

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.2729 of 2012

S.Suresh Kumar

...Appellant/Petitioner

vs.

1.P.Irudhaya Thause

2.N.Balu

3.M/s.New India Assurance Co. Ltd.,
Represented by its Assistant Manager,
P.B.No.47, Kumaran Shopping Complex,
Kumaran Road,
Tiruppur.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.01.2012 passed in MCOP.No.312 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Coimbatore.

For Appellant : Mr.A.E.Ravi Chandran

For Respondents : Mrs.Elveera Ravindran for R3
No appearance for R1 and R2

J U D G M E N T

The appellant is the claimant in MCOP.No.312 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Coimbatore. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.55,00,000/- for the injuries sustained by him in a road accident on 02.08.2008.

2. The case of the claimant in nutshell is as follows:

On 02.08.2008, the claimant was riding a motorcycle bearing Registration No.TN 40 X 2439 on Annur - Karumathampatti main road, near Ravichandra Departmental Stores and at about 10.30 pm, a speeding auto bearing Registration No. TN 39 AA 8256 belonging to the second respondent and insured with the third respondent hit him, as a

result of which, he sustained grievous injuries all over his body. According to the claimant, the rash and negligent driving of the driver of the auto belonging to the second respondent was the cause of the accident and that since the said auto was insured with the New India Assurance Company, the driver, the owner and the insurer are jointly and severally liable to pay compensation.

3. The driver and the owner of the auto remained absent before the Tribunal and therefore they were set *ex parte*. The third respondent / New India Assurance Company contested the claim petition on all the grounds available to the insured. The learned Principal Subordinate Judge / Motor Accident Claims Tribunal, Coimbatore after analysing the evidence on record, awarded a compensation of Rs.17,98,044/- together with interest at the rate of 7.5% per annum to the claimant. Not being 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. Heard Mr.A.E.Ravi Chandran, learned counsel appearing for the appellant / claimant and Mrs.Elveera Ravindran, learned counsel appearing for the third respondent. No appearance on behalf of the respondents 1 and 2.

5. A perusal of the discharge summaries (Ex.P9 and Ex.P13) shows that the appellant/claimant has sustained traumatic brachial plexus injury on his right upper limb, head injury and multiple injuries all over his body and since the appellant / claimant was working as a Customer Support Engineer in AEON System India Pvt. Ltd., Coimbatore, he would definitely find it difficult to continue his job and therefore, adopting multiplier method is warranted in the present case as per the decision in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. Dr.Kesavamoorthy (PW2), has assessed the partial permanent disability as 50% and the same is taken up for calculating "loss of earning capacity". As per Transfer Certificate (Ex.P14), the petitioner has completed 25 years on the date of the accident. However, the Tribunal had wrongly adopted multiplier '17'. It should be '18', as per the decision in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. It is seen from the State Bank Pass Book (Ex.30) that the claimant was earning a sum of Rs.8,100/- per month. The "loss of earning capacity" is calculated as follows:

Loss of earning capacity:

$$\begin{aligned} &= \text{Rs.}8,100/- \times 12 \times 18 \times 50/100 \\ &= \text{Rs.}8,74,800/- \end{aligned}$$

Since the claimant was not married on the date of the accident, a sum of Rs.1,00,000/- is awarded towards "loss of amenities". The Tribunal did not award any amount towards

Physiotherapy treatment taken by the claimant mainly on the ground that Dr.Nithyadevi (PW3) during the course of cross examination, had deposed that she does not maintain Accounts Book in her Hospital. This observation of the Tribunal cannot be sustained since Physiotherapy is part of the treatment and therefore the charges which he had incurred towards Physiotherapy ie., Rs.83,250 is added towards medical expenses. As the claimant has suffered head injury, he would not have been in a position to attend to his routine work atleast for 12 months and therefore, a sum of Rs.97,200/- (Rs.8,100/- x 12 months) is awarded towards "loss of income". Apart from the said amount, a sum of Rs.1,00,000/- is awarded towards "future medical expenses" which would not carry any interest. The award passed by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted by this Court
1.	Loss of earning capacity	Rs.8,74,800/-
2.	Pain and sufferings	Rs.1,25,000/-
3.	Transportation	Rs.22,789/-
4.	Extra nourishment	Rs.20,000/-
5.	Loss of income	Rs.97,200/- (Rs.8,100/- x 12 months)
6.	Medical expenses	Rs.8,52,305/-
7.	Attender's charges	Rs.30,000/-
8.	Damage to clothes	Rs.1,000/-
9.	Loss of amenities	Rs.1,00,000/-
10.	Future Medical Expenses	Rs.1,00,000/-
Total		Rs.22,23,094/-

6. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.17,98,044/- to Rs.22,23,094/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, within a period of three weeks from the date of this order and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The third respondent / New India Assurance Company is directed to deposit the enhanced compensation amount i.e., Rs.22,23,094/- (less the amount already deposited) together with interest at the rate of 7.5% per

annum on Rs.21,23,094/- from the date of claim petition till the date of deposit to the credit of MCOP.No.312 of 2009 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Judge, Coimbatore within a period of four weeks from the date of receipt of a copy of this order. No interest is awarded for "future medical expenses" (i.e., Rs.1,00,000/-).

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

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To

The Motor Accidents Claims Tribunal,
The Principal Subordinate Judge,
Coimbatore.

+1cc to Mr.A.E.Ravi Chandran, Advocate SR.No.92712

+1cc to Mrs.Elveera Ravindran, Advocate SR.No.92552

CMA.No.2729 of 2012

RSI (CO)
GMY (07/01/2020)

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