IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.438 of 2013

N.Sathiswar ...Appellant/Claimant

..Vs..

1.N.Anandan

2.ICICI Lombard General Insurance
Company Limited,
1st Floor, Arihant Plaza,
No.84/85, Waltax Road,
Chennai 3. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 13.09.2012, passed in M.C.O.P.No.3411 of 2010, on the file of the III Judge, Motor Accidents Claims Tribunal, (Court of Small Causes), Chennai.

For Appellants : Mr.R.Arundathan

For Respondents : Mrs.R.Sree Vidhya for R2
R1 - Ex-parte

JUDGMENT

The appellant is the claimant in M.C.O.P.No.3411 of 2010 on the file of the III Judge, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai. He filed the above said claim petition under Section 166 of the Motor Accident Claims Tribunal, seeking compensation of Rs.23,00,000/- restricted to Rs.15,00,000/- for the injuries sustained by him in a road accident that took place on 01.07.2010, at about 16.30 hours, when the appellant/claimant was riding his cycle along the GST Road from south to north direction with due care and diligence.

2. According to the appellant/claimant, when he was nearing Irumbullur "O" point, at that time, a speeding lorry bearing Registration No.TN 21 AY 97875 came from behind, hit the claimant's cycle, as result of which, he sustained grievous injuries all over his body. He further contended that the rash and negligent driving of the driver of the lorry bearing

Registration No. TN 21 AY 97875 was the cause of the accident and that since the first respondent has insured his lorry with the second respondent, both of them are jointly and severally liable to pay compensation to him.

3.The first respondent remained absent before the tribunal and therefore he was set ex-parte. The second respondent ICICI Lombard General Insurance Company Limited, Chennai contested the claim petition. The III Judge, Small Causes Court, Chennai after analysing the evidence on record, the tribunal has awarded a compensation of Rs.6,10,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant.

4.Not satisfied with the quantum of compensation awarded by the tribunal the appellant/claimant filed the present appeal under Section 173 of Motor Vehicles Act, 1988 seeking for enhancement of compensation to him.

5. Mr.R.Arundathan, learned counsel appearing for the appellant/claimant contended that the appellant/claimant had sustained degioving injury of left leg with fracture and dislocation of ankle medial malleous fracture with right ankle and wound debridement over the left leg was performed on 06.07.2010. He was hospitalised for more than 50 days on two different occasions and 4 operations were also performed on his left leg. He was a priest, earning a sum of Rs.10,000/- per month. Dr.K.J.Mathiazhagan (PW2) had assessed the permanent disability as 80% and partial permanent disability as 30%. However, the tribunal has fixed the disability only as 50% and the partial permanent disability only as 20%.

6.Per contra, Mrs.R.Sreevidhya, learned counsel ICICI Lombard General Insurance Company Limited, would contend that the tribunal has awarded a just compensation of Rs.6,10,000/-, taking into consideration various aspects and the same need not be disturbed at this juncture.

7.The Hon'ble Apex 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. However, the Tribunal fixed a sum of Rs.4,500/- as notional income for the injured, without any rational and any application of mind. Before fixing the income, the Tribunal should have considered the notional income fixed by the Apex Court in Syed Sadiq case (cited supra) plus reasonable income addition. It is just a necessary for the Tribunal before fixing the national income of the injured to consider the following factors:

(i) The rise in the cost of living affects everyone across the board. It does not make any distinction between rich and poor. As a matter of fact, the effect of rise in prices which directly impacts the cost of living is minimal on the rich and maximum on those who are self-employed or who get fixed income/emoluments. They are the worst affected people. Therefore, they put extra efforts to generate additional income necessary for sustaining their families.

(ii) The salaries of those employed under the Central and State Governments and their agencies/instrumentalities have been revised from time to time to provide a cushion against the rising prices and provisions have been made for providing security to the families of the employees. The salaries of those employed in private sectors have also increased manifold. Till about two decades ago, nobody could have imagined that salary of Class IV employee of the Government would be in five figures and total emoluments of those in higher echelons of service will cross the figure of rupees one lakh.

