IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.557 of 2013

Rajendran ... Appellant / Petitioner

..Vs..

1. Ramani

2. The Divisional Manager,
   The United India Insurance Company Limited,
   No.46, Katpadi Salai,
   Vellore. ... Respondents / Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 21.06.2010 in M.A.C.T.O.P.No.548 of 2006 on the file of the Motor Accidents Claims Tribunal, Principal Sub Judge, Tiruvanamalai.

For Appellant : Mr.F.Terry Chellaraja

For Respondents: R1 - Set Exparte before Claims Tribunal
R2- Mr.J.Chandran

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Principal Sub Court, Tiruvanamalai in and by its award dated 21.06.2010 in M.A.C.T.O.P.No.548 of 2006, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 07.11.2005, at about 5 p.m., when the appellant/claimant was riding his bicycle, from Mottur to Nalalpallam along Thaniyapadi Thandarampattu road and was nearing Nalalpallam Elumalai Tailor shop, a Mini Tempo van, bearing Registration No. TN 25 4343 belonging to the first respondent, driven by its driver in a rash and negligent manner, came from behind the bicycle and hit the bicycle, as a result of which, the appellant/claimant sustained bone fracture in right leg and grievous injuries all over his body. Hence, the claimant made a claim petition in a sum of Rs.5,00,000/- as compensation

as against the owner of the vehicle/first respondent herein as well as the insurer of the offending vehicle, viz., the second respondent.

3. The first respondent/owner of the vehicle remained absent before the Claims Tribunal, and therefore, he was set ex-parte.

4.The second respondent/Insurance Company, Vellore contested the claim petition by filing a counter statement, inter alia disputing their liability on the ground that the owner of the vehicle does not have a valid driving licence and hence, they are not liable to indemnify the first respondent. Further, they also denied the age, occupation and monthly income of the claimant and the nature of injuries sustained by the claimant and prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one Dr.Ravindran as P.W.2 and marked 8 documents as Exs.P.1 to P.8. On the side of the Insurance Company, neither any witness was examined nor any document was marked.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident was due to the rash and negligent driving of the Mini Tempo Van, belonging to the first respondent/owner, and the second respondent, being the insurer of the offending vehicle, they are liable to pay the compensation. By arriving at such a conclusion, the Tribunal made the calculation under different heads and passed an award for a total sum of Rs.1,41,200/- with interest at the rate of 7.5% per annum from the date of Petition till payment as compensation to the claimant. The break up details of the compensation amount awarded by the Tribunal are as follows:-

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.1,15,200/-
2.	Transportation	Rs.2,000/-
3.	Extra Nourishment	Rs.2,000/-
4.	Pain and sufferings	Rs.20,000/-
5.	Attender's Charges	Rs.2,000/-
Total		Rs.1,41,200/-

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already stated above.

8. Mr.F.Terry Chellaraja, learned counsel appearing for the appellant/claimant submitted that though due to the accident, the appellant/claimant was admitted in the Government Hospital at Tiruvanamalai for first aid initially, and subsequently, for further treatment, he was shifted to Government Royapettah Hospital, Chennai, where, he underwent treatment for four days, i.e. from 08.11.2005 to 11.11.2005. Due to the accident, since the claimant sustained crush injuries on the right toes, his fourth and fifth right toes were amputated by way of surgery on 08.11.2005. The Doctor, who treated the injured claimant retired from service, Dr.Ravindran, the assisting Doctor, who has treated the injured in the Government Hospital at the time of the accident, was examined before the Claims Tribunal as P.W.2, and he has assessed the disability of the claimant as 30% and issued disability certificate marked as Ex.P.7. Considering the facts and circumstances of the case, the Tribunal fixed the entire 30% disability as functional disability and awarded a sum of Rs.15,500/- as compensation towards Permanent Disability. 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. The learned counsel, therefore, submitted that, when the Hon'ble Apex Court took notional income of a vegetable vendor as Rs.6,500/- during the year 2008, the notional income fixed by the Tribunal at Rs.2,000/- in the present case for the accident occurred in the year 2005, is not proper and requested this Court to fix the monthly notional income of the injured as Rs.3,000/- per month.

