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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.133 of 2013

Nagendran

... Appellant/Petitioner

Vs

1.J.Gokul

(R-1 Already set exparte in Lower Court
R-1 dispense with notice)

2.The New India Ass.Co.Ltd.,

Motor III Party Claims Office,
No.45, Moore Street,
Chennai-1

... Respondents/Respondent

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 17.12.2007 made in MCOP.No. 722 of 2005, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge, FTC IV, Poonamallee.

For Appellant : Ms.Jayanthi Baskar

For Respondents: Mr.C. Ramesh Babu for R2

: R1 - Exparte.

J U D G M E N T

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal cum Additional District and Sessions Judge, FTC IV, Poonamallee, dated 17.12.2007 in MCOP.No. 722 of 2005, the claimant has come forward with the present Appeal seeking enhancement of the compensation.

2. On 14.06.2005 at about 20 :30 hours, when the claimant was standing on the southern side of the Velachery main road, a motor cycle bearing Registration No. TN 10 D 2774, which was driven by its driver in a rash and negligent manner dashed against the claimant and thus caused the accident. In the said



accident, the claimant sustained grievous injuries. Hence, the claimant filed a claim petition against both the owner of the vehicle and insurer to pay a compensation of Rs.5,00,000/- jointly or severally.

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Before the Tribunal, the appellant/claimant examined himself as PW1 and Dr.Sai Chandran was examined as PW2 and marked 8 exhibits, viz., . Ex.P1 Copy of complaint, Ex.P2 dated 22.07.2005 Xerox copy of FIR, Ex.P3 dated 12.07.2005 Xerox copy of discharge summary, Ex.P4 dated 25.08.2005 Discharge summary, Ex.P5 Medical bills, Ex.P6 Photos and negatives, Ex.P7 dated 14.11.2007 Disability certificate and Ex.P.8 X-ray. On the side of the second respondent, neither any witness was examined nor any document was marked.

4. The Tribunal, on appreciation of both oral and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent driving by the driver of the motor cycle and held that both the respondents 1 and 2 are jointly and severally liable to pay a sum of Rs.1,65,000/- with interest at 7.5% p.a., as compensation to the appellant.

5. The compensation awarded by the Tribunal under various heads are as follows:-

Disability	:	Rs.50,000/-
Pain and suffering	:	Rs.20,000/-
Medical bills	:	Rs.55,000/-
Transport	:	Rs. 1,000/-
Extra nourishment	:	Rs. 1,000/-
Loss of earning	:	Rs.18,000/-
Mental agony	:	Rs.20,000/-

Rs.1,65,000/-		

6. The learned counsel appearing for the appellant/claimant would contend that the claimant sustained fracture in the thigh bone and as soon as the accident occurred, he was immediately taken to Royapettah Government Hospital and was admitted, where, he was treated as inpatient for one month in respect of treatment towards insertion of plate and further continued his treatment at Grace Hospital, wherein also, he was treated as inpatient for 40 days. Ex.P.3 is the discharge summary, in which, it is stated as follows:-

"Diagnosis : Supracandylar fracture
right femur comminuted fracture M/3 tibia.

Treatment : DCS with bone grafting done
and further stated that plate was inserted in
his right leg and left leg was treated with
POP bandage. Thereafter the claimant took



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treatment in Grace Multy Speciality centre as inpatient for 40 days. Ex.P.4 is the discharge summary which reads as follows:-

"Date of surgery :

1. Debridement and currtage on 17th July 2005.

2. Implant Exit. Ilizarov application on 11th August 2005.

Date of discharge: 25.08.2005

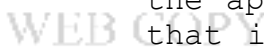
Diagnosis: RTA Type C3 supracondylar fracture right femur DCS done out side hospital deep infection, unstable fixtion.

Closed fracture both bone M/3 Leg communitted with AK cast application.

Bone graft site infection right iliac region. Grade 1 Bed sore".

7. The learned counsel for the appellant/claimant further submitted that even thereafter, the claimant took treatment as outpatient. Dr.Sai Chandran (PW2) had assessed the disability suffered by the claimant as 60%. However, the Tribunal has awarded only a sum of Rs.50,000/- towards disability, which is meagre and awarded compensation of Rs.1,65,000/- as compensation to the claimant. It is further contended that the claimant was running a fast food shop at Velachery and was earning Rs.350/- per day and due to the fracture sustained by him at the right thigh, he is unable to sit or walk properly and he could not run the shop. Further, the learned counsel for the appellant would state that the Doctor examined the claimant 2 years after the accident and had found that the claimant was fitted with plates and screws in his right leg but the same were removed, because, he developed pus in the injured area and now bones got mal united and the claimant is able to move his right knee only upto 20 degree. Therefore, the learned counsel contended that the disability sustained by the appellant is permanent disability, and hence, the compensation awarded by the Tribunal towards disability requires enhancement. He further contended that the Tribunal failed to apply multiplier method while determining the compensation under the head "Loss of Income". Therefore, the learned counsel seeks for appropriate enhancement of the award passed by the Tribunal

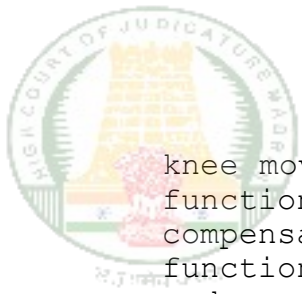
8. Per contra, the learned counsel appearing for the second respondent strongly disputed that the disability sustained by the appellant/claimant is permanent disability, and contended it is only a permanent partial disability. Therefore, the Tribunal has awarded a just compensation of Rs.1,65,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.



