IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.1373 OF 2009

S.Veerasingam ...Appellant/Petitioner

Vs.

1. Kasiviswanathan
2. The Commissioner of Police, Egmore, Chennai 8.
3. The Managing Director, Metropolitan Transport Corporation (Chennai Division-I), Anna Salai Chennai 2. ...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act 1988, against the Judgment and decree dated 18.08.2008 made in M.C.O.P. No.3959/2003 on the file of the Motor Accidents Claims Tribunal, Chennai, Additional District and Sessions Court, Fast Track Court-V Chennai.

For Appellant : Mr. F.Terry Chellaraj

For Respondents : Mr. S. Jaganathan, Government Advocate (CS) for R2
Mr.K.S.Suresh for R3.

JUDGMENT

The appellant is the claimant in M.C.O.P. No.3959/2003 on the file of the Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Chennai. He filed the Claim Petition under Section 166 of Motor Vehicles Act, seeking compensation of Rs.8,00,000/- for the injuries sustained by him in a motor accident that took place on 12.11.2001.

2.The brief case of the appellant / claimant is as follows: On 12.11.2001, the appellant / claimant was travelling as a pillion rider in a two wheeler TVS 50 XL bearing registration No. TN 31-1408 along PVER salai near Dr. Nair Bridge, Chennai. When the two wheeler was nearing Central Railway Station, a Recovery vehicle owned by the second respondent bearing registration No. TN 01 G 1454, was coming on the opposite direction, towing the third respondent's bus bearing registration No.TN 01 N 2899. The first respondent without fixing the hook properly was towing the third respondent's bus, as a result of which, the bus got detached from the hook and lost its control and hit an auto rickshaw bearing registration No. TN01P 7002 and also the two wheeler bearing registration No. TN 31-1408, in which the appellant was traveling as a pillion rider. The appellant thus sustained grievous injuries. According to the appellant/claimant, the rash and negligent act of the driver of the Recovery vehicle bearing registration No. TN 01 G 1454, was the cause of the accident and that, the respondents 2 and 3 are jointly and severally liable to pay compensation of Rs.8,00,000/- to him.

3.The respondents 1 and 3 remained absent before the tribunal and therefore, they were set exparte. The second respondent / Commissioner of Police, Egmore, contested the claim petition. The additional District and Sessions Judge, Fast Track Court No.V, after analysing the evidence on record awarded a compensation of Rs.2,70,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit and directed the second respondent to pay the entire compensation amount. Not satisfied with the quantum of compensation awarded by the tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act.

4. Mr. F.Terry Chellaraj, Learned counsel appearing for the appellant would contend that, the appellant was a fitter by profession and he was working as a technical assistant in a private concern, earning a sum of Rs.3,500/- per month. He would also contend that the appellant / claimant was in coma stage continuously for a period of 5 years and till date he has not recovered fully. He also drew the attention of this court to the disability certificates, Ex.P10 and Ex.P12, issued by Dr.Mathiazhagan(P.W.2) and Dr.Saravana Bhavanandam (P.W.3) respectively and contended that though the permanent disability was assessed by both the doctors as 90%, the tribunal has awarded a meagre amount of Rs.70,000/- towards permanent disability and loss of earning power. His another contention is that the appellant / claimant has filed medical bills to the tune of Rs.3,04,205/-, but, the tribunal has awarded only a sum of Rs.1,50,000/- taking into account only the final bill issued by Vijaya Health Centre. His specific contention is that the expenses incurred by the appellant / claimant towards his treatment in Bharani Hospital was not at all considered by the tribunal.

5. The award passed by the Tribunal under various heads is extracted hereunder:

Sl.No.	Head	Amount(Rs.)
1.	Loss of earning	30,000/-
2.	Medical expenses	1,50,000/-
3.	Pain and sufferings	15,000/-
4.	Permanent disability & loss of earning power	70,000/-
5.	Transport charges	1,000/-
6.	Extra nourishment	4,000/-
	Total	2,70,000/-

6. Mr. S. Jaganathan, Government Advocate (CS), contended that the tribunal has analysed all the aspects before awarding a sum of Rs.2,70,000/- and therefore, it need not be disturbed at this stage.

