

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.02.2019

PRONOUNCED ON : 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.1178 OF 2011

Kannupillai

... Appellant/Claimant

Versus

1.N.Periyasamy

2.M/s.Reliance General Insurance Co.Ltd.,
No.15-A, PLA Towers,
11th Cross, Thillai Nagar,
Trichy-18.

... Respondents/Respondents

(R1 set exparte before the Tribunal)

Prayer :

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Order and Decreetal order dated 30.11.2010 made in M.C.O.P.No.20 of 2009 on the file of Motor Accident Claims Tribunal/Principal District Judge, Perambalur.

For Appellant : Mr.S.Kamadevan

For Respondents : Exparte before the Tribunal
(for R1)

: Mr.N.Vijayaraghavan (for R2)

JUDGMENT

The Claimant is the appellant herein and he has filed this appeal against the Award and Decree dated 30.11.2010 made in M.C.O.P.No.20 of 2009 before the Motor Accident Claims Tribunal/Principal District Judge, Perambalur.

2.Brief facts, which are necessary to decide the present appeal, are as follows:-

On 04.12.2007 at 18.00 hours, when the claimant was walking on the road at Naranamangalam near Selvi Crusher Unit, a TATA ACE Auto bearing Regn.No.TN-46-F-2235, which was coming from the opposite direction dashed against him. In the impact, the claimant fell down and the rear wheel of the auto had ran over his left hand, with the result, the left hand of the claimant got crushed. Immediately, the claimant was admitted in ABC Hospital at Tiruchirapalli, where he was admitted as an in-patient for ten days i.e., from 04.12.2007 to 13.12.2007. The injury suffered by the claimant in his left hand is near total to that of amputation of the left hand, as a result of which, the claimant could not undertake any work, as before. Therefore, the claimant filed the claim petition claiming a sum of Rs.4,00,000/- as compensation.

3.The claim petition was resisted by the Insurance Company repudiating the manner in which the accident had occurred and the nature of injuries said to have sustained by the claimant.

4.Before the Tribunal, the Claimant examined himself as PW.1 and Doctor Saravanan as PW.2 and marked Ex's.P1 to P13. On behalf of the respondents in the claim petition, no witness was examined or any document marked. The Tribunal, on analysing the oral and documentary evidence awarded a sum of Rs.2,00,975/- as compensation. Not being satisfied with the award amount, the appellant has filed the present appeal for enhancement.

5.The learned counsel for the appellant/claimant would contend that the Tribunal has erred in passing the award, awarding only a sum of Rs.2,00,975/- in favour of the appellant/claimant without taking note of his age, occupation, the nature of injury sustained by him and the consequences of the injuries had caused to carry out his normal work. The Tribunal had failed to note that the appellant sustained multiple injuries in the left hand, lost his four fingers and it amounts to an amputation causing permanent disability and everlasting pain and suffering. The claimant was aged 37 years at the time of accident and an agricultural worker and he could not undertake his employment as before. In such circumstances, the Tribunal ought to have adopted multiplier method and awarded reasonable amount as compensation.

6.The learned counsel for the insurance company would justify the amount awarded by the Tribunal as fair and reasonable and prayed for dismissal of the appeal.

7.I have heard both sides and perused the materials on record. The Tribunal, upon analysing the evidence adduced before it has come to a conclusion that the accident was a result of the rash and negligent driving of the driver of the auto-riskshaw and it is not in dispute.

8.In the accident that took place on 04.12.2007, the claimant suffered crush injuries and lost his four fingers in the left hand, except thumb. The claimant examined himself as PW1 and the Doctor as PW2 to prove the nature of injuries sustained by him. Ex.P2 is the Wound Certificate issued by PW.2 and the Medical records have been marked as Ex's.P3 to P6. The Doctor/PW.2 assessed the disability of the claimant at 45%. The deposition of PW.2 is to that effect that by reason of the injuries sustained, the claimant could not perform his avocation as before. Further, at the time of accident, the claimant was 37 year old and he was an agricultural coolie earning a sum of Rs.4,500/- per month. However, in view of the injuries sustained, the claimant's occupation and his source of livelihood will definitely get affected. In such circumstances, this Court is of the view that the Tribunal ought to have resorted to award compensation by applying multiplier method. Thus, this Court is of the view that the amount awarded by the Tribunal requires to be enhanced and this is a fit case for adopting multiplier method to determine the compensation. Accordingly, by applying multiplier '15', taking note of the percentage of disability assessed by the Doctor at 45% and taking the monthly income of the claimant at 4,500/- the compensation to be awarded towards permanent disability and loss of income shall be $(Rs.4500 \times 12 \times 15 \times 45/100)$ Rs.3,64,500/-. Thus, the amount of Rs.87,500/- awarded by the Tribunal towards permanent disability and loss of income is re-calculated and awarded at Rs.3,64,500/-.

9.The Tribunal has awarded a sum of Rs.2,400/- towards transportation and Rs.20,000/- towards pain and suffering. Having regard to the nature of injuries sustained by the claimant and the period of his hospitalisation, this Court is inclined to award a sum of Rs.10,000/- towards transportation and Rs.25,000/- towards pain and suffering. The Tribunal did not award any amount towards attendant charges. The claimant had lost his four fingers in his left hand and he was treated for the said injury. In such circumstances, awarding Rs.5,000/- towards attendant charges will meet the ends of justice. Accordingly, the award passed by the Tribunal is modified as indicated below:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Loss of income and future loss of earning capacity	Rs.20,000/-	Rs.3,64,500/-
partial Disability	Rs.67,500/-	-
Transportation	Rs.2,400/-	Rs.10,000/-
Extra Nourishment	Rs.10,000/-	Rs.10,000/-
Medical Expenses	Rs.81,075/-	-
Pain and Suffering	Rs.20,000/-	Rs.25,000/-
Attendant Charges	-	Rs.5,000/-
Total	Rs.2,00,975/-	Rs.4,14,500/-

10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.2,00,975/- is enhanced to a sum of Rs.4,14,500/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

klt
To

1. The Motor Accident Claims Tribunal
Principal District Judge, Perambalur.
2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1cc to Mr.S.Kamadevan, Advocate, S.R.No.17069
+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.18432

CMA.No.1178 of 2011

CA(CO)
NR/12/12/2019