

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1292 of 2013

Sathya

... Appellant/Claimant

Vs

The Superintending Engineer,
Public Works Department,
Electrical Division,
Salem - 7.

... Respondent/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Judgment and decree dated 29.03.2012 made in MCOP.No.610 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.

For Appellant : Mr.P.Jagadeesan

For Respondent : Mr.S.Jaganathan,
Government Advocate (Civil Side)

J U D G M E N T

This Civil Miscellaneous Appeal has been filed for enhancement of the compensation against the order dated 29.03.2012 made in MCOP.No.610 of 2009 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Salem.

2. The appellant is the claimant in M.C.O.P.No.610 of 2009, on the file of Motor Accidents Claims Tribunal, II Additional Sub Court, Salem. She filed the said claim petition, claiming a sum of Rs.6,80,000/- as compensation for the injuries sustained by her.

3. It is a case of injury. In this case, the accident happened on 05.08.2009 at about 2:15 p.m., when the petitioner was standing on the extreme left side of the Omalur main road, near Anna Park and she was about to cross the road from north to south, at that time a jeep belonging to the respondent Department bearing Registration No.TN-30-G-0174 driven by its driver rashly and negligently in high speed without any control

from the west direction dashed against the petitioner and the petitioner was thrown away and sustained multiple injuries all over the body.

4. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the Jeep bearing Registration No.TN 30-G-0174 and the respondent is liable to pay compensation to the claimant. The Tribunal awarded a sum of Rs.1,77,404/- as compensation to the claimant and directed the respondent to pay the same.

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

6. The learned counsel appearing for the appellant/claimant would contend that the claimant sustained fracture of right leg femur bone and multiple injuries all over the body and was admitted in Government Hospital on 05.08.2009 and thereafter she was discharged on 08.08.2009 and again she was admitted in Chellappa Hospital on 08.08.2009 and discharged on 21.08.2009 where she underwent surgery with implant due to which appellant is suffering from pain and stiffness over right hip and her right hip movements are restricted. Further the petitioner has got difficulty in walking fast, climbing steps, sitting cross legged or squatting and do her work. Dr.A.D.Sampath (PW5) had assessed the permanent disability suffered by the claimant as 38%. The tribunal has awarded a very meagre amount of Rs.1,77,404/- as compensation to the claimant. It is contended that the Tribunal failed to apply multiplier method and further stated that the claimant was working as a cooly in a Silver Manufacturing works and on account of the accident she is not able to do her work and apart from that facing difficulty in climbing steps and walking.

7. Per contra, the learned counsel appearing for the respondent/Public Works Department would contend that the Tribunal has awarded a just compensation of Rs.1,77,404/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

8. Loss of earning capacity due to disability:- (a) Taking into consideration the injuries sustained by the appellant and her nature of work, it is just and necessary to fix appropriate notional income. The Hon'ble Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident during the year 2008. In the present case, the petitioner being a

coolie met with an accident during the year 2009, hence, it would be appropriate to fix a sum of Rs.5,000/- as notional income. The Supreme Court in the above cited case fixed Rs.6,500/- for a vegetable vendor and therefore definitely for a coolie, this Court is inclined to fix the notional income atleast a sum of Rs.5,000/-. The Tribunal has failed to add any amount towards future prospects. The appellant/injured was aged 20 years at the time of accident. Hence, she is entitled to 40% of the notional income as future prospects as held by the Supreme Court of India in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12. In the present case, the Tribunal should have applied the multiplier method as held by the Hon'ble Apex Court in the case of Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The injured being a lady, suffered injuries on the hip and also implantation was done. She was 20 years old at the time of accident, therefore it would be appropriate to apply 18 multiplier to determine the loss of income. It is relevant to note that the appellant has also undergone implantation and took treatment in two hospitals initially in Government hospital, Salem and took treatment for four days and thereafter for 13 days at Chellappa hospital, Salem.

(b) The Tribunal has fixed the permanent disability as 38% based on the assessment by the Dr.A.D.Sampath who was examined as PW5 and he has confirmed the disability as 38%. However for the purpose of arriving at just compensation, this Court is inclined to take functional disability of the Appellant as 20%. Accordingly, the compensation for loss of earning capacity due to the functional disability suffered by the appellant is calculated as under:-

Monthly income = 5,000/-
Future prospects = 40%
Multiplier - 18
 $5000 \times 12 + 40\% \times 18 - 20\%$ (towards disability)
 $5000 \times 12 = 60,000/-$
 $60,000/- + 40\% (24000) = 84,000/-$
 $84,000/- \times 18 = 15,12,000/-$
 $15,12,000 - 20\% = 3,02,400/-$

Thus, this court deems it fit to award Rs.3,02,400/- towards loss of earning capacity for the functional permanent disability suffered by the appellant.

9. Since this Court has fixed the compensation by applying the multiplier method, a separate compensation awarded by the Tribunal as Rs.76,000/- towards disability, is set aside.

10. Pain and Suffering:-

The Tribunal has awarded a sum of Rs.50,000/- towards pain and suffering and the same is confirmed.

11. Extra Nourishment:-

The Tribunal has awarded a sum of Rs.2,500/- under this head, since the said amount is too low the same is enhanced to Rs.5,500/-

12. Transportation:-

The Tribunal has awarded a sum of Rs.2,500/- under this head and the same is confirmed.

13. Medical Expenses:-

The Tribunal has awarded a sum of Rs.84,404/- under this head and the same is confirmed.

14. Hence the total compensation payable to the claimant is as hereunder:-

S.No	Head	Amount granted
1	Loss of income due to functional permanent disability at 20%	Rs.3,02,400/-
2	Transportation	Rs.2,500/-
3	Extra nourishment	Rs.5,500/-
4	Medical expenses	Rs.84,404/-
5	Pain and sufferings	Rs.50,000/-
Total		Rs.4,44,804/-

15. The respondent/Public Works Department is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

16. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,77,404/- is enhanced to Rs.4,44,804/-. No costs. Consequently, connected miscellaneous petition is also closed, if any.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Motor Accidents Claims Tribunal,
II Additional Sub Court, Salem.
2. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+1cc to Mr.P.Jagadeesan, Advocate, S.R.No. 17407

+1cc to the Special Government Pleader(CS), S.R.No.17384

C.M.A.No.1292 of 2013

RSK(CO)
GN(10/06/2019)

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