IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.03.2019
CORAM:
The Hon'ble Mr.Justice Krishnan Ramasamy
C.M.A.No.632 of 2013

Venkataramani @ Kannan
... Appellant/Petitioner

..Vs..

1. Shankar
(First respondent set-exparte before the Tribunal)

2. The New India Insurance Co.Ltd.,
No.45, Moore Street,
Chennai.
... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 29.09.2006 made in M.A.C.T.O.P.No.2659 of 1999 on the file of the Motor Accident Claims Tribunal, IV Court, Small Causes Court, Chennai.

For Appellant : Mr.F.Terry Chellaraja
For Respondent-1: Set Exparte before Claims Tribunal
For Respondent-2: Mr.C.Ramesh Babu

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal (IV Judge, Small Causes Court) Chennai in and by its award dated 29.09.2006 made in M.A.C.T.O.P.No.2659 of 1999, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 12.03.1999 at about 9.30 hours, when the appellant/claimant was travelling as a pillion rider in a Kinetic Honda, bearing Registration No. TN-07-D-1384 from Mandaveli to Mylapore at Royapettah High Road, near Thannithurai Market, an Autorickshaw, bearing Registration No. TN-07-D-4606 came in a rash and negligent manner, endangering the public safety and dashed against the claimant and thus caused the accident. In the said accident, the claimant sustained fracture on his right leg and multiple injuries all over the body. Hence, the claimant made a claim in a sum of Rs.1,50,000/- as compensation as against the owner of the offending 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, Chennai 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 denied the age, occupation and monthly income of the claimant and the nature of injuries sustained by him 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.Saichandran as P.W.2 and marked 9 documents as Exs.P.1 to P.9. 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 Autorickshaw, 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.57,485/- 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 income	Rs.5,000/-
2.	Transportation	Rs.1,000/-
3.	Extra Nourishment	Rs.1,000/-
4.	Medical expenses	Rs.15,485/-
5.	Pain and sufferings	Rs.5,000/-
6.	Permanent disability	Rs.30,000/-
	Total	Rs.57,485/-

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

8. The learned counsel appearing for the appellant/claimant submitted that, due to the accident, he sustained comminuted fracture of patella right on his right leg and implant nailing was done through surgery. P.W.2, Doctor assessed the disability of the claimant at 30% and the Disability Certificate issued by P.W.2 in this regard is marked as Ex.P.8. The injured was given first aid treatment at Sampath Nuring Home and thereafter, taken treatment in St.Isabella Hospital, Chennai, for eight days. The learned counsel further contended that eventhough, the claimant has not produced any documents as proof to show his income, since he was 45 years old at the time of the accident, and was running the KVN Automobiles, as Proprietor and earning a sum of Rs.10,000/- per month at the time of the accident, this Court shall take the notional income at Rs.5,000/-. The learned counsel also pointed out that the Hon'ble Apex Court is number of Judgments, where, the accident occurred in the year 1992, fixed the notional income of the claimant at Rs.3000/-. The learned counsel also drawn the attention of this Court to one such judgment, viz., the judgment rendered in the case of Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, wherein, the Hon'ble Supreme Court fixed the notional income of the claimant at 3000/-, in an accident occurred in the year 1992. Therefore, the learned counsel submitted that the same principles may be followed in this case as well.

9. The learned counsel further submitted that the Tribunal has not awarded any amount towards future prospects and has not applied multiplier method. Even for no fault or liability, the claim petition filed under Section 163 (a) prescribes the schedule for payment of compensation for the injury sustained by the injured on the basis of percentage of disability by applying the multiplier method. The learned counsel, therefore, submitted that decisions in the cases of (i) Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121 and (ii) 2017(2)TNMAC 609 (SC) [National Insurance Co. Ltd., v. Pranay Sethi and others], have to be applied in the case on hand and sought for enhancement of compensation.

10. The learned counsel for the second respondent/Insurance Company though raised objection for fixing the notional income of the claimant at Rs.5,000/-, however, admitted the fact that as per the principles laid down by the Hon'ble Apex Court in the case of Sarala Verma (supra), the notional income can be fixed at Rs.3,000/- for the claimant, who sustained accident in the year 1992.

