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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

CMA.No.1475 of 2009

K.Sridhar

...Appellant/Petitioner

vs.

1.M.Aziz

2.United India Insurance Co. Ltd.,
Now operating from, No.73-C,
M.T.H. Road,
1st Floor, Ambattur,
Chennai -53.

3.D.Prashanth

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 04.04.2008, in MCOP.No.1702 of 2003, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Court, Fast Track Court-V, Chennai.

For Appellant : Mr.S.Gangaram Prasad

For Respondents : Mrs.C.Harini
for Mr.N.Vijayaraghavan
for R2
R1 and R3 - Exparte

JUDGMENT

The appellant is the claimant in MCOP.No.1702 of 2003, on the file of the learned Additional District and Sessions Judge, Motor Accidents Claims Tribunal, Fast Track Court-V, Chennai. He has filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road traffic accident that took place on 03.02.2003.

2. The brief case of the appellant/claimant is as follows:



(i) The appellant/claimant was aged about 30 years on the date of the accident. He was working as an Electrician and Electrical Contractor, earning a sum of Rs.6,000/- per month.

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(ii) On 03.02.2003, around 19.00 hours, at Heavy Vehicle Factory (HVF) road near Thangiah gate, Avadi, the appellant/claimant was riding his bicycle and was proceeding from his residence at Brindavan nagar towards Avadi, while so, the rider of Suzuki motorcycle bearing Registration No. TN 20 D 8760, belonging to the first respondent herein, came in a rash and negligent manner from the opposite direction to the wrong side of the said road and dashed against the appellant / claimant, thereby, the appellant / claimant sustained grievous injuries besides damages to his cycle. The first respondent is the owner of the offending vehicle, which was insured with the second respondent. The third respondent is the rider of the said motorcycle.

(iii) The injured appellant / claimant was first taken to KMC Hospital on 03.02.2003 and then shifted to Government General Hospital on the same day and was admitted therein as an inpatient from 03.02.2003. Thereafter, he took treatment at Puttur for the fracture on his right leg. Then, he was admitted in Sri Ramachandra Hospital, Chennai, wherein, he was treated as an inpatient from 19.02.2003 to 25.02.2003 and after discharge, the appellant/claimant was admitted in Sankara Nethralaya Nungambakkam as inpatient from 26.02.2003 to 27.02.2003 and after discharge he was admitted in Mercury Nursing Home, Egmore, Chennai - 8 as an inpatient from 27.02.2003 to 03.03.2003 and after discharge from there, he was admitted in Government Eye Hospital, Egmore, Chennai - 8 as an inpatient from 12.03.2003.

(iv) According to the appellant / claimant, the rash and negligent riding of the rider of the motorcycle bearing Registration No. TN 20 D 8760 was the cause of the accident and that since, the said motorcycle was insured with the United India Insurance Company Limited, the owner and insurer are jointly and severally liable to pay compensation to him and hence the claim petition.

3. The owner and driver of the said motorcycle was absent before the Tribunal and therefore, they were set ex-parte. The United India Insurance Company Limited contested the claim petition. Before the Tribunal, on the side of the appellant / claimant, PW1 to PW4 were examined and exhibits P1 to P23 were marked. On the side of the Insurance Company no oral or documentary evidences were adduced.



4. The learned Additional District and Sessions Judge after analysing the oral and documentary evidences available on record, awarded a compensation of Rs.3,59,200/- together with interest at the rate of 9% per annum and directed all the respondents therein to pay the same jointly and severally to the appellant / claimant and fixed the primary responsibility on the United India Insurance Company Limited.

5. Aggrieved against the said order passed by the Tribunal, the appellant / claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. The factum of the accident, involvement of the motorcycle owned by the first respondent, the policy of the insurance company, manner of the accident, rash and negligence fixed on the part of the third respondent are not disputed by both the parties. Accordingly, the finding of the Tribunal to that effect, is hereby confirmed.

