

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.10.2018
Delivered on : 11.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Civil Miscellaneous Appeal No.1690 of 2018

Arumugam

...Appellant/Petitioner

-Vs-

1.Ashok B.Lavaand

2.Sri Ram General Insurance Co. Ltd.,
Branch Office,
2nd Floor, Rear Portion,
Nagappa Complex, 1076,
Mettupalayam Road,
Coimbatore Post and District.

..Respondents/Appellant

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the order dated 27.6.2017 passed in M.C.O.P.No.110 of 2012 on the file of the Motor Accident Claims Tribunal, Rasipuram.

For Appellant : Mr.C.Thangaraju

For Respondents: Mr.S.Dhakshnamoorthy
for respondent No.2

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.5,32,525/- awarded by the Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.

2. Brief facts are that on 20.11.2011 at about 7.00 P.M., the appellant was driving his TVS motorcycle bearing registration No.TN-29 AJ 8138 on Bommidu - Pappireddipatti Main road and when he was nearing Lurdupuram timber mark, a Tata lorry bearing registration No.KA-22 D 2757 owned by the first respondent and insured with the second respondent driven by its driver in a rash and negligent manner dashed against the appellant. Due to the impact, the appellant sustained grievous injuries all over the body. Immediately, after the accident, he was admitted in Government Hospital, Dharmapuri and thereafter, admitted at Ganga Hospital, Coimbatore where he had

taken treatment for 20 days. Regarding the accident, a criminal case in Crime No.444 of 2011 was registered by Bommidi Police Station under Section 279 and 337 IPC against the driver of the lorry. At the time of accident, the appellant was working as Forest Watcher in Tamil Nadu Forest Department and was earning Rs.10,000/- per month. Stating that the accident occurred due to rash and negligent driving of the driver of the lorry, the appellant has filed the claim petition claiming compensation of Rs.10,00,000/-.

3. Resisting the claim petition, the second respondent filed counter stating that the driver of the lorry drove the same with all due care and caution following the traffic rules. It is the appellant who drove his vehicle rashly and negligently without observing traffic rules came from the opposite direction and caused the accident. Since the accident occurred due to the act of the rider of the motorcycle, the driver of the lorry was not at all responsible for the alleged accident. Therefore, the claim by the appellant against the second respondent is untenable. It is stated that the driver of the lorry bearing registration No.KA 22D 2757 drove the same without driving licence and the owner of the lorry committed breach by permitting a unlicensed driver to drive the vehicle on the date of the alleged accident. If any compensation is awarded, it is only the first respondent, owner of the vehicle, who is liable to pay the same.

4. Before the Tribunal, the appellant examined himself as P.W.1 and one Jayaseelan was examined as P.W.2. Exs.P1 to P14 were marked. No oral and documentary evidence was adduced on the side of the contesting second respondent. Ex.C1-salary record was marked.

5. Upon consideration of oral and documentary evidence, the Tribunal held that the accident occurred due to rash and negligent driving of the driver of the lorry bearing registration No.KA-22 D 2757. The Tribunal also held that though the second respondent contended that the driver of the lorry had no valid driving licence, the second respondent has not marked any document to establish the same. Moreover, nothing has been produced to show that there was violation of policy conditions. Therefore, being the insurer of the offending lorry, the second respondent is liable to pay the compensation to the appellant. Finding that the appellant sustained 30% disability and also incurred a sum of Rs.3,92,525/- towards medical expenses, the Tribunal awarded total compensation of Rs.5,32,525/-. Being dissatisfied with the quantum, the appellant has filed the present Civil Miscellaneous Appeal.

6. Challenging the award, the learned counsel for the appellant submitted that the method of compensation adopted by the Tribunal is far-fetched and based upon surmises and conjectures. In fact, the Tribunal neglected the corroborative evidence viz., Medical report, to assess the nature of injury which clearly shows that the appellant feels discomfort while walking and standing and the said fact itself sufficiently proves that the award passed by the Tribunal is totally unfair. He would submit that the Tribunal erred in not appreciating the evidence on record properly and has adopted mere guess work while doing assessment of the degree of disability and there must be a basis since degree of disability and loss of earning capacity are not synonymous.

7. The learned counsel further submitted that due to injuries sustained by the appellant, it was not possible for the appellant to perform his avocation effectively and efficiently as before and the Tribunal ought to have awarded Rs.50,000/- under the head partial loss of earning. The Tribunal ought to have awarded much higher amount for pain and suffering as the claimant had suffered 30% disability and in fairness, it ought to have awarded at least Rs.1,00,000/- under the head pain and suffering and mental agony. The learned counsel submitted that the total compensation awarded by the Tribunal is inadequate and clearly deserved enhancement.

