

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 19.09.2018

Delivered on : 05.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN
Civil Miscellaneous Appeal No.1725 of 2018

Natarajan

...

Appellant

Vs

1.P.Velusamy

2.The National Insurance Company Ltd.,
No.58, Rajaji Street,
Gangayan - 638 701.

...

Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the order dated 6.7.2012 passed in M.C.O.P.No.438 of 2010 on the file of the Motor Accident Claims Tribunal (Additional District Judge), Namakkal.

For Appellant : Mr.C.Thangaraju

For Respondents: Mr.M.Aniruthan (for R1)

Mr.S.Vadivel (for R2)

JUDGMENT

Being dissatisfied with the quantum of compensation of Rs.7,00,000/- awarded by the Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.

2. Brief facts are that on 02.3.2010 at about 4.00 P.M., the appellant was travelling as pillion rider in a motorcycle bearing registration No.TN-28 J 9743 driven by one Tamilselvan on the left side of Tiruchengode - Paramathi Velur Main road and while nearing Mel Sathampur MSC Crusher, a three wheeler goods vehicle bearing registration No.TN-28 AA 7355, owned by the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner dashed against the motorcycle. Due to the impact, the appellant sustained severe grievous injuries all over the body including amputation of above right knee, bone fracture at hip. Immediately after the accident, the appellant was admitted in Government Hospital,

Namakkal and thereafter, admitted in Ganga Hospital, Coimbatore. Regarding the accident a criminal case in Crime No.74 of 2010 was registered by Nallur Police Station against the driver of the first respondent. Stating that the accident occurred due to rash and negligent driving of the driver of the first respondent's goods vehicle, the appellant has filed the claim petition claiming compensation of Rs.15,00,000/-.

3. Resisting the claim petition, the second respondent filed counter stating that the accident did not occur in the way as it is narrated in the claim petition. In fact at the relevant time, the three-wheeler (minidor auto) bearing registration No.TN-28 AA 7355 was driven by its driver in a slow speed and kept his left side of the road to a two-wheeler bearing registration No.TN-28 J 9743, which was driven by its rider in a rash and negligent manner, came in the opposite direction and dashed against the minidor auto and thereby caused the accident for which the driver of the minidor auto cannot be in any way be blamed. It is stated that if at all the appellant is entitled to any relief, the same can very well be worked out against the owner and insurer of the two wheeler. It is also stated that the driver who drove the minidor auto by name Shankar has not even possessed a valid and effective driving licence at the time of accident. Even if it is found that the said driver was negligent, the second respondent is under no obligation to reimburse the loss occasioned to the appellant and if at all he is entitled to any relief, the same can very well be worked out against the first respondent and prayed for dismissal of the claim petition.

4. In order to prove the claim, before the Tribunal, the appellant examined himself as P.W.1 and Dr.Sivalingam was examined as P.W.2. Exs.P1 to P11 were marked. The Development Officer of the second respondent was examined as R.W.1 and Exs.R1 to R3 were 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 three-wheeler. The Tribunal awarded total compensation of Rs.7,00,000/- for the injuries sustained by the appellant. Finding that the driver of the three wheeler had no valid driving licence at the time of accident, the Tribunal directed the second respondent to pay the compensation at the first instance and then recover the same from the first respondent.

6. It appears that as against the award, admittedly, respondents 1 and 2 have not preferred any appeal. Being dissatisfied with the quantum, the appellant alone has preferred the present appeal. In such circumstances, 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 three-wheeler.

7. Challenging the award, the learned counsel for the second respondent submitted that the Tribunal failed to perform its primary duty in not ascertaining what activities the appellant could carry on in spite of permanent disability and what he would not do as a result of the permanent disability. He would submit the Tribunal ought to have awarded more amount under the heads pain and suffering, transport charges, extra-nourishment and loss of earning.

8. The learned counsel further submitted that the Tribunal failed to award a reasonable amount of Rs.1,80,000/- for fixing of artificial limb and every year replacement. Further, the Tribunal failed to see that fixing of prosthetic limb will cause complications and side effects such as redness, skin breakdown, bruising, blisters formation in the stump and the appellant needs medical observation for the rest of his life. Hence, the learned counsel for the appellant seeks reasonable enhancement.

9. Per contra, the learned counsel for the second respondent submitted that after appreciating the oral and documentary evidence, the Tribunal awarded just and reasonable compensation and there is no need to interfere with the same.

10. I have heard Mr.C.Thangaraju, learned counsel for the appellant, Mr.M.Aniruthan, learned counsel for the 1st respondent and Mr.S.Vadivel, learned counsel for the 2nd respondent and also perused the materials available on record.

11. The only point that arises for consideration in this appeal is whether the compensation of Rs.7,00,000/- awarded by the Tribunal is just and reasonable.