7. A perusal of the order shows that the tribunal, without assigning proper reasons, has awarded a sum of Rs.1,50,000/-, especially, when the appellant/claimant has produced medical bills to the tune of Rs.3,04,205/-. A perusal of the medical bills Ex.P7 clearly shows that the appellant / claimant has incurred an expenditure of Rs.3,04,205/- towards his medical treatment. This cannot be said to be on the higher side since as per the medical records Ex.P2 and Ex.P3, the appellant was in coma stage continuously for a period of 5 years. Moreover, the genuineness of the medical bills was not also questioned by the respondent. Therefore, a sum of Rs.3,04,205/- is awarded towards his medical expenses.

8. The appellant / claimant was a fitter by profession and this is evidenced by the certificate Ex.P6 issued by Government of India, Ministry of labour. A division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 has held thus:

> "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. The Tribunal should not mechanically apply the

percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanent disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terns of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of the court in Arvind Kumar Mishra v. New India Assurance Co. Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010(8) SCALE 567).

9.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 a 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 was aged 23 years on the date of accident and since he was a fitter by profession, multiplier method is warranted. The income of the appellant is said to be Rs.3,500/- per month. Though there is no proof in this regard, it can be inferred that a person who is a fitter by profession, can easily earn a sum of Rs.3,500/- per month. Since the age of the deceased was 23 years, proper multiplier to be adopted in the instant case is 18 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. Therefore, the loss of earning capacity is calculated as Rs.3,78,000/- (Rs.3,500/- x 12 x 18 x 50/100), taking permanent disability as 50%. Apart from the above, since the appellant / claimant was in coma stage for 5 years, loss of income for that period is calculated as Rs.2,10,000/- (Rs.3,500/- x 60 months). Apart from the above amount, the appellant / claimant is entitled to to a sum of Rs.15,000/-, Rs.25,000/-, Rs.25,000/-, Rs.1,00,000/-, Rs.1,00,000/-, Rs.20,000/-, and Rs.1,000/- towards loss of amenities, transportation, extra nourishment, pain and sufferings, loss of marriage prospects, attender's charges and damage to cloths respectively. Hence, the first respondent/claimant is entitled to the following amount as extracted hereunder:

S.No.	Head	Amount granted (Rs.)
1.	Loss of earning capacity	3,78,000/-

S.No.	Head	Amount granted (Rs.)
2.	Loss of Income	2,10,000/-
3.	Medical Expenses	3,04,205/-
4.	Loss of amenities	15,000/-
5.	Transportation	25,000/-
6.	Extra Nourishment	25,000/-
7.	Pain and sufferings	1,00,000/-
8.	Loss of marriage prospects	1,00,000/-
9.	Attender charges	20,000/-
10.	Damage to clothes	1,000/-
	Total	11,78,205/-

9. In the result,

(i) The appeal is allowed. No costs.

(ii) The quantum of compensation awarded by the tribunal is enhanced from Rs.2,70,000/- to Rs.11,78,205/- (Rupees Eleven lakhs seventy eight thousand two hundred and five only) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(iii) The second respondent is directed to deposit the enhanced compensation amount of Rs.11,78,205/- with accrued interests and costs, less the amount already deposited by them, within 4 weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the second respondent, the appellant / claimant is entitled to withdraw the same after following due process of law.

(v) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount within two weeks from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Additional District and Sessions Judge,
Fast Track Court-V., Motor Accidents Claims Tribunal, Chennai,

2.The Section Officer,
VR Section, High Court, Madras.

+1cc to M/S.M.Malar, Advocate Sr.483

C.M.A.NO.1373 OF 2009

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