

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.04.2019

PRONOUNCED ON : 30.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No. 1118 of 2011

Sakthiselvam Appellant/petitioner

... Vs ...

Radhakrishnan (died)

1.New India Assurance Company Limited,
Divisional Office,
Premier Complex, Five Roads, Salem 16.

2.Suguna (W/o. deceased)
[Second respondent set Exparte
before the Court below] ...Respondents/Respondents

PRAYER: Appeal is filed under Section 173(1) of the Motor Vehicle Act, 1988 against the judgment and decree dated 26.07.2010 made in M.C.O.P.No.425 of 2007 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Salem.

For Appellants : Mr.K.Kuppusamy

For R1 : Mr.J.Michael Visuvasam

For R2 : Ex-parte

JUDGMENT

The claimant is the appellant herein and challenging the award passed in M.C.O.P.No.425 of 2007 on the file of the Motor Accidents Claims Tribunal, learned Chief Judicial Magistrate, Salem, the appellant has come up with the present appeal.

2 The claimant/appellant herein preferred MCOP.No.425 of 2011, alleging that on 02.07.2007, at 8 AM, he was riding the bi-cycle near Sixer complex on the Saradha College road. At that time, a lorry bearing No.TN-43-8030, which belongs to the

second respondent herein, came in the opposite side, in a rash and negligent manner and hit the bi-cycle directly. Due to which the appellant herein has fell down on the road and the front wheel of the lorry ran over his right leg and has sustained severe fracture injuries all over the body. Immediately, he was admitted in the Salem Government Hospital for treatment and still he is under treatment. The claimant/appellant herein is only 33 years old, a hale and healthy man and was earning a sum of Rs.5,000/- per month. After the accident, he has got to permanent disability and now he is not able to attend his regular work.

3 First Respondent herein/Insurance Company filed a counter statement before the Tribunal denying that the age, avocation and alleged income of the claimant. After the trial, the Tribunal has held that the accident has taken place due to the rash and negligence driving of the driver of the offending vehicle and has awarded a compensation of Rs.1,19,500/- and having not satisfied with the amount, the claimant has preferred this appeal.

4 The factum of the accident, manner of the accident and rash and negligent driving on the part of the driver of the vehicle of the second respondent herein, are not in dispute and hence, the same is hereby confirmed.

5 On the point of quantum of compensation, both the parties were heard.

6 The appellant herein himself examined as PW1 and Dr.Sampath Kumar was examined as PW2 and documents Exs.P1 to P10 were marked on the side of the claimant. On the side of the respondents, before the Tribunal, one Sriranganatham was examined as RW1 and Ex.R1 was marked.

7 Injured/appellant herein would depose that, he has sustained injuries and took treatment in hospital and filed Ex.P2/Accident Register and discharge summary and discharge notes pertaining to the second treatment underwent are marked as Exs.P3 and P4 respectively and also marked Ex.P6 Driving licence of the claimant/appellant herein. PW2/Dr.Sampathkumar, who has examined and given treatment to PW1 would depose that after the surgery, the right femur bone was fractured and after the surgery, metal rod was fixed and due to the accident and the infection thereon, the said thigh bone has turned in a circular manner, resulting in shortening of his leg and the infected portion of the right leg has lost its strength and there is a malunion of the bone and hence, the claimant/applicant herein cannot drive four wheeler as before and assessed disability at 48%.

8 Taking into consideration, the evidence of the PW1, PW2/doctor, coupled with Ex.P9/Wound Certificate, Ex.P10/X-ray, this Court is of the considered view that the claimant/appellant herein, who has sustained injury and after surgery and fixation of metal rod, it has resulted in restriction of the normal movement and also resulted in shortening of the leg, which making him unfit for driving four wheelers and hence, this Court is of the considered view that the claimant/appellant herein have suffered a functional disability whereby, the earning capacity of the claimant/appellant has been reduced.

9 Taking into consideration the functional disability suffered by the claimant/appellant herein, disability is fixed at 35% and the compensation is awarded under the multiplier method, since the criteria in adoption of the multiplier method as held in Rajkumar Vs. Ajaykumar & another case reported in [2010 (2) TN MAC 581 SC] by Hon'ble Apex Court are being satisfied in the factual matrix of the case. The multiplier method adopted by the Tribunal is just and proper. The Tribunal also given a finding that the claimant would have earned Rs.5,000/- at that time.

10 However, taking note of the date of the accident, this Court is of the considered view that he could have earned not less than Rs.4,000/- at the time of the accident and following Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC), claimant/appellant herein is also entitled for future prospects at the rate of 25% and accordingly based upon Ex.P6/driving licence, it is seen that the date of birth of the claimant is 10.05.1973 and date of the accident is 02.07.2007 and accordingly, the age of the claimant/appellant herein at that time of the accident is assessed as 34 years and multiplier 16 is adopted following the decision of the Hon'ble Supreme Court in Sarla Verma Vs. Delhi Transport Corporation [2009 (2) TN MAC 1 (SC)]

accordingly,

$$4,000 + 40\% \text{ of } 4,000 = 5,600$$

$$5,600 \times 16 \times 12 \times (35/100) = 3,76,320/-$$

Further the claimant/appellant herein is also entitle to transportation charge of Rs.3,000/-, nutrition Rs.6,000/-, damage to the cloth 500/- pain and suffering 15,000/-, attendant charges 5,000/-, loss of amenities 5,000/-. Accordingly, the compensation awarded by the Tribunal is re-assessed as under:

Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court
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Loss of income	1,20,000.00	3,76,320.00
Transportation	2,000.00	3,000.00
Nutrition	5,000.00	6,000.00
Damage to the clothes	500.00	500.00
Pain and sufferings	10,000.00	15,000.00
Attendant charges	-	5,000.00
Loss of amenities	-	5,000.00
Total	1,19,500.00	4,10,820.00

Hence, the compensation is re-assessed and enhanced from Rs.1,19,500/- to Rs.4,10,820/-

***Since, the Tribunal has held that the compensation is payable by the owner of the vehicle and as there is a breach of terms of contract on insurance, the Insurance Company/second respondent before the Tribunal was directed to pay the amount in any one of the Nationalized Bank and thereafter, recover the same from the third respondent viz., Suguna. In the said finding, there is no challenge before this Court and same is confirmed."**

11 In the result,

I. This Civil Miscellaneous Appeal is partly allowed accordingly by enhancing the compensation from Rs.1,19,500/- to Rs.4,10,820/-, with proportionate costs.

II. The interest granted by the Tribunal at 7.5% stands confirmed.

III. **"The Insurance Company is directed to deposit the enhanced compensation amount within a period of eight weeks from the date of receipt of a copy of this judgment, with liberty to recover the same from the second respondent as stated by the Tribunal, less the amount already deposited, if any."**

IV. On such deposit being made, the claimant is permitted to withdraw the entire award amount with proportionate interest, as apportioned by the Tribunal, less the amount already withdrawn, if any.

V. The appellant/claimant shall pay necessary Court fee,
if any, on the enhanced compensation.

Sd/-

Assistant Registrar(CS VI) (09/01/2020)

***To be deleted and corrected as per order of this
court dt.28.02.2020, made in CMA.No.1118 of 2011**

Sd/-

Assistant Registrar(CS-VI)

24/03/2020

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate, Salem.

2.The Section Officer,
V.R. Section, High Court,
Madras.'

To be substituted the
order already despatched
on 13.01.2020

+1cc to Mr.J.Michael Visuvasam, Advocate *SR.17504 dt.28/02/2020

C.M.A.No. 1118 of 2011

mr[co]
srg 10/01/2020
CB(19/10/2020)

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