12. In the present case, the appellant had sustained severe grievous injuries all over the body including amputation of right leg above knee and bone fracture at right hip, as a result, he had permanently/partially disabled. In his evidence, the injured (P.W.1) clearly deposed that his right leg was amputated above the knee. The evidence of P.W.1 is also supported by the medical records viz., Ex.P2-wound certificate and Ex.P5-discharge summary and also the evidence of P.W.2-Doctor. P.W.2-Doctor examined the injured after the accident and issued Ex.P11-disability certificate assessing the

disability at 80%. Sustaining of 80% disability by the appellant has not been seriously disputed by the second respondent and the Tribunal has also taken the disability at 80% and awarded Rs.1,00,000/- towards disability.

13. In this regard, it is pertinent to point out that the physical frame of the appellant has been shattered because of amputation of right leg above the knee and either he has to walk with crutches or to remain immobilise. Money cannot compensate what has been shattered. One cannot put the appellant to his original position, but just and reasonable compensation has to be given.

14. In Cholan Roadways Corporation Limited v. Ahmed Thambi, reported in 2006 (4) CTC 433, Full Bench of this Court observing that the compensation awarded is to be just, fair and adequate has held as follows:

"The Supreme Court and this Court repeatedly held and reiterated that the compensation to be awarded by the Tribunals under any head should not be a token compensation, but it should be adequate and reasonable to achieve the statutory goal. The Tribunals are well advised to take into account the facts and circumstances of the individuals case, the age of the injured or the deceased on the date of the accident, social and economic status of the deceased or injured, the prospects of the deceased/injured earning more income if the accident had not taken place. The Courts and Tribunals, in bodily injured cases while assessing compensation should take into account all relevant circumstances, evidence, legal principles governing quantification of compensation".

15. This Court is of the view that awarding of Rs.1,00,000/- by the Tribunal for 80% disability is very low. While awarding compensation under the head disability, the Tribunal ought to have taken note of injuries sustained by the appellant, more particularly, amputation of right leg above the knee.

16. In National Insurance Company Ltd. v. G.Ramesh, reported in 2013 (2) TN MAC 583, the Hon'ble Apex Court has considered Rs.3,000/- per percentage of disability. Following the decision of the Hon'ble Apex Court in National Insurance Company Ltd. v. G.Ramesh, supra, this Court has taken Rs.3,000/- per percentage of disability. Taking the disability at 80%, an amount of Rs.1,00,000/- awarded by the Tribunal is enhanced to Rs.2,40,000/- towards permanent, partial disability.

17. The Tribunal awarded Rs.2,00,000/- towards loss of earning power. When the Tribunal awarded compensation towards

permanent disability, it ought not to have awarded compensation under the head loss of earning power. No material has been produced by the appellant to show that after the accident, he was sent out of the job and he was not employed till date. Since this Court awarded Rs.2,40,000/- towards permanent disability, awarding compensation under the head loss of earning power would not arise. Therefore, Rs.2,00,000/- awarded by the Tribunal separately under the head loss of earning power is deleted.

18. The Tribunal awarded Rs.25,000/- towards pain and suffering. As pointed out supra, the appellant had taken treatment from 02.03.2010 to 13.03.2010 and during treatment his right leg was amputated above the knee. Due to 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. The Tribunal failed to consider that the appellant who suffered 80% of disability suffer severe phantom pain after the loss of limb and also experience brief flashes of pain or constant, numbering pain apart from post-traumatic stress disorder. Having regard to the period of treatment undergone by the appellant and considering the nature of injuries and also his right leg was amputated above the knee, the compensation of Rs.25,000/- awarded by the Tribunal for pain and suffering is very meagre and the same is enhanced to Rs.3,00,000/-.

19. The Tribunal awarded Rs.20,000/- towards transport charges and the same is enhanced to Rs.50,000/-.

20. The Tribunal awarded Rs.10,000/- towards extra-nourishment. Considering the nature of injuries and the amputation of right leg above the knee and also the period of treatment undergone by the appellant, the same is enhanced to Rs.30,000/-.

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.

22. 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.

23. The Tribunal awarded Rs.15,000/- towards loss of earning. At the time of accident, the appellant was working as Clerk in Primary Agricultural Co-operative Bank and was getting salary of Rs.11,529/-. Ex.P8 is the salary certificate, wherein the gross salary mentioned as Rs.11,529/- and the net pay is Rs.9,936/-. The second respondent has not seriously disputed Ex.P8-salary certificate. Considering the nature of injuries sustained by the appellant and also amputation of right leg above the knee, 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 atleast six months admitted salary i.e., Rs.59,616/-, rounded off to Rs.60,000/- towards partial loss of earning.

24. The Tribunal awarded Rs.10,000/- towards injuries. Since an amount of Rs.2,40,000/- awarded towards disability taking note of injuries sustained by the appellant, Rs.10,000/- awarded by the Tribunal towards injuries is deleted.

25. The Tribunal awarded Rs.3,20,000/- towards medical expenses. Ex.P6-series is the medical bills produced by the appellant. Since the second respondent has not disputed Ex.P6-medical bills and also after scrutinizing the medical bills only the Tribunal awarded Rs.3,20,000/- towards medical expenses, Rs.3,20,000/- awarded by the Tribunal is based on Ex.P6-medical bills and the same is confirmed.