9. Mr.J.Chandran, learned counsel appearing for the second respondent/Insurance Company strongly opposed for enhancement of the compensation by stating that, except the documents related to the injuries sustained, the appellant/claimant did not produce any documents with regard to the monthly income so as to arrive at a just compensation towards loss of income, and the Tribunal, taking into consideration various aspects, has awarded a just compensation of Rs.1,41,200/-, and the same need not be disturbed at this juncture.

10.Heard, learned counsel appearing for the appellant/claimant and as well as learned counsel appearing for the respondents.

11.This Court is not inclined to accept the contention of the learned counsel for the second respondent/Insurance Compay and the same is rejected. On a perusal of Ex.P.7/Disability Certificate, it is seen that the fourth and fifth right toes of the appellant/claimant were amputated by surgery. That apart, he is an agriculture labour by avocation and was earning a sum of Rs.3,000/- per month at the time of the accident and mentioned the same in the claim petition. However, the Tribunal has fixed only a sum of Rs.2,000/- towards monthly income of the injured. As rightly pointed out by the learned counsel appearing for the appellant/claimant, the Honourable Supreme Court, in Syed Sadiq's case (supra) fixed the monthly income at Rs.6,500/- even for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008, the notional income of Rs.2,000/- fixed by the Tribunal is meager.

13.This Court, considering the fact that both the learned counsel appearing for the appellant as well as the second respondent is agreeable for fixation of a sum of Rs.2,200/- per month as notional income of the injured instead of Rs.2,000/- per month as wrongly fixed by the Tribunal, and therefore, this Court is inclined to fix a sum of Rs.2,200/- per month as notional income of the injured.

14. 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 in this case. As rightly pointed out by the learned counsel appearing for the appellant/claimant, the deceased was aged about 40 years and the proper multiplier to be adopted in the instant case is '15' as per the law laid down by the Honourable Supreme Court, in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. But, the Tribunal wrongly adopted the multiplier as '16'. 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 held by the Honourable Supreme Court, in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 25% should be added towards future prospects and if added, the income would be a sum of Rs.2,750/-(Rs.2,200/- + Rs.550/-) per month. Thus, the loss of earning capacity of the injured is as follows:

Calculation:

Notional Income = Rs.2,200/-
25% Future Prospects = Rs.550/-
Total = Rs.2,200/- + Rs.550/-
= Rs.2,750/-

Loss of earning capacity

= Rs.2,750/- x 15 x 12 x 30/100
= Rs.1,48,500/-

15. Similarly, the compensation awarded by the Tribunal under the heads "Transportation", "Attender Charges" and " Extra Nourishment" at a sum of Rs.2000/- each are low and the same are hereby modified and enhanced to a sum of Rs.10,000/- towards "Transportation", Rs.6,000/- towards "Extra Nourishment" and Rs.4,000/- towards "Attender Charges". Likewise, the compensation awarded by the Tribunal at a sum of Rs.20,000/- towards Pain and Sufferings is concerned, the same appears to be just and reasonable and hence, it stands confirmed. As rightly pointed out by the learned counsel for the appellant/claimant, the Tribunal has failed to award any amount towards "Loss of amenities" and "Damage to clothes", and this Court is inclined to award a sum of Rs.5,000/- towards "Loss of amenities" and Rs.2,000/- towards "Damage to clothes". Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.1,48,500/-
2.	Pain and sufferings	Rs.20,000/-
3.	Extra nourishment	Rs.6,000/-
4.	Transportation	Rs.10,000/-
5.	Attender charges	Rs.4,000/-
6.	Loss of amenities	Rs.5,000/-
7.	Damage to clothes	Rs.2,000/-
Total		Rs.1,95,500/-

Thus, the appellant/claimant is entitled to a sum of Rs.1,95,500/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

16. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.1,41,200/- to Rs.1,95,500/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(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 second respondent/United India Insurance Company Limited is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of six 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. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

Sub Assistant Registrar

vkr

To

1) The Motor Accidents Claims Tribunal,
The Principal Sub Judge,
Tiruvanamalai.

2) The Section Officer,
VR Section, High Court, Madras.

+1 cc to Mr.M.Malar, Advocate, S.R.No.28865

+1 cc to Mr.J.Chandran, Advocate, S.R.No.29276

C.M.A.No.557 of 2013

AK(CO)
SSM(23/05/2019)