

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

C.M.A.NOS.2828 OF 2015 AND 2 OF 2016
AND CONNECTED C.M.PS.

M/s.New India Assurance Co. Ltd.,
Chennai. ... Appellants in both C.M.As./1st Respondent

v.

1. S.Karthi ... Respondent in C.M.A.No.2828/15/ Petitioner
2. V.Periasamy ... Respondent in C.M.A.No.2/16/ Petitioner
3. M/s.Parveen Travels,
Rep., by its Proprietor,
Mr.Afzal,
No.3/75, Mahabalipuram Road,
Chemmencherry, Sholinganallur,
Chennai 600 119.
... 2nd respondent in both CMAs./1st respondent

Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, against the judgments and decrees, made in M.C.O.P.No.2521 and 2522 of 2008, dated 13.04.2015, on the file of the Motor Accident Claims Tribunal (Small Causes Court - IV Judge) Chennai.

For Appellant सत्यमेव जयते : Mr.J.Chandran
in both C.M.As
For Respondents 1 : Mr.D.Velu
in both C.M.As

COMMON JUDGMENT

(Judgment of this Court was made by S.MANIKUMAR, J.)

Civil Miscellaneous Appeals are filed, against the awards, made in M.C.O.P.No.2521 and 2522 of 2008, dated 13.04.2015, on the file of the Motor Accident Claims Tribunal (Small Causes Court - IV Judge) Chennai.

2. Short facts leading to the appeals are as follows:

That on 22.01.2008, about 6.30 Hours, when Mr.V.Periasamy, was riding a motorcycle, bearing Registration No.TN 20 AD 5213, from Chennai to Pondicherry, on ECR Road, along with Mr.S.Karthi, as pillion rider, near Elianur Kuppan Bridge turning, a Parveen Travels Omni Bus, bearing Registration No.TN 22 AY 1895, insured with the appellant-Insurance Company, which was coming on the opposite direction, ie., Pondicherry to Chennai, driven by its driver, in a rash and negligent manner, dashed against the motorcycle and both the motorcyclist and pillion rider sustained injuries. A case in Cr.No.36 of 2008, has been registered against the driver of the Omni Bus, for the offences, under Sections 279 and 337 IPC., on the file of the E-3 Sadras Police Station.

3. Mr.S.Karthi, aged about 13 years, at the time of accident, made a claim in M.C.O.P.No.2521 of 2008, on the file of Motor Accident Claims Tribunal (Small Causes Court - IV Judge) Chennai, for Rs.20 Lakhs, under various heads, contending inter alia that immediately after the accident, he was admitted in Chettinad Hospital, Chennai, on 22.01.2008 and on the same day, he was referred to Government General Hospital, Chennai and took treatment till 05.03.2008. During treatment, ORIF with NDCP was done for the fracture of shaft of femur and fracture of both bones, for which, he was treated conservatively. He further contended that due to the severe fracture, he cannot able to walk, sit, stand, squat on the floor and climb staircases. His leg was shortened to one and half inches and therefore, he stated that he suffered permanent disablement.

4. Mr.V.Periasamy, aged 39 years, at the time of accident, made a claim in M.C.O.P.No.2522 of 2008, on the file of Motor Accident Claims Tribunal (Small Causes Court - IV Judge) Chennai, for Rs.20 Lakhs, under various heads, contending inter alia that immediately after the accident, he was admitted in Chettinad Hospital, Chennai, on 22.01.2008 and took inpatient treatment till 26.03.2008. Once again, he was admitted in the said hospital on 06.09.2008 and took treatment till 21.10.2008. During treatment, plates and rods were implanted and that he sustained right leg femur compound fracture, grievous head injury and multiple grievous injuries all over the body and knee broken petella. That apart, he sustained severe head injury, Petela, Tibia, Grade III Compound Fracture and Super Condyla Fracture. He further contended that due to the severe fracture in his right leg, he cannot able to walk, sit, stand, squat on the floor and climb staircases. His right leg was shortened to one and half inches and therefore, he stated that he suffered permanent disablement.

5. The appellant-Insurance Company has filed separate counter affidavits, contending inter alia that the accident had occurred only due to the rash and negligent riding of the rider of the motorcycle, bearing Registration No.TN 20 AD 5214, who did not possess a valid and effective driving licence to drive the same. The rider of the motorcycle hit the front right of the wheel of the bus and thus, caused the accident. The company has further contended that the claimants have not implemented the insurer of the motorcycle, bearing Registration No.TN 20 AD 5214 and hence, prayed for dismissal of the claim petitions, for non-joinder of the necessary parties. Without prejudice to the above, the Company has contended that the compensation claimed in both the petitions are excessive and exorbitant.

