

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKA RAMAN

C.M.A.No.1352 of 2011

Mahendran

...Appellant/Petitioner

Vs.

1. K.Kulandaivel

2. United India Insurance Company Ltd.,
No.38, Anna Salai,
Chennai - 2.

... Respondents/Respondents

(R1 set exparte before the Tribunal)

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 01.03.2011, in M.C.O.P.No. 611 of 2007 on the file of the Motor Accidents Claims Tribunal (In the court of V Small Causes), Chennai.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.P.Sankara Narayanan for R2.

JUDGMENT

The appellant is the claimant in M.C.O.P.No. 611 of 2007, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai. He has filed the above claim petition under Section 166(1)(a) of the Motor Vehicles Act, 1988 seeking compensation of Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 18.04.2004.

2. The brief case of the appellant/claimant is as follows:

On 18.04.2004, at about 02.00 hours, while the appellant/claimant was travelling in the State Express Transport bus bearing Registration No. TN 32 N 1615 in between Ayyur Agaram to Chintamani, a lorry bearing Registration No. TN 28 C 5883 owned by the first respondent and insured with the second respondent vide policy No. 170900/31/03/01268 valid from 05.06.2003 to

04.06.2004 being driven by its driver in a rash and negligent manner, scratched the bus in which the appellant/claimant travelled, as a result of which, the passengers sitting on the window seat of the bus sustained injuries. According to the appellant/claimant, the rash and negligent driving of the driver of the said lorry was the cause of the accident, and therefore, both the first and second respondents, are jointly and severally liable to pay compensation to him.

3. After going through the oral and documentary evidence adduced, the Tribunal held that the appellant/claimant has sustained injuries in the accident that was caused due to the rash and negligent driving of the driver of the lorry bearing Registration No. TN 28 C 5883, and the finding of the Tribunal, to that effect, is not in dispute. The learned Tribunal awarded compensation of Rs.4,05,200/- together with interest at the rate of 7.5% per annum to the appellant/claimant. Not 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. The learned counsel appearing for the appellant/claimant contended that at the time of the accident, the appellant/claimant was 21 years old and he was doing centring job, earning a sum of Rs.150/- per day and the Tribunal has wrongly fixed the income of appellant/claimant as Rs.3,000/-. The learned counsel relied on the discharge summary (Exs. P4 & P5), case sheet (Ex.P6), and photographs with negatives (Ex.P7) and submitted that the appellant/claimant underwent surgery three times and as per the medical evidence of Dr.J.R.R.Thiagarajan (PW3). It is also evident from the disability certificate (Ex.P10), that, the appellant/claimant's right arm was malunited and there is loss of forearm muscles, and hence, he contended that the compensation awarded under the conventional heads is very meagre. He would further contend that 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 and 40% should be added towards the future prospects of the appellant/claimant as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601.

5. The learned counsel appearing for the second respondent contended that the Tribunal is generous enough in accepting the contention of the appellant/claimant that the disability suffered by him is a 'functional disability'. He would contend that the disability suffered by the appellant/claimant is only a 'permanent disability', since, the appellant/claimant suffered injury only in his right arm and even if it is to be treated as

'functional disability', it has to be assessed only as 30%.

6. Heard both sides and perused the materials available on records.

7. With regard to the injuries suffered by the appellant/claimant, Dr.J.R.R.Thiagarajan (PW3) was examined. The discharge summary (Exs. P4 & P5), case sheet (Ex.P6), and disability certificate (Ex.P6) issued by Dr.J.R.R.Thiagarajan (PW3) were marked on the appellant/claimant's side.

8. After perusal of Exs. P4, P5 and P6 issued by the Government Hospital, Chennai it could be seen that the appellant/ claimant was admitted in the hospital on 18.04.2004 and discharged on 07.06.2004, and it could also be seen that he has sustained compound fracture of both bones of his right forearm. It is further noticed that he was operated on 18.04.2004 and ORIF with rush nail and external fixation was done. It is evident from Ex.P5, that the appellant/claimant was again treated as an inpatient from 24.11.2004 to 10.12.2004 in the very same hospital for cross union of fracture of radius and had undergone surgery on 06.12.2004 and open ostoclasis and internal fixation of radius was done. It appears from Ex.P6, the case sheet, that the appellant/claimant had once again gone back to Government Hospital on 19.08.2004 wherein X-ray was taken for the right forearm and he had gone frequently to the hospital till 24.11.2004. It is noticed from Ex.P7, the photographs with CD that the appellant/claimant has suffered some serious sort of injuries in his right hand. Ex.P7 is itself self explaining with regard to the nature of the injuries sustained by the appellant/claimant.

