

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.672 of 2019

Arunkumar @ Arunachalam,
S/o.Chinnaiyan @ Chellaiyan,
residing at
No.61/2B, Ennore, Express Salai,
Thiruvotriyur, Chennai 600 019. ...
Appellant/Petitioner

Vs

1.A.Manoharan,
No.9/4, Thiagarajan Street,
Thiruvotriyur,
Chennai 600 019.

2.Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Towers,
No.45 & 46, Whites Road,
Chennai 600 014. ... Respondents/Respondent

PRAYER : Civil Miscellaneous Appeal filed against the Decree and
Judgment dated 27.11.2018 made in M.C.O.P.No.694 of 2014 on the
file of Motor Accident Claims Tribunal, (II Small Causes Court),
Chennai.

For Appellant :Mr.U.Chithambaram

For Respondents :Mr.R.Mohanbabu (for R2)
for Mr.N.Vijayaraghavan

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant aggrieved over
the dismissal of the claim petition filed by him for the
disability sustained because of the injuries sustained by him in
the accident occurred on 22.04.2012, when he was standing behind
the lorry and giving signal to take reverse and was hit down by
the lorry.

2.Heard Mr.U.Chitambaram, learned counsel appearing for the appellant and Mr.R.Mohanbabu, learned counsel for Mr.N.Vijayaraghavan, learned counsel appearing for the 2nd respondent.

3.The Tribunal, based on PW1's evidence, dismissed the claim petition holding that the claimant was negligent and he was not careful as he was hit down by the lorry while giving signal to the lorry for taking reverse.

4.The claimant categorically stated that he was giving signal to the lorry, however, the lorry driver with great speed and in a rash and negligent manner reversed the vehicle and hit him and caused the accident and because of the accident, his right leg above knee was amputated. There was no contra evidence to PW1's evidence. The driver of the lorry was also not examined. Consequently, the FIR has also been filed against the driver of the lorry. In view of the absence of any contra evidence, this Court holds that the accident occurred because of the rash and negligent driving of the driver of the lorry and therefore, the 2nd respondent/Insurance company which insured the lorry has to pay the compensation.

5.The claimant in his evidence categorically stated that he was working as a lorry cleaner and was drawing about Rs.10,000/- per month. The Honourable Supreme Court in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, we fix a sum of Rs.7,000/- as notional income for a Lorry Cleaner who sustained injuries in the accident which occurred in the year 2012. Ex.P.2/discharge summary and Ex.P.6/Medical board opinion would undoubtedly prove that the right leg of the claimant was amputated, resulting in 90% disability. Since right leg of the claimant has been amputated, he would have lost 100% earning capacity. However, considering the fact that disability is 90%, this Court determines the loss of earning capacity at 90% only.

6.The age of the victim is 24 years as proved by Ex.P.8 Aadhar Card. Since the age of the victim is 24 years, 40% has to be added towards future prospects as per the Pranay Sethi's case, and the total monthly income is determined at Rs.9,800/- (Rs.7,000/- + Rs.2,800/-).

7.The age of the claimant was 24 years at the time of accident and the applicable multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "18". Therefore, the loss of income would be at Rs.19,05,120/- (Rs.9,800/- x 12 x 18 x 90%).

8.Pain and suffering, Loss of amenities & Attendant charges :

The claimant suffered grievous injuries leading to amputation of right leg above knee. Therefore, a sum of Rs.1,00,000/- is awarded towards pain and suffering, a sum of Rs.50,000/- is awarded towards loss of amenities, a sum of Rs.50,000/- is awarded towards attendant charges and a sum of Rs.25,000/- each is awarded towards transportation and extra nourishment.

9.Medical expenses:

Based on Ex.P4/Inpatient Medical bills and Ex.P.5/Outpatient Medical bills a sum of Rs.2,44,957/- is awarded under this head.

10.Loss of Marital prospects:

It is very difficult for the claimant, to get married given the present status, i.e, his right leg having been amputated above knee.. Therefore, a sum of Rs.50,000/- is awarded under this head.

Head	Amount (Rs.)
Loss of income	1905120
Pain and suffering	100000
Loss of amenities	50000
Attendant charges	50000
Medical expenses	244957
Extra nourishment	25000
Transportation	25000
Loss of marital prospects	50000
Total	2450077

11.Hence, the total compensation payable in this case is Rs.24,50,077/- rounded off to Rs.24,50,000/-, along with interest at the rate of 7.5% per annum.

12.The appellant/claimant is directed to pay the requisite court-fee, if any, within a period of two weeks from the date of receipt of a copy of this order, If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the

requisite court fee from the compensation awarded to the claimant and thereafter, transfer the remaining award amount to the claimant's account.

13.The 2nd respondent/Insurance company is directed to deposit the entire award amount along with interest and costs as per the award passed by this Court, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the entire award amount along with interest and costs to the personal bank account of the appellant/claimant through RTGS within a period of one week thereon.

14.Accordingly, this appeal is partly allowed awarding a sum of Rs.24,50,000/- with interest. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

sai
To

1. The II Judge,
Court of Small Causes,
Chennai 104.

2.The Section officer
VR Section
High Court, Madras 104.

+1 CC to Mr.K. Varadha Kamaraj, Advocate sr 55869
+1 CC to Mr.N.Vijayaraghavan, Advocate sr 57083.

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SPD(CO)
SP(23/10/2019)

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