

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2019

CORAM

The Hon'ble Mr.Justice M.M.Sundresh
and
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.Nos.1540 & 1541 of 2018
and
C.M.P.No.12263 of 2018

C.M.A.No.1540 of 2018

Praveen KumarAppellant/claimant

Vs.

1.Aruldoss

2.United India Insurance Co.Ltd.,
"Chandra Plaza", 1st Floor,
No.48, Arcot Road,
Saligramam, Chennai - 600 093 Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 04.01.2018 made in M.C.O.P.No.262 of 2016 on the file of The Motor Accidents Claims Tribunal, IInd, Additional District Judge, Poonamallee.

For Appellant : Ms.Ramya V. Rao
For Respondents : M/s.T.Rathna Thara, for R2
No Appearance for R1

C.M.A.No.1541 of 2018

Muralidharan ...Appellant/claimant

Vs.

1.Aruldoss

2.United India Insurance Co.Ltd.,
"Chandra Plaza", 1st Floor,
No.48, Arcot Road,
Saligramam, Chennai - 600 093.... Respondents/Respondents

PRAYER:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the judgment and decree dated 04.01.2018 made in M.C.O.P.No.266 of 2016 on the file of The Motor Accidents Claims Tribunal, IInd, Additional District Judge, Poonamallee.

For Appellant : Ms.Ramya V. Rao

For Respondents : M/s.T.Rathna Thara, for R2
No Appearance for R1

C O M M O N J U D G M E N T

(Judgment of the Court was delivered by
Krishnan Ramasamy, J.,)

CMA.Nos.1540 & 1541 of 2018 have been filed challenging the quantum of award passed by the tribunal in MCOP.No.262/2016 and MCOP.No.266/2016 respectively. In both the appeals, the appellants are the claimants before the tribunal.

2. The brief facts of the case are as follows:-

(i) The appellants sustained injuries as a result of an accident caused by a Tata Ace bearing Registration No.TN 20 CX 9479. On 21.12.2015, at 5.30 pm when the rider of motorcycle bearing Registration No.TN 22 6069 along with his pillion rider-Muralidharan on T.H.Road from Thirumazhisai towards Nemam. The driver of TATA ACE drove the vehicle in a rash and negligent manner and hit the two wheeler and thereby both rider and pillion rider sustained severe injuries. The injured rider took treatment at SRMC Hospital, Porur as in-patient from 21.12.2015 to 13.01.2016 and pillion rider took treatment from 21.12.2015 to 30.12.2015, at Kumaran Hospital. The appellants preferred a claim before the Motor Accidents Claims Tribunal in MCOP.Nos.262/2016 and 266/2016 seeking a compensation of Rs.23,00,000/- and Rs.12,00,000/- respectively.

(ii) The Motor accident Claims Tribunal, by its award dated 04.01.2018 in MCOP.Nos. 262/2016 and 266/2016 directed the second respondent/Insurance Company to pay the appellants a sum of Rs.8,01,105/- and Rs.2,92,260/- respectively together with interest at 7.5% per annum from the date of claim till the date of realisation.

(iii) Aggrieved by the quantum of compensation awarded by the tribunal, the appeals have been filed by the claimants

seeking enhancement of compensation.

3. Heard, Ms.Ramya and Mr.V. Rao, learned counsel for the appellants and Ms.T.Rathna Thara, learned counsel for the second respondent.

CMA.No.1540/2018:

4. The learned counsel appearing for the appellant would contend that the Court below awarded a sum of Rs.8,01,105/-. The appellant made a claim for a sum of Rs.30,00,000/- and he was about 20 years at the time of accident, he was working as Despatcher in Sri Krishna Sweets. He had sustained head injury, Sub Dural Hemorrhage right frontal parietal and occipital region, diffuse cerebral edema in bilateral hemisphere, Right shaft of femur fracture and he was treated as in-patient at Sri Ramachandra Hospital from 21.12.2015 to 13.01.2016 and 30.11.2016 to 03.12.2016. The Doctor assessed the disability as 95%. However, the tribunal has taken the functional disability as 45% and awarded a sum of Rs.2,000/- per percentage of disability and awarded a compensation a sum of Rs.90,000/- (2000X45) for permanent disability.

5. Further the learned counsel would contend that the tribunal without application of mind, awarded a sum of Rs.2,000/- per percentage of disability, the said amount is too low for the disability sustained by the appellant. Considering the gravity of injury, the tribunal ought to have awarded the compensation for disability as well as for the loss of income to the appellant by applying multiplier method. Due to the disability, the appellant is not able to get any marriage alliance till date. Almost the appellant lost his marital prospects.