7. Heard both sides on the point of quantum of compensation and perused the materials available on records.

8. It is seen from the evidence of Dr.Sai Chandran (PW2) coupled with the discharge summaries issued by Government Hospital, Ramachandra Hospital, Mercury Nursing Home and Government Hospital, (Exs. P2, P5, P7 and P8) that in the said accident, the appellant/claimant has sustained comminuted fracture of lateral wall of right orbit, comminuted fracture of right zygomatic arch, fracture of anterior and lateral walls of right maxillary sinus, traumatic neuropathy of right eye, sub-conjunctival hemorrhage, total loss of vision in right eye, fracture of both bones in right leg and abrasions and lacerations all over the body.

9. It is evident from the records that the appellant / claimant took treatment initially at Ramachandra Hospital as an out patient and then continued the treatment there itself, for the head and eye injury as an inpatient, and then took treatment at Sankara Nethralaya, Mercury Nursing Home, Government Eye Hospital on various dates.

10. The copy of the discharge summary sheet issued at the Government General Hospital under Ex.P2, the out patient chit issued at bone setting Hospital under Ex.P3, the out patient chit issued at Ramachandra Hospital under Ex.P4, the discharge summary issued at the same hospital under Ex.P5, the medical certificate issued at Shankara Nethralaya under Ex.P6, the discharge summary issued at Mercury Nursing Home under Ex.P7,



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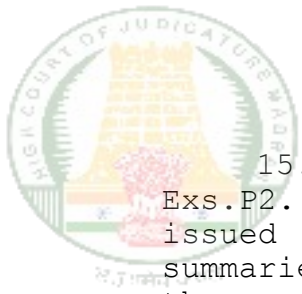
the discharge summary issued at Government Eye Hospital under Ex.P8, the out patient chit issued at Government Dental Hospital under Ex.P9, the medical certificate issued at Sri Ivan Stedeford Hospital under Ex.P10 were all marked on the side of the appellant / claimant before the Tribunal.

11. A perusal of Ex.P2 discloses that the appellant / claimant sustained fracture of both bones in right leg and on diagnosis they found closed displaced fracture right tibia P/3-M/3 3rd junction. The discharge summary sheet issued at Ramachandra Hospital discloses that on local examination they found extra oval - sutured laceration over right upper eye lid pet orbital odema right eye present - right sub conjunctival heamorrhage and on investigation they found fracture of right zygomatic maxillary. On CT scan they found fracture involving anterior and lateral walls of right maxillary sinus, fracture right zygomatic arch and lateral wall of orbit. The certificate issued at Sankara Nethralaya discloses that this appellant / claimant was referred to Mercury Nursing Home, Egmore for further treatment with regard to the injuries sustained by him in the right eye. The discharge summary sheet issued at Mercury Nursing Home discloses that on discharge the appellant / claimant's right side vision was better.

12. The appellant/claimant continued to take treatment at the Government Hospital from 12.03.2003 to 22.03.2003. A further perusal of other documents also discloses the appellant/claimant was in continuous treatment with regard to eye injury till 2007 and the present position as per the disability certificate issued by Dr.Rajappa Eye Specialist is that the appellant / claimant's right opthalmic nerve is completely damaged and he suffers 30% total permanent disability.

13. Further, the disability certificate (Ex.P19) issued by Orthopedic Doctor shows that Dr.Saichandran (PW2) fixed the partial permanent disability at 30%. Dr.R.Rajappa (PW3) after examination of the injury coupled with the Exs.P6 and P7, fixed the total permanent disability sustained by the appellant/claimant at 30% and issued Ex.P20. Dr.T.S.Kalkura (PW4) has issued disability certificate under Ex.P3, fixing the dental injury sustained by the appellant / claimant as partial permanent disability at 35%.

14. As per the item 26 of Part II (list of injuries deemed to result in permanent partial disablement) of Schedule I annexed to the Employee's Compensation Act, 1923 shows that for "loss of vision of one eye, without complications or disfigurement of eye-ball, the other being normal", the percentage of loss of earning capacity should be fixed at 30%.



15. After going through medical evidences issued under Exs.P2, P3 and P4 coupled with the disability certificates issued under Exs.P19, P20 and P23 along with the discharge summaries issued under Exs.P2, P5, P7 and P8, this Court is of the considered view that the disability sustained by the appellant / claimant may be fixed at 65% instead of 60% fixed by the Tribunal.