(iii) Although, the wages/income of those employed in unorganised sectors has not registered a corresponding increase and has not kept pace with the increase in the salaries of the Government employees and those employed in private sectors but it cannot be denied that there has been incremental enhacement in the income of those who are self-employed and even those engaged on daily basis, monthly basis or even seasonal basis. We can take judicial notice of the fact that with a view to meet the challenges posed by high cost of living, the persons falling in the latter category periodically increase the cost of their labour. In this context, it may be useful to give an example of a tailor who earns his livelihood by stitching cloths. If the cost of living increases and the prices of essentials go up, it is but natural for him to increase the cost of his labour ".

8. Since the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income of Rs.4,500/- fixed by the Tribunal in the accident occurred in the year 2010 is not proper and this Court set aside the same and re-fix the notional income of the as Rs.7,500/- per month.

9.The Compensation awarded by the Tribunal under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.27,000/-
2.	Transportation	Rs.10,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Damage to clothes	Rs.2,000/-
5.	Medical expenses	Rs.80,000/-
6.	Attender's charges	Rs.6,000/-
7.	Loss of amenities, mental agony and discomfort	Rs.10,000/-
8.	Pain and sufferings	Rs.25,000/-
9.	Disability of 20% at the rate of Rs.2,000/- per disability	Rs.40,000/-
10.	Towards permanent disability	Rs.4,05,000/-
Total		Rs.6,10,000/-

10.The Tribunal has not awarded any amounts towards future prospects, especially, when the injured was aged just 40 years on the date of accident. As per the decision rendered in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects and the income would be after adding the future prospects a sum of Rs.9,375/-(Rs.7,500/- + Rs.1,875/-) per month. In terms of the decision of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343, multiplier method is warranted as far as the present case is concerned and the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. The loss of income of the injured is as follows:

Calculation:

Notional Income = Rs.7,500/-
25% Future Prospects = Rs.1,875/-
Total = Rs.7,500/- + Rs.1,875/-
= Rs.9,375/-

Loss of earning capacity
= Rs.9,375/- x 15 x 12 x 80/100
= Rs.13,50,000/-

Since already a sum of Rs.13,50,000/- is awarded towards permanent disability, there is no need to award separately towards any other disability. Therefore, Rs.40,000/- awarded towards partial permanent disability is set aside. With regard to all other damages under S.Nos.1 to 8 awarded by the tribunal is just and proper. Therefore, need not be interfere at this juncture and the same is confirmed by this Court.

11. Thus, the revised compensation awarded by this court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of income	Rs.27,000/-
2.	Transportation	Rs.10,000/-
3.	Extra Nourishment	Rs.5,000/-
4.	Damage to clothes	Rs.2,000/-
5.	Medical expenses	Rs.80,000/-
6.	Attender's charges	Rs.6,000/-
7.	Loss of amenities, mental agony and discomfort	Rs.10,000/-
8.	Pain and sufferings	Rs.25,000/-
9.	Towards permanent disability	Rs.13,50,000/-
Total		Rs.15,55,000/-

Thus the claimants are entitled to a sum of Rs.15,55,000/- together with interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of deposit.

12.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.6,10,000/- to Rs.15,55,000/-, 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, if any, and the Registry is directed to draft the decree only after the payment of court fee.

(iv)The Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered and the apportionment shall be as ordered by this Court. On such deposit being made, the Tribunal shall transfer the amount to the claimants bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar(CS VI)

//True Copy//
Sub Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
III Judge,
Small Causes Court,
Chennai.

+1cc to Mr.C.Munusamy, Advocate, S.R.No.13398
+1cc to Mr.R.Sreevidhya, Advocate, S.R.No.13046

C.M.A.No.438 of 2013

VBA(CO)

RRS(31/05/2019)