9. In connection with the injuries sustained by the appellant/ claimant they have examined Dr.J.R.R.Thiagarajan (PW3), who had issued disability certificate (Ex.P10), wherein, it has been mentioned that the radius and ulna bone in the right arm are malunited and there is loss of forearm muscles. The flexion of the right elbow is 80 degrees only and it is seen also from disability certificate (Ex.P10) that the appellant/claimant cannot extend his wrist fully due to which he cannot use his fingers. The thumb of the appellant/claimant is adducted and therefore, he cannot eat, work or sign with his right hand. It is categorically stated in Ex.P10 that the right hand of the appellant/claimant is totally functionless. In view of all these, Dr.J.R.R.Thiagarajan (PW3) has assessed the disability of the appellant/claimant at 70%. It is supported by Ex.P11, the X-ray film.

10. In view of the categorical evidence of PW3, it could be concluded that the right arm of the appellant/claimant is

functionless, due to which, the appellant/claimant cannot rotate his wrist and fold his fingers in the right hand. It could be said that the whole body disability of the appellant/claimant cannot and shall not be less than 60%. Whether it is 'permanent disability' or 'functional disability' has to be assessed with the difficulties caused to the appellant/claimant in carrying out his avocation. In the present case, the appellant/claimant was doing centring works which indicates that it involves lot of physical activities and it is needless to say that the arms of the appellant/claimant are the vital components for carrying out his avocation. In the instant case, the right arm of the appellant/claimant has become functionless according to PW3, the doctor. It then could be said that the 'functional disability' of the appellant/claimant would be equal to the whole body disability sustained by the appellant/claimant. In view of the same, the functional disability of the appellant/claimant is assessed and fixed at 60% , for which, he has to be compensated.

11. Thus, I find that the reasons assigned by the Tribunal for treating disability sustained by the appellant/claimant as 'functional disability' are well founded and well merited. It does not warrant any interference and accordingly, the same is hereby confirmed.

12. Quantum of Compensation: As rightly pointed out by the learned counsel appearing for the appellant, 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. Since, the age of the appellant/claimant was 21 years on the date of the accident, 40% should be added towards the future prospects of the deceased as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601. Admittedly, on the date of the accident, the claimant was doing centring job in the construction works. Taking into consideration, the year of the accident, this Court finds that a sum of Rs.150/- per day claimed as income by the appellant/claimant is reasonable. Therefore, the notional income of the appellant/claimant is fixed at Rs.4,500/- per month. As discussed above, the disability of the appellant/claimant is fixed at 60%.

Calculation:

Notional income	= Rs.4,500/-
40% Future Prospects	= Rs.1,800/-
Total = Rs. 4,500 /- + Rs. 1,800/-	= Rs.6,300/-

Loss of earning capacity

$$= \text{Rs.}6,300/- \times 12 \times 18 \times 60/100$$

$$= \text{Rs.}8,16,480/-$$

Loss of income is calculated for the period of three months, which would come to Rs.13,500/- (Rs.4,500/- x 3). Taking into consideration, the appellant/claimant was admitted as inpatient for 68 days, a sum of Rs.10,000/- is awarded towards 'attender's charges'. All the other heads, awarded by the Tribunal are found to be just and reasonable and the same are hereby confirmed.

13. Accordingly, the award of the Tribunal in M.C.O.P.No. 611 of 2007 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of earning capacity	Rs.3,67,200/-	Rs.8,16,480 /-
2.	Medical expenses	Rs.3,000/-	Rs.3,000/-
3.	Extra nourishment	Rs.4,000 /-	Rs. 4,000 /-
4.	Transportation	Rs.1,000/-	Rs.1,000/-
5.	Damages to clothes and articles	Rs.1,000/-	Rs.1,000/-
6.	Loss of Income	Rs.9,000/-	Rs.13,500/-
7.	Pain and sufferings	Rs.20,000/-	Rs.20,000/-
8.	Attender's charges	NIL	Rs.10,000/-
	Total	Rs.4,05,200/-	Rs.8,68,980/-

The compensation awarded by the Tribunal is enhanced from Rs.4,05,200 /- to Rs.8,68,980 /- which shall carry interest at the rate of 7.5% per annum.

14. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.4,05,200/- to Rs.8,68,980/-.

(iii) The appellant/claimant is directed to pay the Court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The second respondent herein - United India Insurance Company Limited is directed to deposit the entire enhanced compensation of Rs.8,68,980/- (if not 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 M.C.O.P.No. 611 of 2007, dated 01.03.2011, on the file of the Motor Accidents Claims Tribunal, V Small Causes Court, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant/claimant is permitted to withdraw the entire amount after following the due process of law.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

mbi

To

The Motor Accidents Claims Tribunal,
V Small Causes Court,
Chennai.

+1cc to M/S.M.Malar, Advocate, S.R.No.16561

+1cc to Mr.P.Sankara Narayanan, Advocate, S.R.No.16677

C.M.A.No.1352 of 2011

SJ(CO)
CS/11/07/2019

सत्यमेव जयते

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