8. Per contra, the learned counsel for the second respondent contended that upon appreciating the evidence produced before it, the Tribunal awarded just compensation and there is no need to enhance the same and prayed for dismissal of the appeal.

9. I have heard Mr.C.Thangaraju, learned counsel appearing for the appellant and Mr.S.Dhakshnamoorthy, learned counsel for the 2nd respondent and also perused the materials available on record.

10. It is not necessary for this Court to state entire facts in detail such as, as to how the accident occurred and who was negligent and who is liable to pay compensation. It is for the reason that these things are recorded in favour of the appellant by the Tribunal and secondly, none of those findings are under challenge either by the second respondent insurance company or the owner of the offending lorry. Being dissatisfied with the quantum, the appellant/claimant has only preferred the present Civil Miscellaneous Appeal.

11. The only point that arises for consideration in this appeal is whether the compensation of Rs.5,32,525/- awarded by the Tribunal warrants enhancement.

12. In the accident, the appellant, who was aged 48 years and was working as Forest Watcher in Tamil Nadu Forest Department, sustained the following injuries:

- (1) A 7cm sutured wound over the right supra orbital region - coarsely sutured - Black eye left present.
- (2) A sutured wound over the right knee measuring 7cm.
- (3) Right thigh - abnormal mobility present middle 3rd right thigh.
- (4) Left thigh - Tenderness/abnormal mobility present middle 3rd left thigh.

Immediately after the accident, the appellant was admitted in Government Hospital, Dharmapuri, where from he was taken to Ganga Medical Centre and Hospital Private Limited, Coimbatore and admitted as inpatient. Ex.P2 is the wound certificate and Ex.P3 is the discharge summary issued by Ganga Medical Centre and Hospital Private Limited, Coimbatore. In Ex.P2-wound certificate, it was opined that all four injuries stated above are grievous in nature. Thus, it is clear that in the accident, the appellant sustained grievous injuries.

13. On a perusal of Ex.P3-discharge summary, it is seen that the appellant was admitted on 21.11.2011 and discharged on 08.12.2011. During treatment as inpatient, the appellant was diagnosed as under:

- (a) Head injury with sub arachnoid haemorrhage.
- (b) Closed cervical fracture right femur.
- (c) Closed segmental fracture right femur with comminution.
- (d) Closed distal 3rd shaft of femur with intercondylar extension left side.
- (e) Tibial condyle fracture right knee

From Ex.P3-discharge summary, it is seen also seen that the appellant was admitted to the ICU stabilization and ventilator support and was intubed in the resuscitation room.

14. In the present case, in order to assess the disability, during the course of enquiry before the Tribunal, the appellant was referred to the District Medical Board, Government District Headquarters Hospital Campus, Namakkal. The Board has examined the appellant and assessed the disability at 30% for the injuries sustained by him. Considering the report of the Medical Board dated 02.05.2017, the Tribunal has taken the disability at 30% and awarded Rs.90,000/- towards disability by taking Rs.3,000/- per percentage.

15. The fixation of 30% disability by the Medical Board and

awarding of Rs.90,000/- towards 30% disability by the Tribunal have not been seriously disputed by the appellant. Since there was no serious dispute qua fixing 30% disability and awarding of Rs.90,000/- towards disability, this Court feels that Rs.90,000/- awarded by the Tribunal for 30% disability is quite reasonable and the same is confirmed.

16. As far as compensation of other heads awarded by the Tribunal are concerned, the Tribunal awarded Rs.20,000/- for pain and suffering. Since the appellant suffered 30% disability, which is inevitable consequences of permanent disability, the learned counsel for the appellant seeks Rs.1,00,000/- towards pain and suffering.

17. In the accident the appellant had sustained sutured wound over the right supra orbital region, sutured wound over the right knee, abnormal mobility present middle 3rd right thigh and tenderness/abnormal mobility present middle 3rd left thigh and also multiple injuries all over the body. Considering the nature of injuries sustained by the appellant in the accident, he would have suffered pain and suffering during the period of treatment. Further, he would have suffered mental and physical shock at the time of accident. The pain and suffering are hardships, which is intolerable and cannot be expressed in terms of words and money cannot compensate the same. Therefore, this Court feels that Rs.20,000/- awarded by the Tribunal towards pain and suffering is very low and it would be appropriate to award a sum of Rs.1,00,000/- towards pain and suffering. Accordingly, Rs.20,000/- awarded by the Tribunal under the head pain and suffering is enhanced to Rs.1,00,000/-.