6. The learned counsel appearing for the appellant submits that at the time of accident, he was drawing a sum of Rs.8,500/- as salary. In this regard, he has also filed bank statement which is marked as Ex.P1. Therefore, he pleaded before this Court that a sum of Rs.8,500/- may be fixed as the income of the deceased and award compensation by applying multiplier method due to the reason that in the present case, the appellant sustained 95% disability, the disability certificate was issued by the medical board. However, the tribunal without considering all the aspect, merely fixed the functional disability as 45% and awarded a sum of Rs.90,000/- compensation for disability. However, no amount was awarded for loss of income due to the disability. The tribunal awarded only a sum of Rs.24,000/- towards loss of income, when the injured was admitted in the hospital. Except the loss of income awarded

for the treatment period, no amount was awarded towards the loss of income due to the disability. Therefore, he contend that this Court may consider to fix a sum of Rs.8,500/- as notional income and award the compensation by applying the multiplier method. In the present case the age of the deceased at the time of accident was 20 years. Therefore, the multiplier applicable in the present case is 18. Further, the counsel contend that 45% may be considered as functional disability and award the compensation by applying multiplier method. In the event of awarding the compensation for the loss of income, the counsel would fairly contend that the amount awarded a sum of Rs.90,000/- towards disability may be set aside. The tribunal awarded a sum of Rs.25,000/- towards the pain and suffering. The amount awarded towards the pain and sufferings by the tribunal is too low. Considering the nature of injuries sustained by the appellant therefore, he contend that to fix the higher amount towards the pain and sufferings.

7. The learned counsel further contend that no amount was awarded towards loss of amenities, therefore he pleaded to fix a sum of Rs.40,000/- towards loss of amenities. The tribunal awarded a sum of Rs.5,000/- towards extra nourishment. Therefore, he contend that the said amount is too low and pleaded to fix a sum of Rs.25,000/- atleast towards extra nourishment. The counsel fairly submits that the tribunal awarded a sum of Rs.6,52,105/- towards medical bills and the same may be confirmed. Further he contend that no amount was awarded towards loss of marital life, future medical expenses, attender charges. Therefore, he contend that a reasonable amount may be fixed as compensation under these heads. A sum of Rs.5,000/- awarded by the tribunal towards transportation is too low. Therefore he contend that a sum of Rs.15,000 may be awarded towards transportation.

8. The learned counsel appearing for the 2nd respondent/Insurance Company strongly contend that the tribunal has fairly awarded a sum of Rs.90,000/- towards permanent disability, by taking 45% disability, the said amount is just and fair and requires no revision but no amount was awarded for loss of income due to 45% functional disability. The tribunal awarded loss of income during the treatment a sum of Rs.24,000/-. In these circumstances, there is no need to award any amount towards the loss of future earnings and further, the award of the tribunal in all other aspect is just and fair, which requires no revision by this Court as contended by the appellant.

9. On perusal of the Motor Vehicles Act, and also Second Schedule attached thereto, wherein a method has been provided for the purpose of determining compensation for the claims made under Section 163A in the both the cases of fatal as well as injuries. As per Second Schedule, the Court can award compensation by applying multiplier method. All the claims made under Section 163A based on the no fault liability. In the present case, the claim has been filed, contested and thereafter, tribunal fixed the liability. When the negligence and the liability were fixed after the contest, we are of the considered view that there is no difficulty for the tribunal to determine the loss of income due to the disability, for the appellant by applying the multiplier method. This is because the Act itself provides to award compensation by applying the multiplier method, even when the claim filed under no fault liability under Section 163A. When that being the position, we do not find any difficulty to determine the compensation for the loss of income due to the disability, for the appellant, based on the multiplier method.

10. The medical board determined the disability of the appellant as 95%. However, the tribunal has taken the functional disability of the injured as 45%. So at the time of argument, the counsel appearing for the appellant made a submission that at least 40% may be considered as functional disability. However, we are not inclined to accept to take 40% as functional disability. On the other hand, we are of the view that it would be appropriate to take 30% as functional disability and award the compensation for loss of income of the injured due to the disability by applying multiplier method. The tribunal has taken the notional income as Rs.8,000/- per month. In the present case, the accident occurred in the year 2016. The Hon'ble Supreme Court in the judgment delivered in Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- per month for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Considering the increase in cost of living, we are of the view to fix a sum of Rs.8,500/- as notional income would be appropriate and accordingly, we fix the notional income of the injured as Rs.8,500/- per month. In the present case, the multiplier applicable for the injured who was 20 years, at the time of accident is 18. Since we have fixed the notional income of Rs.8,500/- per month, it would be appropriate to add 40% towards future prospects. Therefore, loss of income for the injured would be as follows:-
$$\text{Rs.8500} + 40\% = \text{Rs.11,900/-} \quad \text{Rs.11,900/-} \times 12 \times 18 \times 30 / 100 = 7,71,120/-$$

Therefore, we determined the loss of income of the injured as Rs.7,71,120/- as contended by the learned counsel

appearing for the appellant. Since, we have awarded the compensation for loss of income and for disability by applying multiplier method, we set aside the award passed by the tribunal to the tune of Rs.24,000/- and Rs.90,000/- towards loss of income during treatment and permanent disability respectively.