6. In M.C.O.P.No.2521 of 2008, Mr.S.Karthi, examined himself as PW.1 and Dr.J.R.R.Thiagarajan, who clinically examined Mr.S.Karthi, on the basis of the medical records, has been examined as PW.2. Documents, Ex.P1 - FIR, Ex.P2 - Treatment record of Chettinadu Hospital, Ex.P3 - Discharge Summary, Ex.P4 - Photos with C.D., Exs.P5 and P6 - X-Rays and Ex.P7 - Disability Certificate, have been marked on the side of the respondent/claimant.

7. In M.C.O.P.No.2522 of 2008, Mr.V.Periasamy, examined himself as PW.1 and two other witnesses have been examined, including Dr.J.R.R.Thiagarajan, as PW.3. Documents, Ex.P1 - FIR, Exs.P2 & P3 - Discharge Summaries issued by Government General Hospital, Chennai, Ex.P4 - Photos with CD, Exs.P5, P7 and P8 - X-Rays, Ex.P6 - Identity Card for PW.2 and Ex.P9 - Disability Certificate, have been marked on the side of the respondent/claimant.

8. On behalf of the appellant-Insurance Company, the Manager of the Company has been examined as RW.1 and marked Ex.R1 - Motor Vehicles Inspector's Report of the motorcycle, bearing Registration No.TN 20 AD 5214 and Ex.R2 - Motor Vehicles Inspector's Report of the bus, bearing Registration No.TN 20 AY 1895 and Ex.R3 - Legal notice, dated 30.06.2011.

9. On evaluation of pleadings and evidence, the Claims Tribunal held that the driver of Parveen Travels Omni Bus, bearing Registration No.TN 22 AY 1895, insured with the appellant-Insurance Company, was negligent in causing the accident. Impugned judgment shows that though the appellant-Insurance Company has filed a petition to implead the owner and insurer of the motorcycle, bearing Registration No.TN 20 AD 5214, on the ground of contributory negligence, the same was dismissed the Tribunal and a revision preferred against the said

order in C.R.P.(PD)Nos.1622 and 1623 of 2012, was also dismissed by this Court on 16.10.2012, with an observation that the contributory negligence should be decided during the outcome of the trial.

10. In M.C.O.P.No.2521 of 2008, on the basis of the medical records, stated supra and the oral testimonies of PWs.1 and 2, the Tribunal fixed the extent of disability at 75%. While considering the decision of this Court in United India Insurance Co. Ltd., v. Veluchamy reported in 2005 (1) CTC 38 and that of the decision of the Hon'ble Apex Court in Rajkumar v. Ajay Kumar reported in 2010 (2) TNMAC 581 (SC), the Claims Tribunal observed that the injured has lost his entire life and his chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. Therefore, the Claims Tribunal, while considering the disability percentage, suffering of the claimant, fixed the notional income of Rs.6,500/- per month and inclined to adopt multiplier method for awarding compensation. Applying '18' multiplier to the age of the respondent/claimant, the Claims Tribunal computed the loss of earning as Rs.10,53,000/- (Rs.6,500/- x 12 x 18 x 75%).

11. Following the decision in A.Elango v. Natarajan reported in 2013 (1) TNMAC 812, the Claims Tribunal awarded Rs.1,00,000/- towards pain and suffering. That apart, the Claims Tribunal has awarded Rs.1,50,000/- for extra nourishment, Rs.75,000/- towards transportation, Rs.3,000/- towards damages to clothes, Rs.75,000/- towards attendant charges, Rs.50,000/- towards medical expenses, Rs.75,000/- for future medical expenses, Rs.1,00,000/- towards marriage prospects, Rs.1,00,000/- for loss of amenities and Rs.78,000/- towards loss of income. Altogether, the Claims Tribunal has awarded Rs.18,59,000/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

12. In respect of M.C.O.P.No.2522 of 2008, on the basis of the medical records, stated supra and the oral testimonies of PWs.1 and 3, the Tribunal fixed the extent of disability at 85%. While considering the decision of this Court in United India Insurance Co. Ltd., v. Veluchamy reported in 2005 (1) CTC 38 and that of the decision of the Hon'ble Apex Court in Rajkumar v. Ajay Kumar reported in 2010 (2) TNMAC 581 (SC), the Claims Tribunal observed that the injured has lost his entire life and his chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance. Therefore, the Claims Tribunal, while considering the disability percentage, suffering of the claimant, fixed the notional income of Rs.6,500/- per month and inclined to adopt multiplier method for awarding compensation. Applying '15' multiplier to the age of the respondent/claimant, 39 years, the

Claims Tribunal computed the loss of earning as Rs.9,94,500/- (Rs.6,500/- x 12 x 15 x 85%).