18. The Tribunal awarded Rs.10,000/- each towards extra-nourishment and transport to hospital. Considering the nature of injuries sustained and the period of treatment undergone by the appellant, Rs.10,000/- each awarded by the Tribunal is enhanced to Rs.50,000/- each.

19. The Tribunal awarded Rs.3,92,525/- towards medical expenses. Ex.P4-series is the medical bills. Since the second respondent has not disputed Ex.P4-medical bills and also after scrutinizing the medical bills only the Tribunal awarded Rs.3,92,525/- towards medical expenses, Rs.3,92,525/- awarded by the Tribunal is based on Ex.P4-medical bills and the same is confirmed.

20. The Tribunal awarded Rs.10,000/- towards loss of amenities. Loss of amenities covers the deprivation of ordinary experiences and enjoyment of life. In the case on hand, the appellant has stated that due to injuries sustained in the accident, he could not able to do any usual activities.

Considering the nature of injuries sustained in the accident, a sum of Rs.10,000/- awarded by the Tribunal towards loss of amenities is enhanced to Rs.50,000/-.

21. A person becomes entitled to damages for mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. The normal expectation of life is impaired. But at the same time it has to be borne in mind that the compensation is not expected to be a windfall for the victim. Statutory provisions clearly indicate that the compensation must be "just" and it cannot be a bonanza; not a source of profit but the same should not be a pittance. The Courts and Tribunals have a duty to weigh the various factors and quantify the amount of compensation, which should be just. What would be 'just' compensation is a vexed question. There can be no golden rule applicable to all cases for measuring the value of human life or a limb. Measure of damages cannot be arrived at by precise mathematical calculations. It would depend upon the particular facts and circumstances, and attending peculiar or special features, if any. Every method or mode adopted for assessing compensation has to be considered in the background of 'just' compensation which is the pivotal consideration. Though by the use of the expression "which appears to it to be just", a wide discretion is vested on the Tribunal, the determination has to be rational, to be done by a judicious approach and not the outcome of whims, guesses and arbitrariness. The expression "just" denotes equitability, fairness and reasonableness, and non-arbitrariness.

22. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident.

23. The Tribunal has not awarded any amount towards mental agony. An injury may bring about many consequences like loss of earning capacity, loss of mental pleasure and many such consequential losses. A person becomes entitled to damages for mental and physical impairment, his or her life may have been shortened or that he or she cannot enjoy life, which has been curtailed because of physical handicap. Considering the nature of injuries sustained by the appellant, this Court is inclined to award Rs.50,000/- towards mental agony.

24. The Tribunal has not awarded any amount towards attender charges. As stated supra, the appellant had taken treatment as inpatient from 21.11.2011 to 08.12.2011 at Ganga Medical Centre

and Hospital Private Limited, Coimbatore. Considering the period of treatment undergone by the appellant and also the fact that the appellant would have been taken care of by the attender during the period of treatment, it would be appropriate to award Rs.30,000/- towards attender charges.

25. The Tribunal has not awarded any amount towards loss of expectation of life and future medical expenses. On a perusal of the additional typed set of papers filed by the appellant containing the wound certificate and discharge summary issued by Ganga Medical Centre and Hospital Private Limited, Coimbatore, it is seen that after discharge from the hospital as inpatient on 08.12.2011, the appellant was periodically taken treatment in the same hospital as outpatient. In his evidence, P.W.1 deposed that still he is taking treatment for the injuries sustained by him and he was not able to do his normal work as before. Considering the nature of injuries sustained by the appellant, this Court is inclined to award a sum of Rs.30,000/- towards future medical expenses and Rs.40,000/- towards loss of expectation of life.

26. In the case on hand, the Tribunal has not awarded any amount towards loss of income during the treatment period. The medical records produced by the appellant would reveal that he had taken treatment from 21.11.2011 to 08.12.2011 as inpatient and in fact, he was in ICU for nearly 12 days.

27. There is no dispute that at the time of accident, the appellant was working as Forest Watcher in Tamil Nadu Forest Department and was drawing salary of Rs.10,941/-. Ex.P5 is the salary certificate issued by the Pay Disbursing Officer, Forest Range Officer, Shevaroy's North Range, Pappireddipatti. In Ex.P5, the gross salary of the appellant has been mentioned as Rs.10,941/- and the net pay as Rs.10,886/-. The second respondent has not seriously disputed Ex.P5-salary certificate. Considering the nature of injuries sustained by the appellant, it is not possible for him to perform his avocation effectively and efficiently as before, which would impact on his attendance. Therefore, it is just and reasonable to award at least three months admitted salary i.e., Rs.30,000/- by taking the monthly salary at Rs.10,000/- towards partial loss of earning.