11. Pain and Sufferings:

The tribunal has awarded a sum of Rs.25,000/- towards pain and sufferings and the said sum is too low. Therefore, we enhanced to Rs.40,000/-.

12. Loss of Amenities:

No amount was awarded by the Tribunal towards loss of amenities. Therefore, this Court is inclined to award a sum of Rs.40,000/- towards loss of amenities.

13. Extra Nourishment:

The tribunal has awarded a sum of Rs.5,000/- towards Extra Nourishment and the said sum is too low. Therefore we enhanced to Rs.25,000/-.

14. Medical Bill:

The tribunal has awarded a sum of Rs.6,52,105/- towards medical bill and the said amount is just and fair and the same is confirmed.

15. Attender Charges:

No amount was awarded by the Tribunal towards attender charges. Therefore, this Court is inclined to award a sum of Rs.15,000/- towards attender charges.

16. Future Medical Expenses:

No amount was awarded by the Tribunal towards future medical expenses. Therefore, this Court is inclined to award a sum of Rs.50,000/- towards future medical expenses.

17. Transportation:

The tribunal has awarded a sum of Rs.5,000/- towards transportation and the said sum is too low. Therefore, we enhanced to Rs.15,000/-.

18. Loss of Marital Prospects:

No amount was awarded by the Tribunal towards loss of marital prospects. Therefore, this Court is inclined to award a sum of Rs.25,000/- towards loss of marital prospects.

19. Hence, the total compensation awarded by the tribunal a sum of Rs.8,01,105/-, stands increased in the manner stated below:-

Head	Amount
Loss of future earnings	Rs.7,71,120/-
Pain and sufferings	Rs.40,000/-
Loss of amenities	Rs.40,000/-
Extra Nourishment	Rs.25,000/-
Medical bills	Rs.6,52,105/-
Attender charges	Rs.15,000/-
Future medical expenses	Rs.50,000/-
Transportation	Rs.15,000/-
Loss of marital prospects	Rs.25,000/-
Total	Rs.16,33,225/-

CMA.No.1541/2018:

20. The learned counsel appearing for the appellant would contend that the Court below awarded a sum of Rs.2,92,260/-. The appellant made a claim for a sum of Rs.12,00,000/- and he was about 50 years at the time of accident, he was working as Supervisor in Sri Krishna Sweets. He had sustained fracture at shaft of right femur, fracture at right ilium, degloving injury on left knee and other multiple injuries all over the body. He was treated as in-patient at Kumaran Hospital from 21.12.2015 to 30.12.2015. The Doctor assessed the disability as 80%. However, the tribunal has taken disability as 40% and awarded a sum of Rs.2,000/- per percentage for the disability and awarded a compensation for a sum of Rs.80,000/- for permanent disability.

21. Further the learned counsel would contend that the tribunal without application of mind, awarded a sum of Rs.2,000/- per percentage of disability, the said amount is too low for the disability sustained by the appellant. Considering the gravity of injury, the tribunal ought to have awarded the compensation for disability as well as for the loss of income to the appellant by applying multiplier method.

22. The learned counsel for the appellant would contend that the injured was earning a sum of Rs.9,500/- per month at the time of accident. In this regard, the appellant marked the bank statement as Ex.P17. At the time of accident, the appellant was 50 years of age. Further, he contend that the tribunal ought to have applied the multiplier method by adding 25% future prospects. In the present case, the multiplier

applicable for the injured is 13. The tribunal has taken the functional disability as 40% and awarded a sum of Rs.2,000/- per percentage and the same should be set aside. Further he would contend that when the deceased was sustained 80% disability, the tribunal awarded 40% disability is not proper. The same is required to be reconsidered by this Court. Further, he contends that the tribunal awarded a sum of Rs.25,000/- for pain and sufferings, the same should be increased at a higher amount.

23. The learned counsel further contends that no amount was awarded towards loss of amenities. Therefore, he pleaded that at least a sum of Rs.25,000/- may be considered towards the loss of amenities. Further he contends that the tribunal awarded a sum of Rs.5,000/- towards extra nourishment and Rs.5,000/- towards transportation, these amounts are too low. Therefore, he pleaded Rs.15,000/- may be awarded under each head. The loss of income of the deceased due to the injury by applying multiplier method, the counsel fairly submits that the amount awarded Rs.80,000/- towards permanent disability and Rs.28,500/- towards loss of income during treatment period may be set aside. Further the counsel submits that a sum of Rs.1,48,760/- towards medical bills is just and fair.

