IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.1913 of 2010

Suresh Kumar ...Appellant/Petitioner

vs.

1.N.Krishnan
2.National Insurance Company Limited,
No.751, Anna Salai,
Chennai 600 006. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 24.04.2009 passed in MCOP.No.2464 of 2002 on the file of the Motor Accident Claims Tribunal / VI Court of Small Causes, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : R1 - No appearance
R2 - Mr.N.Vijayaraghavan

J U D G M E N T

The appellant is the claimant in MCOP.No.2464 of 2002 on the file of the Motor Accident Claims Tribunal / VI Court of Small Causes, Chennai. He filed the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 and Rule 3 of MACT Rules seeking compensation of Rs.2,50,000/- for the injuries sustained by him in a road accident on 13.03.2001.

2. The case of the claimant in nutshell is as follows:
On 13.03.2001, the claimant was walking on the left side of North Usman road pushing his two wheeler TVS 50 bearing Registration No. TN 22 J 9095 and at about 10.30 pm, a speeding lorry bearing Registration No. TNI 8009, hit him, as a result of which, he sustained injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration No. TNI 8009 was the cause of the accident and that since the said lorry was insured with the National Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation.

3. The owner of the lorry remained absent before the Tribunal and therefore he was set exparte. The second respondent / National Insurance Company contested the claim petition on all the grounds available to the insured. The

learned VI Judge, Court of Small Causes / Motor Accident Claims Tribunal, Chennai after analysing the evidence on record, awarded a compensation of Rs.70,850/- together with interest at the rate of 9.5% per annum to the claimant. Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.A.Shanmugaraj, learned counsel appearing for the appellant / claimant contended that the claimant sustained Grade I open communited fracture of left tibia and fibular bone and he was hospitalised for three days in the Best Hospital Private Limited, Chennai. He specifically contended that the injured was aged about 18 years on the date of the accident and the Tribunal without considering the age of the injured, awarded a very meagre sum of Rs.70,850/- and the same is liable to be enhanced.

5. Per contra, Mr.N.Vijayaraghavan, learned counsel appearing for the second respondent contended that the Tribunal had awarded a just compensation to the claimant after considering all the aspects of the case and therefore, the same need not be disturbed at this stage.

6. It is pertinent to point out that the claimant has filed the claim petition under Section 163(A) of the Motor Vehicles Act, 1988 and Rule 3 of MACT. The claimant was working as an Office boy in VICOMCO, earning a sum of Rs.1,500/- per month. Ex.P1 / Discharge Summary shows that he was admitted in the hospital on 13.03.2001 and discharged on 15.03.2001 and suffered fracture of left tibia and fibular bone. In the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 it has been held thus:

> "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.

10.Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

Doctor, V.P.Sivaraman (PW.3) has assessed the partial permanent disability as 45% and the same cannot be considered for the whole body disability and therefore, 20% is taken up for calculating loss of earning capacity. Since the age of the injured is 18 years, the 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. In the absence of any evidence to prove the actual income of the injured, a sum of Rs.1,500/- is fixed as notional monthly income of the injured. The loss of earning capacity is calculated as follows:

Calculation

= Rs.1,500/- x 12 x 18 x 20/100

= Rs.64,800/-

7. The award passed by this Court under various heads is extracted hereunder:

S.No.	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.64,800/-
2.	Pain and sufferings	Rs.5,000/-
3.	Medical bills	Rs.5,821/-
Total		Rs.75,621/-

8.In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.70,850/- to Rs.75,621/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The second respondent / National Insurance Company Limited is directed to deposit the enhanced compensation amount i.e., Rs.75,621/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.2464 of 2002 on the file of the Motor Accident Claims Tribunal / VI Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The VI Judge,
The Motor Accidents Claims Tribunal,
Chennai.

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

+1cc to Mr.N.Vijayaraghavan, Advocate, S.R.No. 93478
+1cc to Mr.A.Shanmugaraj, Advocate, S.R.No.93284

CMA.No.1913 of 2010

SSD(CO)
GN(16/03/2020)