

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 25.10.2018

Delivered on : 28.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

C.M.A.No.208 of 2015

Subramanian

Appellant

Vs

1.Mukund B.Desaik

2.National Insurance Company Limited,
1248/A, Shivaji Nagar,
Asmani Plaza, Goodluck Chowk,
Decan GYM, Pune, Maharastra.

Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, for enhancement of the Compensation amount awarded in the Judgment and Decree dated 10.11.2009 made in MCOP.No.574 of 2005 on the file of Motor Accident Claims Tribunal / Fast Track Court V, Coimbatore at Tiruppur.

For Appellant : Mr.MA.P.Thangavel

For Respondents: Mr.S.Vadivel (for R2)

No Appearance (for R1)

JUDGMENT

Aggrieved by the award dated 10.11.2009 passed by the Tribunal in M.C.O.P.No.574 of 2005, the appellant/claimant have preferred this Civil Miscellaneous Appeal.

2.It is the case of grievous injury suffered by the injured claimant, who was working as Masson and earned Rs.5,000/- pm and he was only 24 years and met with accident on 23.03.2005. Upon consideration of the oral and documentary evidence, the Tribunal held that the accident happened due to rash and negligent driving of the first respondent, who was happen to driver cum owner of vehicle, and having insured with the second respondent insurance company, the Tribunal held that the respondents 1 and

2 are jointly and severally liable to pay the compensation. Based on the pleadings and evidences the learned tribunal granted compensation under following heads:-

Sl. No.	Head	Amount awarded by the Tribunal
1.	Loss of income (Rs.3,000 X 12 X 17 X 50/100)	Rs.3,06,000/-
2.	Medical Bills	Rs.1,56,110/-
3.	Pain and Suffering	Rs. 25,000/-
4.	Partial Amputation of penis	Rs.2,00,000/-
5.	Extra Nourishment	Rs. 3,000/-
6.	Transport	Rs. 2,500/-
7.	Loss of Income for period of Treatment	Rs. 10,000/-
	Total	Rs.7,04,610/-

3.Since negligence and liability are not disputed either of parties and only Quantum of compensation arrived by the tribunal is inadequate, hence this court not traversed with regard to negligence and Liability fixed by the tribunal are confirmed

4.The learned counsel for the appellant submitted that as per Exs.P2, P3, and P6 to P10, and evidence of PW-2 there was head injuries, multiple fracture in hip and right Leg thigh and Doctor has categorically deposed that due to the impact of the injuries there was restricted movement of both hip joint and right knee and partially amputated penis, fracture and there is mal Union of right side hip and acetabulum, femur fractures and the injured underwent seven surgery fixed steel and plate with screws due to the injuries his right thigh shortening right hip and CT Scan taken under Exs.P8, P9 and further it is argued that due to the impact of the injuries the injured could not able to sit and stand more than 5 minutes and he cannot walk more than half kilometre and there is a swelling over the right thigh elbow hip and joint. Though the tribunal rightly applied multiplier method but however the income taken is very low and future prospects of 40% not considered. Hence, appellant injured pray for enhancement of compensation with regard loss of earning capacity and other conventional heads.

5.The learned counsel for the appellant further relying the evidence of the PW1 and PW3 Doctor, and argued that, it is rightly apply multiple method without adding 40% towards future prospects as per ruling of Prannay Sethi Constitution judgment and taking monthly income of Rs.3,000/- instead of granting Rs.5,000, since due to the impact of the injuries suffered by

the appellant/claimant was not able to attend the masan works, hence pray for enhancement of compensation by applying multiplier method with right multiplier of 18 instead of 17 and taking income of Rs.5,000/- with 40% future prospects.

6.Per contra, the learned counsel for the Insurance Company vehemently contented that the Tribunal by appreciating the entire evidences and granted compensation by applying multiplier method and other heads also awarded in reasonably, hence he pray for dismissal of the appeal.

7.I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

8.On appreciating the entire evidence of the appellant though he suffered injuries in the Head and Hip Joint and mal union and shorting of hip, partial amputation of Penis however tribunal taken only 50% partial disability and remaining 32% taken as functional disability is not correct without any basis, hence this Court accepts the arguments of the counsel for the appellant.

