

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 04.03.2019

Judgment Pronounced on : 15.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3114 of 2011
and
MP.Nos.1,2 & 3 of 2014

Premkumar ... Appellant/Petitioner
Versus

1.Vinoth Nathinanal (Died)

2.The United India Insurance Co., Ltd.,
Motor Third Party Claims Office,
katpadi, Vellore.

3.Esther Rani

4.Sampath ... Respondents/Respondents

[R3 & R4 impleaded as LR's of the deceased R1
vide order of this Court dated 15.07.2019 in
CMP.Nos.1,2 & 3 of 2014 in CMA.No. 3114/2011

Prayer : Civil Miscellaneous Appeal filed under Section 173 of
the Motor Vehicles Act, 1988, against the Common Judgment and
Decree dated 05.07.2011 made in MCOP.No.301 of 2005 on the file
of the Motor Accident Claims Tribunal (Chief Judicial
Magistrate, Vellore).

For Appellant : Mr.V.Parivallal

For Respondents: Mr.C.R.Krishnamurthy (for R2)

: Ex-parte before the Tribunal - (R1-died)
(Steps taken)

JUDGMENT

The claimant is the appellant herein, who preferred this
appeal for enhancement of compensation.

2.The brief facts of the case of the claimant in the
claim petition are that on 09.10.2005, at about 8.00 pm., at
Katpadi Madras Main Road, at old Katpadi, opposite to
Janakiraman Complex, when the claimant was proceeding as a
rider in Bicycle from West to East direction near by the mud
road, a TVS Victor bearing Registration No.TN-23-J-4122

belonging to the first respondent/owner, which was insured with the second respondent/Insurance company, came in the same direction and hit against the claimant's bicycle. In the said impact, the claimant was thrown out together with the bicycle and he sustained instantaneous multiple grievous injuries. Therefore, the claimant filed the claim petition in MCOP.No.301 of 2005, claiming a sum of Rs.10,00,000/- as compensation.

3.Before the Tribunal, on the side of the claimant, four witnesses were examined as PWs.1 to 4 and Exs.P1 to P13 were marked. On the respondents side, two witnesses were examined as RW.1 & RW.2 and one document was marked as Ex.R1. Upon hearing both sides and perusing the records, the Tribunal has awarded a sum of Rs.1,95,000/- as compensation.

4.Not being satisfied with the award of the Tribunal, the claimant/appellant has come up with the present appeal, seeking enhancement of compensation.

5.The factum of the accident, manner of the accident and the rash and negligent manner of driving on the part of the driver of the first respondent's vehicle, which was insured with the second respondent/Insurance company, are not in dispute and hence, in this regard, the finding rendered by the Tribunal is unchallenged and the same is hereby confirmed.

6.On the point of quantum, I have heard both sides and perused the materials available record.

7.PW.3/Dr.Sumeet Thacker, deposed that the claimant has lost his eye sight on the left side, which was clearly stated in Ex.P5/Discharge summary, issued by the CMC Hospital, Vellore. PW.4/Dr.Gopalkrishnan, deposed that the victim was seen by him on 10.10.2008 and stated that he lost the eye sight on the left side and assessed his disability at 100%. The claimant was aged 17 years at the time of accident. Thereafter, an amendment petition filed in I.A.No.1620 of 2010 for declaration as major and the same was ordered on 08.02.2011.

8.The learned counsel appearing for the appellant/claimant would contend that as per Ex.P5/Discharge summary and the various medical bills, i.e., Ex.P6/CMC Hospital's medical bills; Ex.P8/Kumar Hospital's medical bills; and Ex.P11/Sankar Nethralaya Hospital, Chennai, medical bills, the claimant incurred medical expenses to the tune of Rs.35,000/-, but, the same was not granted by the Tribunal.

9.Taking into consideration, the medical evidence of PW.3/Doctor, that the claimant has lost his eye sight, as per the Schedule I, Part I in Serial No.4 of the Employee's Compensation Act, 1923, it has been considered as 100% of disability.

10.At this juncture, it is apposite to refer to the following decisions of the Supreme Court:

(i) In Mallikarjun Vs. Divisional Manager, National

Insurance Co.Ltd., reported in 2013 ACJ 2445 (SC), at para 12, the Hon'ble Apex Court held as under:

"12. Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10 per cent and up to 30 per cent to the whole body, Rs.3,00,000; up to 60 per cent, Rs.4,00,000; up to 90 per cent, Rs.5,00,000 and above 90 per cent, it should be Rs.6,00,000. For permanent disability up to 10 per cent, it should be Rs.1,00,000, unless there are exceptional circumstances to take a different yardstick."