28. The learned counsel for the appellant argued that the Tribunal has not awarded any amount towards loss of earning capacity and considering the nature of injuries sustained by the appellant, an amount of Rs.2,00,000/- may be awarded towards loss of earning capacity. In the case on hand, nothing on record to show that after the accident, the appellant's earning capacity was affected. No document was filed to show that due to injuries, the appellant was reverted to lower post.

Therefore, this Court feels that after quite some time, the appellant had joined duty and performing his work. Therefore, this Court is not inclined to accede to the claim of Rs.2,00,000/- made by the learned counsel for the appellant towards loss of earning capacity.

29. In view of the above discussion, the compensation of the Rs.5,32,525/- awarded by the Tribunal is enhanced to Rs.9,12,525/- as under:-

Heads	Rs.
Disability	90,000.00
Pain and suffering	1,00,000.00
Extra-nourishment	50,000.00
Transport charges	50,000.00
Loss of amenities	50,000.00
Medical expenses	3,92,525.00
Attender charges	30,000.00
Mental agony	50,000.00
Future medical expenses	30,000.00
Loss of expectation of life	40,000.00
Partial loss of earning for 3 months	30,000.00
Total	9,12,525.00

30. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.5,32,525/- awarded by the Tribunal is enhanced to Rs.9,12,525/-. The second respondent is directed to deposit the enhanced compensation of Rs.9,12,525/- with interest at the rate of 7.5% per annum from the date of petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the entire amount along with accrued interest. Consequently, connected miscellaneous petition is closed.

vs

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Rasipuram.

Copy to:-

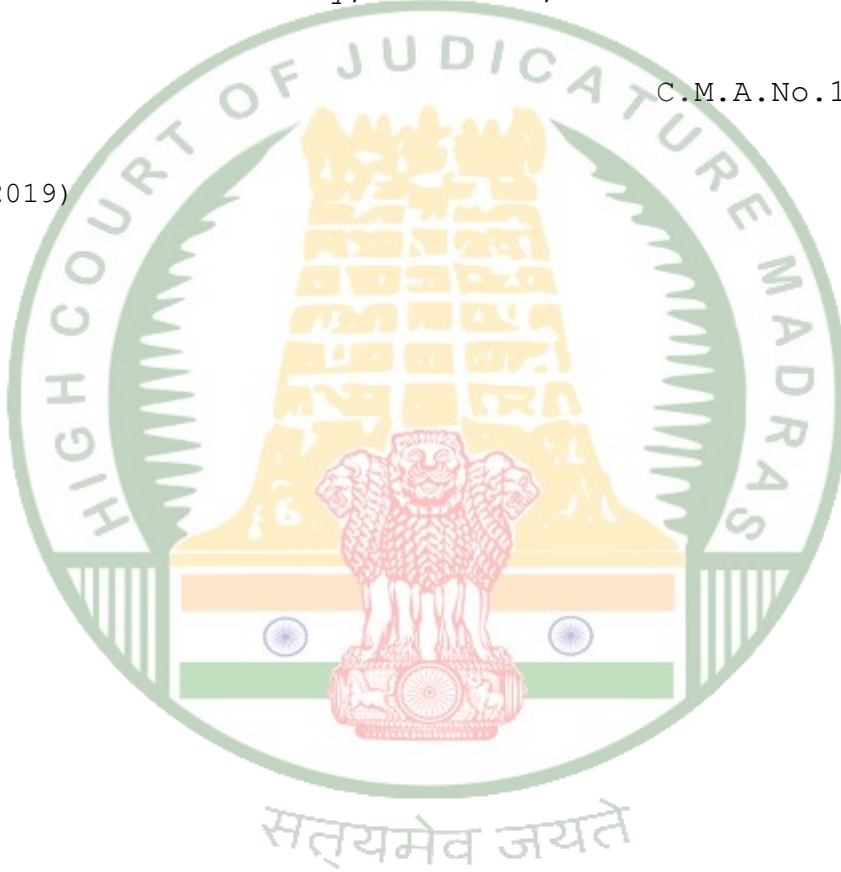
The Section Officer,
V.R.Section,
High Court, Madras - 104.

+2cc to Mr.A.Sathish Kumar, Advocate, SR.No.11733

+1cc to Mr.S.Dhakshnamoorthy, Advocate, SR.No. 12288

C.M.A.No.1690 of 2018

Kak(18/11/2019)



WEB COPY