

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

C.M.A.No.2197 of 2018

P.Kala ... Appellant/Petitioner

Vs

1.G.Vijayan
2.The National Insurance Co.Ltd.,
Divisional Office No.10, Plot No.101-106,
N-1, BMC House, Connaught Place,
New Delhi - 110001.
Now at No.46, Regina Mansion,
Moore Street, Chennai.1. ... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 for enhancement of compensation against the Judgment and Decree dated 25.09.2014 in M.C.O.P.No.16 of 2010 on the file of the Motor Accidents Claims Tribunal, Sub Court, at Attur.

For Appellant : Ms.Ramya .V. Rao

For Respondents : Mrs.N.B.Surekha for R2.

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the claimant, not satisfied with the quantum of compensation of Rs.7,01,035/- for the disability sustained by the appellant due to injuries caused in the accident occurred on 26.12.2009, when the appellant was travelling in a van from Attur to Thirunageswaram temple, which was driven rash and negligently and capsized leading to accident. Because of the injuries sustained by the claimant/appellant, her right hand got amputated above the elbow. Therefore, claim petition.

2. Heard Ms. Ramya Rao, learned Counsel appearing for the Appellant and Mrs. N.B. Surekha, learned Counsel appearing for the 2nd respondent.

3. Ms. Ramya Rao, learned Counsel appearing for the appellant would submit that the determined monthly income of Rs. 6,000/- and addition of 25% towards future prospects as the claimant was aged about 45 years are without any basis. Further, the tribunal did not award any amount towards future medical expenses, loss of amenities, Attendant charges and a sum of Rs. 3,00,000/- awarded towards loss of earning capacity is less. Even the other amounts awarded towards other heads are less and she seeks to enhance the compensation.

4. However, Mrs. N.B. Surekha, learned Counsel appearing for the 2nd respondent submitted that the amount awarded is adequate and there is no need to enhance the compensation.

5. Heard the parties and perused the records.

6. The only point is with regard to the quantum of compensation as there is no appeal against the finding of the tribunal that the driver of the omni van alone was rash and negligent in driving the vehicle. Therefore, negligence need not be gone into.

7. The injured was aged about 45 years. As per the medical report and PW2, doctor's evidence and as per the medical certificates viz., Ex.P.2 to Ex.P.5, the tribunal rightly determined the disability at 89% as the victim suffered amputation of right hand above the elbow. It is very difficult for any person to live a normal life with the amputation of right hand.

8. Moreover, the claimant claims that she was earning Rs. 10,000/- per month through fruit business. However, the tribunal taking the appellant's age as 45 held that she would have lived healthily without any problem for 50 years and awarded a sum of Rs. 3,00,000/- towards loss of earning capacity. The said amount of Rs. 3,00,000/- is without any basis, especially when the right hand has been amputated. The Honourable 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/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and added 50% towards future prospects whereas in this case, the accident occurred in the year 2009 and therefore, this Court is inclined to follow the multiplier method by determining the monthly income at Rs. 6,500/- and adding 25% towards future prospects as the age of the victim is

45. For the age of 45, the relevant multiplier is '14' and thus, the loss of income would be Rs.6,500/- + 25% x 12 x 14 x 89/100 = Rs.12,14,850/-.

9.A sum of Rs.2720/- awarded towards loss of income during the period of treatment and Rs.1,78,000/- awarded towards permanent disability are deleted as the loss of income in toto has been calculated by multiplier method. Rs.5,000/- awarded towards transportation is very less and the same is enhanced to Rs.25,000/- as the treatment further follows as after amputation, the patient requires frequent visit to the hospital. Similarly, Rs.5,000/- awarded towards extra nourishment is enhanced to Rs.50,000/- as it is a case of amputation. Rs.1,10,315/- awarded towards medical expenses as per Ex.P.6 medical bills is confirmed.

10.Further, Rs.1,00,000/- is awarded towards attendant charges. Since, no amount has been awarded towards amenities and future medical expenses, a sum of Rs.1,50,000/- is awarded towards loss of amenities and Rs.1,00,000/- is awarded towards future medical expenses. Further, Rs.1,00,000/- awarded towards pain and sufferings is too low and considering the pain and sufferings, the victim would have undergone during the accident and during amputation of the right hand, Rs.1,50,000/- is awarded. Therefore, a sum of Rs.7,01,035/- awarded by the tribunal is modified as follows:

SI.No	Head	Amount (Rs.)
1.	Loss of income	12,14,850/-
2.	Loss of Amenities	1,50,000/-
3.	Transportation	25,000/-
4.	Extra nourishment	50,000/-
5.	Medical expenses	1,10,315/-
6.	Attendant charges	1,00,000/-
7.	Future medical expenses	1,00,000/-
8.	Pain and sufferings	1,50,000/-
	Total	19,00,165/-
	Rounded off	19,00,000/-

11.Hence, the total compensation payable in this case is Rs.19,00,000/-. The interest awarded by the Tribunal at the rate of 7.5% per annum is confirmed. Further, for the delay period the appellants are not entitled to any interest.

12.The 2nd respondent/Insurance company is directed to deposit the entire award amount as per the order of this Court before the trial Court along with interest and costs after deducting the amount, if any, already deposited within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to withdraw the entire amount through RTGS within a period of one week.

13. Accordingly, this appeal is partly allowed, by enhancing the award of the Tribunal from Rs.7,01,035/- to Rs.19,00,000/-. No costs.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

The Motor Accident Claims Tribunal,
Sub Court, Attur.

Copy To
The Section Officer,
VR Section, High Court, Madras

+1cc to Mrs.N.B.Surekha, Advocate SR.No.51937

+2cc to Mr.AN.Viswanatha Rao, Advocate SR.No.51562

C.M.A.No.2197 of 2018

NRL (CO)
GMY (19/08/2019)

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