26. The Tribunal has not awarded any amount towards loss of amenities, mental agony, loss of expectation of life, future medical expenses and for fixing artificial limb.

27. In Govind Yadav v. The New India Insurance Company Limited, reported in (2011) 10 SCC 683, the Hon'ble Supreme Court, awarded a sum of Rs.1,50,000/- for loss of amenities, and enjoyment of life, in the case of amputation, where the disability was assessed at 70%.

28. In C.M.A.No.2234 of 2016, dated 22.09.2016 (Managing Director, Tamil Nadu State Transport Corporation, Kancheepuram v. Minor S.Surya, rep. by her father Subramaniam), a Division Bench of this Court relying upon the decision of the Hon'ble Supreme Court in V.Mekala v. M.Malathi, reported in 2014 ACJ 1441, awarded Rs.2,00,000/- towards loss of amenities and attendant charges.

29. Since in the instant case, the appellant suffered 80% disability, following the decisions of the Hon'ble Supreme Court as well as this Court cited supra, this Court is inclined to award a sum of Rs.2,00,000/- towards loss of amenities and attendant charges.

30. 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.2,00,000/- towards mental agony.

31. The Tribunal has not awarded any amount towards loss of expectation of life. In a catena of decisions, the Hon'ble Supreme Court as well this Court considered awarding of compensation under the head loss of expectation of life, if the loss of future earning capacity more than 50%. In the present case, since the appellant suffered permanent disability of 80% as a result of injuries and his right leg was amputated above the knee, this Court is inclined to award a sum of Rs.1,50,000/- towards loss of expectation of life.

32. In the instant case, the Tribunal has not awarded any amount under the head future medical expenses. In cases involving total or partial disablement, the term 'compensation' used in Section 166 of the Motor Vehicles Act, 1988 would include not only the expenses incurred for immediate treatment, but also the amount like to be incurred for future medical treatment/care necessary for a particular injury or disability caused by an accident.

33. The Tribunal failed to see that fixing of prosthetic limb will cause complications and side effects such as redness, skin breakdown, bruising, blisters formation in the stump and the appellant needs periodical medical observation for the rest of his life. Therefore, it is just and necessary to award Rs.50,000/- towards future medical expenses.

34. The Tribunal has not awarded any amount for fixing the artificial limb. In his evident, P.W.1 deposed that for fixing artificial limb, he had incurred Rs.1,80,000/-, which was not included in the medical bills produced by him. More over, the artificial limb has to be replaced every year. Admittedly, for fixing artificial limb, the appellant would have incurred huge amount. The said fact has also not been seriously disputed by the second respondent. In this circumstances, it would be appropriate to award a sum of Rs.2,50,000/- towards fixing of artificial limb.

35. In view of the above discussion, the compensation of the Rs.7,00,000/- awarded by the Tribunal is enhanced to Rs.18,50,000/- as under:

Heads	Amount awarded by the Tribunal	Amount claimed in the appeal
Injury	10,000.00	10,000.00
Loss of earning	15,000.00	50,000.00
Transportation	20,000.00	50,000.00
Medical Bills	3,20,000.00	3,20,000.00
Nutrition	10,000.00	30,000.00
Pain and suffering	25,000.00	3,00,000.00
Disability (80 X 3,000)	1,00,000.00	2,40,000.00
Loss of mental agony	2,00,000.00	2,00,000.00
Loss of amenities	Nil	2,00,000.00
For fixing artificial limp	Nil	2,50,000.00
Loss of expectation of life	Nil	1,50,000.00
Future medical expenses	Nil	50000
Total	7,00,000.00	18,50,000.00

36. In its award, the Tribunal directed the second respondent to pay the compensation at the first instance and then recover the same from the first respondent. The said finding of the Tribunal has not been challenged either by the first respondent/owner of the offending vehicle or the second respondent insurer. Finding that at the time of accident, the driver of the offending vehicle had no valid driving licence to drive the same, the Tribunal directed the second respondent to pay the compensation at the first instance. Since the said finding of the Tribunal is based on the oral evidence of R.W.1 and Exs.R1 to R3, this Court does not want to take a different view and the same is affirmed.

37. In the result, the Civil Miscellaneous Appeal is partly allowed with proportionate costs. The compensation of Rs.7,00,000/- awarded by the Tribunal is enhanced to Rs.18,50,000/-. The second respondent is directed to deposit the enhanced compensation of Rs.18,50,000/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this judgment before the Tribunal. On such deposit, the appellant/claimant is permitted to withdraw the entire amount along with accrued interest. The appellant ought to have forgo the interest for the delayed period of 1674 days in filing this appeal.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Motor Accident Claims Tribunal,
Additional District Judge,
Namakkal.

+2cc to Mr.C.Thangaraju, Advocate sr.9824
+1cc to M/s.Aniruthan, Advocate sr.10576
+1cc to Mr.Vadivel, Advocate sr.9528

C.M.A.No.1725 of 2018

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