandran, Advocate Sr.5611

+1cc to Mr.M.Krishnamurthy, Advocate Sr.4724

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srg 30/04/2019

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