13. Following the decision in A.Elango v. Natarajan reported in 2013 (1) TNMAC 812, the Claims Tribunal awarded Rs.2,00,000/- towards pain and suffering. That apart, the Claims Tribunal has awarded Rs.1,50,000/- for extra nourishment, Rs.75,000/- towards transportation, Rs.3,000/- towards damages to clothes, Rs.75,000/- towards attendant charges, Rs.50,000/- towards medical expenses, Rs.75,000/- for future medical expenses, Rs.1,00,000/- towards marriage prospects, Rs.1,00,000/- for loss of amenities and Rs.78,000/- towards loss of income. Altogether, the Claims Tribunal has awarded Rs.18,00,500/- with interest at the rate of 7.5% per annum, from the date of claim, till deposit.

14. Though the appellant-Insurance Company has raised several grounds, questioning the findings, fixing negligence and fastening liability, when the matter came up for hearing, Mr.J.Chandran, learned counsel for the appellant-Insurance Company submitted that he restricted his relief, only on the quantum of compensation. According to him, in both the cases, the Tribunal has erred in applying the multiplier method for computing the loss of earning capacity. He also submitted that the compensation awarded towards pain and suffering, extra nourishment, loss of amenities, future medical expenses and attendant charges, is without any proof. He also contended that the first respondent herein was minor at the time of accident and therefore, application of multiplier method, is erroneous.

15. Per contra, Mr.D.Velu, learned counsel for the respondents/claimants submitted that considering the nature of injuries, period of hospitalisation, extent of disablement assessed, in each case, the Tribunal was not wrong in estimating the extent of disablement and the loss of earning capacity. According to him, if this Court is of the view that the compensation awarded under certain heads appears to be, on the higher side and the same can be reduced to certain extent.

16. Heard the learned counsel appearing for the parties and perused the materials available on record.

17. Reasoning of the Tribunal in applying multiplier method in both the cases, is as follows:

"It is evident that the petitioner lost his entire life. His chances of getting any other employment was bleak and even if he got any job, the salary was likely to be a pittance.

Considering the present market situation, the above aspects and considering the disability percentage, suffering of the petitioner, this Court fixes the notional income as Rs.6,500/- per month and also inclined to adopts multiplier method for awarding compensation."

18. From the impugned judgment in M.C.O.P.No.2521 of 2008, it could be seen that at the time of the Tribunal examined the respondent/claimant, he was aged 20 years. By observing that he has lost his entire life and his chances of getting employment is bleak, the Tribunal has proceeded to apply multiplier method for estimating the loss of earning capacity for the extent of disablement assessed. It cannot be said that there is no chance for a differently abled person to get employed. If a differently abled person finds difficulty to stand, walk and climb staircases, depending upon the nature of work, such as, mason, painter or any other skilled work, it could be reasonably presumed that there is loss of earning capacity. There are many differently abled person, working in organised or unorganised sectors, in clerical, managerial and administrative capacities. Observation of the Tribunal that he has lost his entire life, cannot at any stretch of imagination, is accepted.

19. The Claims Tribunal has not ascertained the educational qualification of the respondent/claimant, at the time of trial. However, considering the extent of functional disablement, the Tribunal has awarded compensation for loss of amenities, pain and suffering, attendant charges and medical expenses and future medical expenses. Having regard to the guidelines in Rajkumar v. Ajay Kumar reported in 2010 (2) TNMAC 581 (SC), this Court is not inclined to accept the reasoning of the Tribunal and award any compensation for loss of earning capacity. However, this Court decides to award compensation as under:

Loss of earning capacity (Rs.6500X12X18X40%)	-	Rs.5,61,600.00
Pain and suffering	-	Rs.1,00,000.00
Extra nourishment	-	Rs. 50,000.00
Transportation	-	Rs. 25,000.00
Attender charges	-	Rs. 25,000.00
Damages to cloth	-	Rs. 3,000.00
Medical expenses	-	Rs. 5,000.00
Loss of marriage prospects	-	Rs.1,00,000.00
Loss of amenities	-	Rs.1,00,000.00
Disability	-	Rs.1,50,000.00
	-	-----
Total	-	Rs.11,19,600.00
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20. As regards the claim made in M.C.O.P.No.2522 of 2008, at the time of accident, the injured was 39 years and stated to be a mason. PW.2, Doctor, has assessed the functional disablement as 90% and Tribunal fixed the same, as 85%. Despite the extent of disablement and taking note of the guidelines in Rajkumar's case (cited supra), this Court is of the view that there can be a reduction in earning capacity. Loss of earning capacity is estimated as Rs.5,85,000.00 (Rs.6,500/- x 12 x 15 x 50%).