10. Taking into consideration the injuries sustained by the appellant and his nature of work, this Court is of the view that it would be appropriate to fix the notional income of the injured to determine the just and fair compensation. In fact, the Hon'ble Supreme Court in the case of Syed Sadiq Vs. United India Insurance Company, reported in 2014(1) TNMAC 459, fixed the notional income at Rs.6,500/-p.m. for a vegetable vendor, who sustained injuries in the accident during the year 2008. In the present case, since the claimant is a Proprietor of a Fast Food Shop and was earning Rs.350/- per day and due to the unfortunate accident, he sustained permanent partial disability, and finding difficult to work with the same force as he used to do before, it would be appropriate to fix a sum of Rs.6,000/- as notional income.

12. As rightly submitted by the learned counsel for the claimant, the Tribunal ought to have applied the multiplier method while determining the compensation under the head "Loss of Income". As per the ratio laid down by the Hon'ble Supreme Court in the case of Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, since the claimant was 51 years old at the time of accident, it would be appropriate to apply "11" multiplier to determine the loss of income.

13. Similarly, the compensation awarded by the Tribunal towards disability sustained by the claimant is meager. It is pertinent to mention that the appellant was admitted at Royapettah Government Hospital for one month, where, his right thigh was operated and plates and screws were fixed and thereafter, he was admitted at Grace Multi Speciality Centre, where, he was again treated as inpatient for 40 days. Though the Tribunal based on the disability certificate, Ex.P.7, issued by P.W.2/Doctor, who examined the disability of the claimant as 60%, awarded compensation of Rs.50,000/- towards disability, this Court taking into consideration the nature of work, and the injuries sustained by the claimant, and the fact that his right



knee movement is restricted to 20 degree, is inclined to fix the functional disability of the appellant as 40%. Accordingly, the compensation towards loss of earning capacity due to the functional disability suffered by the appellant is calculated as under:-

Monthly income = 6,000/-

Future prospects = 10%

Multiplier - 11

$6000 \times 12 + 10\% \times 11 \times 40\%$ (towards disability)

72,000/- + 10% (7200) = Rs.79200/-

79200/- x 11 = Rs.8,71,200/-

8,71,200 x 40% = Rs.3,48,480/-

14. Thus, this Court inclined to award a sum of Rs.3,48,480/- towards loss of earning, for the functional disability suffered by the appellant and the same is round off to Rs.3,50,000/-. Since this Court has fixed the compensation by applying proper multiplier method, the compensation awarded by the Tribunal towards disability without application of multiplier method is set aside. This Court further, taking into consideration that the claimant underwent treatment for a quite long period, viz., for six months, during which period, fixation and removal of plates and screws in his right leg took place, on account of which, he was unable to work, it would be appropriate to fix a sum of Rs.36,000/- towards loss of income during treatment.

15. Similarly, the compensation awarded by the Tribunal under the head Pain and Suffering at Rs.20,000/- is too low and the same is modified and enhanced to Rs.40,000/-. So far as compensation awarded under the heads "Extra Nourishment", and "Transportation", the Tribunal has awarded Rs.1,000/- under each heads, and the same are enhanced to Rs.10,000/- each. Insofar as the award passed by the Tribunal under the heads of "Medical Expenses" and "Mental Agony" are concerned, the same stands confirmed.

16. Hence, the total compensation payable to the claimant is modified and the break up details of which is mentioned below:-

S.No	Head	Amount granted
1	Transportation	Rs.10,000/-
2	Extra nourishment	Rs.10,000/-
4	Medical expenses	Rs.55,000/-
5	Pain and sufferings	Rs.40,000/-
6	Mental agony	Rs.20,000/-



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S.No	Head	Amount granted
7	Loss of income due to functional permanent disability at 40%	Rs.3,50,000/-
8	Loss of earning during treatment months	Rs.36,000/-
Total		Rs.5,21,000/-

17. The 2nd respondent/New India Assurance Co., Ltd 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.

18. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,65,000/- is enhanced to Rs. 5,21,000/-. No costs. Consequently connected miscellaneous petition is also closed, if any.

Sd/-

Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

dpq

To

The Additional District and Sessions Court,
Motor Accidents Claims Tribunal,
FTC IV, Poonamallee.

+1cc to Mr.J.Mahalingam, Advocate, S.R.No. 15094

+1cc to Mr.C.Rameshbabu, Advocate, S.R.No. 14312

+1cc to Mr.J.Mahalingam, Advocate, S.R.No. 15094 (03/12/2019)

C.M.A.No.133 of 2013

BS (CO)
GN (04/11/2019)