and

(ii) In the case of Raj Kumar Vs. Ajay Kumar, reported in 2011 ACJ 1 (SC), in paras 6 and 8, the Hon'ble Apex Court held as under:

"6. Disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

8. Where the claimant suffers a permanent disability as a result of injuries, the assessment of compensation under the head of loss of future earnings, would depend upon the effect and impact of such

permanent disability on his earning capacity. The Tribunal should not mechanically apply the 2019-07-02, percentage of permanent disability as the percentage of economic loss or loss of earning capacity. In most of the cases, the percentage of economic loss, that is, percentage of loss of earning capacity, arising from a permanent disability will be different from the percentage of permanent disability. Some Tribunals wrongly assume that in all cases, a particular extent (percentage) of permanent disability would result in a corresponding loss of earning capacity, and consequently, if the evidence produced show 45% as the permanent disability, will hold that there is 45% loss of future earning capacity. In most of the cases, equating the extent (percentage) of loss of earning capacity to the extent (percentage) of permanent disability will result in award of either too low or too high a compensation. What requires to be assessed by the Tribunal is the effect of the permanently disability on the earning capacity of the injured; and after assessing the loss of earning capacity in terms of a percentage of the income, it has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency). We may however note that in some cases, on appreciation of evidence and assessment, the Tribunal may find that percentage of loss of earning capacity as a result of the permanent disability, is approximately the same as the percentage of permanent disability in which case, of course, the Tribunal will adopt the said percentage for determination of compensation (see for example, the decisions of this court in Arvind Kumar Mishra v. New India Assurance Co.Ltd. - 2010(10) SCALE 298 and Yadava Kumar v. D.M., National Insurance Co. Ltd. - 2010 ACJ 2713 (SC)).

and

(iii) In the case of Basappa V.T.Ramesh, reported in 2014 ACJ 2743 (SC), in para 12, the Hon'ble Apex Court held as under:

12. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what in spite of the permanent disability and what he could not do as a result of the permanent disability (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, 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"

10.Unfortunately, the claimant lost his eye sight at the age of 17 years and due to loss of eye vision, it is no doubt true that the claimant may suffered lot. Having regard to the facts and circumstances of the case and also the principles enunciated in the cases cited supra. This Court is inclined to award a sum of Rs.6,00,000/- towards his permanent disability.

11.Considering the medical bills as per Exs.P6, P8 and P11, which shows that the claimant incurred a sum of Rs.35,000/-, a sum of Rs.35,000/- is awarded towards medical expenses. Having regard to the nature of injuries sustained, in my view, the amount awarded by the Tribunal towards transportation, extra-nourishment and other incidental charges to the tune of Rs.30,000/0 is too meager. This Court feels it just and proper to modify the award amount. Considering the nature of injuries, a sum of Rs.15,000/- is awarded towards transportation and a sum of Rs.10,000/- towards extra-nourishment. However, the Tribunal did not award any amount towards loss of amenities and attender charges, having regard to the period of hospitalization, a sum of Rs.10,000/- each is awarded under the above said heads and for pain and suffering a sum of Rs.10,000/- is hereby awarded, which would be fair and reasonable. Thus, the break-up details of the enhanced and modified compensation amounts are as follows:-

Description	Amount awarded by Tribunal	Amount awarded by this Court
Permanent Disability	Rs.1,00,000/-	Rs.6,00,000/-
Medical expenses	Rs.30,000/-	Rs.35,000/-
Transportation, extra-nourishment & other incidental charges	Rs.30,000/-	-
Pain and suffering	Rs.35,000/-	Rs.10,000/-
Transportation	-	Rs.15,000/-
Extra-nourishment	-	Rs.10,000/-
Loss of amenities	-	Rs.10,000/-
Attender charges	-	Rs.10,000/-
Total	Rs.1,95,000/-	Rs.6,90,000/-

12.In the result,

(i) This Civil Miscellaneous Appeal is allowed by enhancing the compensation award amount from Rs.1,95,000/- to Rs.6,90,000/- along with interest7.5% per annum.

(ii) The second respondent/Insurance Company is directed to deposit the enhanced compensation amount of Rs.6,90,000/-, within a period of twelve weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(iii) On such deposit being made, the appellant/claimant is permitted to withdraw the entire award amount as determined in this appeal, less the amount already withdrawn, if any.

(iv) The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(v) There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

Klt

To

1.The Motor Accident Claims Tribunal
(Chief Judicial Magistrate), Vellore.

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+2cc to Mr.V.Parivallal, Advocate, S.R.No. 59429

+1cc to Mr.CR.Krishnamoorthy, Advocate, S.R.No. 59470

C.M.A.No.3114 of 2011
and

MP.Nos.1,2 & 3 of 2014

LN(CO)

GN(26/06/2020)