Loss of earning capacity

(Rs.6500X12X15X50%)	-	Rs.	5,85,000.00
Pain and suffering	-	Rs.	50,000.00
Extra nourishment	-	Rs.	50,000.00
Transportation	-	Rs.	25,000.00
Attender charges	-	Rs.	50,000.00
Damages to cloth	-	Rs.	3,000.00
Medical expenses	-	Rs.	50,000.00
Loss of amenities	-	Rs.	50,000.00
Loss of income	-	Rs.	39,000.00
Disability	-	Rs.	1,70,000.00
Total	-	Rs.	10,72,000.00

Thus, after reworking, the award amount in respect of M.C.O.P.No.2521 of 2008 is reduced to Rs.11,19,600.00 and in respect of M.C.O.P.No.2522 of 2008, the award amount is reduced to Rs.10,72,000.00.

21. The appellant / Insurance Company is directed to deposit the entire award amount, now determined by this Court, less the amount already deposited, if any, with proportionate interest at the rate of 7.5% per annum and costs, from the date of petition, till the date of realization, within a period of four weeks from the date of receipt of a copy of this order, to the credit of MCOP Nos.2521 and 2522 of 2008 respectively, on the file of Motor Accident Claims Tribunal (Small Causes Court - IV Judge) Chennai. On such deposit being made, the respondents / claimants are permitted to withdraw their respective shares, on filing proper applications before the Tribunal.

22. Both the Civil Miscellaneous Appeals are disposed of with the above observation and direction. No costs. Consequently, connected civil miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

TK

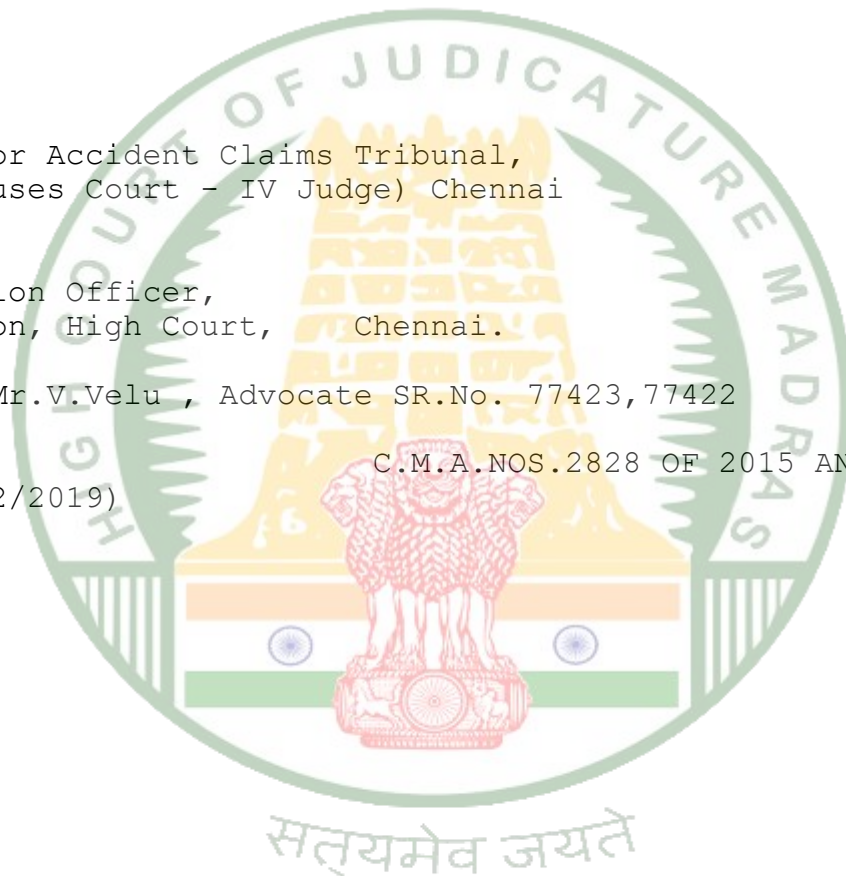
To,

1.The Motor Accident Claims Tribunal,
(Small Causes Court - IV Judge) Chennai

Copy to:
The Section Officer,
VR Section, High Court, Chennai.

+2ccs to Mr.V.Velu , Advocate SR.No. 77423,77422

C.M.A.NOS.2828 OF 2015 AND 2 OF 2016
A.SK(06/12/2019)



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