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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3700 of 2013

Kandasamy

...Appellant/Claimant

vs.

1.Sunil Kumar

2.Ajaikumar

3.Bajaj Alliance General Insurance Co. Ltd.,
D.No.11, Peoples Park Street, 3rd Floor,
Government Arts College Road,
Coimbatore - 641 018.

(R1 & R2 Dispensed with)

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 02.07.2012 passed in MCOP.No.124 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Bhavani, Erode District.

Appellant : Mr.C.Kulanthaivel
R1 & R2 : No appearance
R3 : Mr.S.Arunkumar

J U D G M E N T

The appellant is the claimant in MCOP.No.124 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Bhavani, Erode District. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 07.01.2008.

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

On 07.01.2008, he was travelling as a pillion rider in a Hero Honda motorcycle bearing Registration No. TN 48 F 7309 along Erode -Sankari Main Road and at about 12.00 hours, a speeding container lorry bearing Registration No. HR 38 L 2536 hit the motorcycle, as a result whereof, he sustained injuries all over his body.



3. According to the claimant, the rash and negligent driving of the driver of the container lorry belonging to the second respondent was the cause of the accident and that since the said container lorry was insured with the third respondent / Bajaj Alliance General Insurance Company Limited, the owner and the insurer of the container lorry are jointly and severally liable to pay compensation.

4. The owner and the driver of the container lorry remained absent before the Tribunal and therefore they were set *exparte*. The third respondent / Bajaj Alliance General Insurance Company Limited contested the claim petition on all the grounds available to the insured. The learned Subordinate Judge / Motor Accident Claims Tribunal, Bhavani, Erode District while awarding compensation of Rs.2,34,000/- together with interest at the rate of 7.5% per annum to the claimant, directed the Bajaj Alliance General Insurance Company to pay the compensation in the first instance and then recover the same from the owner of the container lorry bearing Registration No. HR 38 L 2536, since the driver of the said container lorry was not in possession of a valid driving licence on the date of accident. 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.

5. Heard Mr.C.Kulanthaivel, learned counsel appearing for the appellant/ claimant and Mr.S.Arunkumar, learned counsel appearing for the third respondent. No appearance on behalf of the first and second respondents.

6. A perusal of the discharge summaries (Ex.P7 and Ex.P8) shows that the appellant/claimant has sustained the following injuries:

- (i) Compound comminuted shattered fracture of both condyles of right femur.
- (ii) Fracture of inferior pole of patella.
- (iii) Compound comminuted fracture of both condyles of right tibia.

Since he is a labourer in a mill, 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.R.Krishnaswamy (PW3), has assessed the partial permanent disability as 60%. Since the disability of 60% cannot be for the whole body, 20% disability is taken up for calculating "loss of earning capacity". Since the appellant / claimant was aged 30 years on the date of the accident, the proper multiplier to be adopted in the instant case is 17, as per the decision in



Sarla Verma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The claimant has filed salary certificate (Ex.P12) showing his monthly income as Rs.9,000/-. However, the person who issued the salary certificate was not examined on the side of the appellant / claimant. Since it is contended in the claim petition that the claimant was a labourer in a mill, a sum of Rs.4,500/- is fixed as his notional monthly income.

Loss of earning capacity:

$$= \text{Rs.}4,500/- \times 12 \times 17 \times 20/100$$

$$= \text{Rs.}1,83,600/-$$

On account of the accident, the appellant / claimant would not have been in a position to attend to his routine work atleast for six months and therefore, a sum of Rs.27,000/- (Rs.4,500/- x 6 months) is awarded towards "loss of income". 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.1,83,600/-
2.	Pain and sufferings	Rs.25,000/-
3.	Transportation	Rs.5,000/-
4.	Extra nourishment	Rs.10,000/-
5.	Attender's charges	Rs.2,000/-
6.	Damage to clothes	Rs.500/-
7.	Loss of income	Rs.27,000/-
8.	Loss of amenities	Rs.10,000/-
9.	Medical bills	Rs.81,000/-
Total		Rs.3,44,100/-

7. In the result,

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

(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,34,000/- to Rs.3,44,100/-, which shall carry interest at the rate of 7.5% per annum.

(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 / Bajaj Alliance General Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.3,44,100/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.124 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Bhavani, Erode District within a period of four weeks from the date of receipt of a copy of this order and then recover the same from the owner of the container lorry bearing Registration No. HR 38 L 2536 on the same cause of action.

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

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

mtl
To

The Motor Accidents Claims Tribunal,
The Subordinate Judge,
Bhavani, Erode District.

+1 CC to Mr.C.Kulanthaivel, Advocate sr 96136.
+1 CC to Mr.S.Arunkumar, Advocate sr 97973.

CMA.No.3700 of 2013

VD(CO)
SP(05/08/2021)