9.It is relevant to point out that due to the impact of the injuries injured have great difficulty in getting job that too manual worker/mason and to lead the life as like normal person and the accident happen during 2005, Through the Tribunal rightly adopted multiplier method and failed to fix proper income. Hence this court taken income of Rs.4,500/- as per Sri Ramachandrappa judgment reported in 2011 (2) TNMAC 190 (SC) and applying proper multiplicand of 18, since the appellant aged 24 years and adding 40% towards future prospects and taken for whole body permanent disability of 82% as assessed by PW2 Doctor. Thus, the future loss of earning capacity worked out as $\text{Rs.4,500/-} \times \text{Rs.2250} \times 12 \times 18 \times 82/100 = \text{Rs.11,95,000/-}$ instead of tribunal granted a sum of Rs.3,06,000/- .

10.The Counsel for appellant draw the attention of this court that as per the Ex. P 3 & 10 the appellant spent a sum of Rs.1,56,110/- towards medical expenses and the same is confirmed.

11.That the tribunal failed to consider that as per the evidence of PW1 he was inpatient for 50 days in the PSG Hospital at Coimbatore indifferent spells and underwent several surgeries and thereafter taking treatment in continues which was clearly proved through the medical records, therefore this court considering the pain and agony suffered by the injured claimant, it is deem fit to enhancing as a sum of Rs. 25,000/-to a sum of Rs. 50,000/- granted by tribunal under the head of pain and suffering and mental agony.

12.As per the medical records it revealed that the injured taking treatment in the different spell at PSG Hospital at Coimbatore and the Tribunal failed to reasonable amount under transport to hospitals, considering the same this Court awarded a sum of Rs.20,000/-. As rightly pointed by the Learned counsel for the appellant that considering the prolong treatments and nature of injuries the amount of Rs.3,000/- awarded under head of extra nourishment is very low and same has been enhanced to Rs.25,000/- and with regard to damage of cloths and articles the sum of Rs.5,000/- has been awarded.

13.The Learned counsel for the appellant has placed his arguments that as per medical records and evidence of the PW1, there was a partial amputation of penis and he is married person and as per evidence of PW-1 he specifically stated that he has issues because of partial amputation penis. hence disfigurement in the body and hip and there was a deep wound in the right thigh in view of the same the Injured claimant could not walk in properly, taking paramount consideration it would be appropriate to enhance award of Rs.2,00,000/- to Rs.4,00,000/- towards loss of amputation of penis, loss of marriage life and loss of amenities and the loss of income of Rs.10,000/- awarded by tribunal is just reasonable and confirmed. Thus, award tribunal modified and enhanced as follows:-

Sl. No.	Head	Amount awarded by the Tribunal
1.	Loss of future earning capacity (Rs.4,500 X Rs.2250 X 12 X 18 X 82/100)	Rs.11,95,560/-
2.	Pain and Suffering & Mental Agony	Rs. 50,000/-
3.	Loss of Partial Amputation of penis and Loss of Marriage life and loss of amenities	Rs.4,00,000/-
4.	Extra Nourishment	Rs.25,000/-
5.	Medical Bills as per Exs.P3 & P10	Rs.1,56,110/-
6.	Damage towards Cloth and articles	Rs.5000/-
7.	Transport to Hospitals	Rs. 20,000/-
8.	Loss of Income during the treatments	Rs.10,000/-
	Total	18,61,670/-

14.As stated supra, at the time of accident, the offending vehicle was insured with the Second respondent insurance company. Therefore, the Second respondent insurance company is liable to pay compensation of Rs.18,61,670/- with interest at the rate of 7.5% per annum.

15.In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.7,04,610/- awarded by the Tribunal is enhanced to Rs.18,61,670/- payable with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

16.The appellant/claimant is directed to pay Court fee for the enhancement of compensation amount as awarded by this Court, if any. On payment of Court fee, the decree should be made ready. On such deposit, the appellant/claimant is permitted to withdraw enhanced award amount with accrued interest on filing application before the Tribunal, less amount if already withdrawn.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vs
To

1.The Motor Accident Claims Tribunal /
Fast Track Court V, Coimbatore at Tiruppur.

+1cc to Mr.Ma.P.Thangavel, Advocate, SR.19422
+1cc to Mr.S.Vadivel, Advocate, SR.18509

C.M.A.No.208 of 2015

RR(CO)
CB(04/10/2019)

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