24. Since, the Court below determined the income of the deceased at Rs.9,500/- per month and awarded compensation for the loss of income for 3 months Rs.28,500/- and upon the perusal of Ex.P17, it appears that the injured was drawing a sum of Rs.9,500/- per month, therefore, we inclined to fix the income of the deceased as Rs.9,500/-. Since, the injured was aged about 50 years as held by the Hon'ble Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC), 25% has to be added towards future prospects. Further, the multiplier applicable in the present case is 13. After adding 25% the monthly income would be Rs.9,500/- + 25% = Rs.11,875/-.

25. Further the medical board determined the disability as 80%. The tribunal has taken the disability as 40%. So at the time of submission, the counsel for the appellant/claimant submitted that 25% may be considered as functional disability and compensation may be awarded by applying the multiplier method. However, though we are inclined to apply multiplier method to award the compensation, it would be appropriate to fix the percentage of functional disability at 20% and award the compensation. Therefore, the loss of income of the injured is arrived as follows:-

$$\text{Rs.9,500/-} + 25\% = \text{Rs.11,875/-}$$
$$\text{Rs.11,875/-} \times 12 \times 13 \times 20\% = \text{Rs.3,70,500/-}$$
Therefore, the loss of income of the appellant due to the disability is fixed as a sum of Rs.3,70,500/-. Since

the loss of income has been calculated using multiplier method, Rs.80,000/- towards permanent disability and a sum of Rs.28,500/- awarded towards loss of income during treatment are hereby set aside.

26. Under these circumstances, there is no need for loss of future earnings. Further the award of the tribunal in all other aspect is just and fair and requires no revision by this Court as contended by the appellant.

27. Pain and Sufferings:

The tribunal awarded a sum of Rs.25,000/- towards pain and sufferings and the same is confirmed.

28. Loss of Amenities:

No amount was awarded by the Tribunal towards loss of amenities. Therefore, this Court is inclined to award a sum of Rs.25,000/- towards loss of amenities.

29. Extra Nourishment:

The tribunal has awarded a sum of Rs.5,000/- towards Extra Nourishment and the said sum is too low. Therefore we enhanced to Rs.15,000/-.

30. Medical Bill:

The tribunal has awarded a sum of Rs.1,48,760/- towards medical bill and the same is confirmed.

31. Attender Charges:

No amount was awarded by the Tribunal towards attender charges. Therefore, this Court is inclined to award a sum of Rs.10,000/- towards attender charges.

32. Future Medical Expenses:

No amount was awarded by the Tribunal towards future medical expenses. Therefore, this Court is inclined to award a sum of Rs.25,000/- towards future medical expenses.

33. Transportation:

The tribunal has awarded a sum of Rs.5,000/- towards transportation and the said sum is too low. Therefore, we enhanced to Rs.15,000/-.

34. Hence, the total compensation awarded by the Tribunal, a sum of Rs.2,92,260/-, stands increased in the manner stated below:

Head	Amount
Loss of future earnings	Rs.3,70,500/-
Pain and sufferings	Rs.25,000/-
Loss of amenities	Rs.25,000/-
Extra Nourishment	Rs.15,000/-
Medical bills	Rs.1,48,760/-
Attender charges	Rs.10,000/-
Future medical expenses	Rs.25,000/-
Transportation	Rs.15,000/-
Total	Rs.6,34,260/-

The total compensation awarded in this appeal is Rs.6,34,260/-, rounded off to Rs.6,35,000/-.

35. The Insurance Company is directed to deposit entire award amount after deducting the award amount, if any, already deposited as modified by this Court along with interest @ 7.5%. We also direct the Court below to transfer the entire amount to the appellants/claimants to their respective bank accounts by way of RTGS, within three weeks from the date of receipt of a copy of this order. If the award amount is already been deposited and not withdrawn by the claimants, the same shall be transferred to the claimants bank account, within three weeks from the date of receipt of a copy of this judgment. No costs. Consequently connected Miscellaneous Petition is closed.

36. In the result, the civil miscellaneous petitions are partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

at

10/22

To

The Motor Accidents Claims Tribunal,
Additional District Judge, Poonamallee.

copy to
The Section Officer
VR Section
High Court
Madras

+4 cc to Mr.A.N.viswanatha Rao Advocate sr104431,104432
+1 cc to Mr.R.Rathna Thara Advocate sr104960

C.M.A.Nos.1540 & 1541 of 2018
and
C.M.P.No.12263 of 2018

aa24/02/2020



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