11. Keeping in view the submission made by the learned counsel for the appellant/claimant and the learned counsel for the second respondent this Court has gone through the materials on record.This Court is of the view that, as per the decision of the Hon'ble Supreme Court in the case of Sarlavarma (supra), the notional income of the injured claimant would be atleast a sum of Rs.3,000/- p.m. Accordingly, this Court fix at Rs.3,000/- notional income of the claimant. It is seen from the award that the Tribunal has fixed a sum of Rs.1000/- towards per percentage of disability and awarded a sum of Rs.30,000/- towards Permanent Disability. As submitted by the learned counsel appearing for the appellant the Tribunal has failed to apply the multiplier method while determining the compensation under the head "Loss of Income". Admittedly, the claimant has filed a claim petition under section 163. Therefore, as held by the Hon'ble Apex Court in the case of Sarlavarma (supra) multiplier method has to be strictly applied to the present case also. Since the claimant was 45 years old at the time of accident, it would be appropriate to apply "14" multiplier to determine the loss of income. Thus, while applying the multiplier method at '14', this Court would like to take the functional disability only at 20%. Further, as per the principles laid down by the Hon'ble Apex case, in the case of Pranay Sethi (supra) , since the age of the claimant was 45 years at the time of the accident, as stated above, 25% has to be added towards future prospects.

12. Thus, by applying the multiplier of '14' ,taking the functional disability at 20% and adding 25% towards future prospects, the loss of earning works out to Rs. 1,26,000/-, which is as follows:-

Monthly income = Rs.3000/-
Future prospects = Rs.25%
Multiplier = 14
disability = 20%
3000x12 = Rs.36,000/-
Rs.36,000/- + 25%(9000) = Rs.45,000/-
Rs.45,000/- x 14 = Rs.6,30,000/-
Rs.6,30,000/- x20% = Rs.1,26,000/-

13. Since this Court has applied the multiplier method for determining loss of earning, the compensation awarded by the Tribunal under the heard 'Permanent Disability' at Rs.30,000/- is set aside.

14. Insofar as the compensation awarded by the Tribunal under the heads of i) Medical expenses, ii) Loss of Income and iii)Transportation are concerned, the same are found to be just

and fair and hence, stand confirmed. So far as the compensation awarded by the Tribunal under the heads of i) Pain and Sufferings and (ii) Extra Nourishment are concerned, the Tribunal has awarded only a sum of Rs.6,000/- in toto, which is low and the same is modified and enhanced to Rs.15,000/-, in the manner stated in the tabular column mentioned below. It is seen that the Tribunal has not awarded any amount for Attender charges and hence, this Court is inclined to award a sum of Rs.2000/- under the said head.

15. Thus, the total compensation payable to the claimant is as hereunder:-

S.No	Head	Amount granted
1	Loss of earning capacity due to partial and permanent disability at 20%	Rs.1,26,000/-
2	Extra nourishment	Rs.3,000/-
3	Medical expenses	Rs.15,485/-
5	Pain and sufferings	Rs.10,000/-
6	Attender charges	Rs.2000/-
7	Transportation	Rs.1,000/-
8	Loss of Income	Rs.5,000/-
	Total	Rs.1,62,485/-

16. Thus, the appellant/claimant is entitled to a sum of Rs.1,62,485/- together with interest at the rate of 7.5% per annum, from the date of numbering of this Appeal till the date of realisation, as it is seen from the records that the CMA has been filed with a delay of 1960 days and hence, the appellant is not entitled for interest for the above said period of 1960 days and is entitled for interest on the enhanced amount of compensation only from the date of numbering the appeal.

17. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.57,485 to Rs.1,62,485/-, which shall carry interest at the rate of 7.5% per annum from the date of numbering of appeal till the date of realisation.

(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/The New India Insurance Company Limited is directed to deposit the entire amount awarded by this Court equally 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

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal,
   IV Court, Small Causes Court, Chennai.

2. The Record Keeper,
   V.R. Section, High Court, Madras.

+1cc to Mr.C.Ramesh Babu, Advocate sr.30122
+1cc to Mr.M.Malar, Advocate sr.30191

C.M.A.No.632 of 2013

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nr 26/06/2019