16. In the School Transfer Certificate (Ex.P13) issued by the School Authority, the date of birth of the appellant / claimant was shown as 14.06.1972. Accordingly, it is held that on the date of the accident the appellant / claimant was 31 years old. The Tribunal has taken the monthly income of the appellant / claimant as Rs.3,000/-. Since, the age of the appellant / claimant was 31 years on the date of the accident, as per the decision laid down in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601, 40% should be added towards future prospectus of the appellant / claimant.

17. Considering the nature of the injuries sustained by the appellant / claimant and the oral and documentary evidences adduced on behalf of him and also taking note of the avocation of the injured being electrician, this Court is of the considered view that the essential criteria mentioned by the division bench of the Honourable Supreme Court in Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343 is satisfied and the appellant / claimant has suffered 'functional disability' as the same affects earning capacity of the appellant / claimant. Accordingly, the multiplier method is hereby adopted and the notional income of the appellant / claimant as fixed above is taken up. The proper multiplier method to be adopted in the instant case is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

Calculation:

Notional income = Rs.3,000/-

40% Future Prospects = Rs.1,200/-

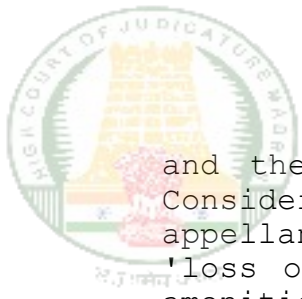
Total = Rs.3,000/- + Rs. 1,200 = Rs.4,200/-

Loss of earning power

= Rs. 4,200/- x 12 x 16 x 65% /100

= Rs.5,24,160/-

18. The compensation awarded by the Tribunal under the heads 'pain and sufferings', 'transportation' and 'medical expenses' are just and fair and the same are hereby confirmed. The Tribunal has not awarded any amount under the heads 'extra nourishment', 'future medical expenses' and 'attender's charges'



and therefore, a sum of Rs.10,000/- is awarded towards each. Considering the nature of the injuries sustained by the appellant / claimant, a sum of Rs.45,000/- is awarded towards 'loss of amenities'. Since, 'pain and suffering' and 'loss of amenities' are already awarded by this Court, a sum of Rs.45,000/- awarded by the Tribunal towards 'mental agony, amenities of life and loss of conjugal life' stands hereby vacated.

19. Accordingly, the award of the Tribunal in M.C.O.P.No. 1702 of 2003 is modified as follows:

Sl.No	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	loss of earning power	Rs.2,59,200/-	Rs.5,24,160/-
2.	Pain and sufferings	Rs.30,000/-	Rs.30,000/-
3.	Transport to Hospital and other incidental expenses	Rs.5,000/-	Rs.5,000/-
4.	Medical expenses	Rs.20,000/-	Rs.20,000/-
5.	Mental agony, amenities of life and loss of conjugal life	Rs.45,000/-	Nil
6.	Extra nourishment	Nil	Rs.10,000/-
7.	Future medical expenses	Nil	Rs.10,000/-
8.	Attender's charges	Nil	Rs.10,000/-
9.	Loss of amenities	Nil	Rs.45,000/-
	Total	Rs.3,59,200/-	Rs.6,54,160/-

The compensation amount awarded by the Tribunal is enhanced from Rs.3,59,200/- to Rs.6,54,160/- which shall carry interest at the rate of 7.5% per annum.

20. In the result,

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



(ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,59,200/- to Rs.6,54,160/- which shall carry interest at the rate of 7.5% per annum.

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(iii) The second respondent / United India Insurance Company Limited is directed to deposit the entire enhanced compensation awarded by this Court i.e., Rs.6,54,160/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No. 1702 of 2003, dated 04.04.2008, on the file of the learned Additional District and Sessions Judge, Fast Track Court No-V, Motor Accidents Claims Tribunal, Chennai within a period of eight weeks from the date of receipt of a copy of this order.

(iv) It is made clear that the appellant / claimant is entitled to interest only at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

(v) On such deposit being made by the second respondent, the appellant / claimant is permitted to withdraw the entire amount, after following due process of law.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
The Additional District and Sessions Court,
Fast Track Court-V, Chennai.

2.The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.Balaji Prasad, Advocate Sr.40955
+1cc to Mr.Vijayaragavan, Advocate Sr.41463

CMA.No.1475 of 2009

mg[co]
srg 22/10/2019