

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2019

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.1592 of 2014

K.Karthi

... Appellant/Petitioner

Vs

1.M.Rasu

2.R.P.P.Blue Metals
156, Mullamparappu
Nathagoundampalayam Post
Erode Taluk
Erode District.

3.National Insurance Company Ltd.,
Having Branch Office
78, Thiruvenkatasamy Chetty Street,
Erode -638 001.

... Respondents

(RR1 & 2 were set exparte, hence notice
in the CMA may be Dispensed with)

PRAYER :

The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 29.10.2014 made in MCOP.No.400 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Erode.

For Appellant : Mr.M.Guruprasad

For Respondents: Mrs.R.Sree Vidhya for R3
: R1 & R2- Exparte.

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the Judgment and decree dated 29.10.2014 made in MCOP.No.400 of 2013 on the file of the Motor Accidents Claims Tribunal/Special Sub Court, Erode.

2. On 04.12.2012 at about 3:00 p.m., when the petitioner was driving a vehicle, viz., TATA Ace, bearing Registration No. TN 33 AP-9274 from north to south on the left side of the Erode to Kangeyam road at Aval Poondurai Eswaran Koil, a Tipper lorry, bearing Registration No. TN-33 AF-2291, driven by the first respondent came from south to north direction in a rash and negligent manner and dashed against the said TATA Ace, and thus, caused the accident. In the said accident, the claimant sustained fracture on the left thigh, left knee, right knee and right hand. Hence, he filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him.

3. Before the Tribunal, PW1 to PW4 were examined and Ex.P1 to Ex.P14 were marked. Ex.P1 - FIR, Ex.P2 - Observation Mahazer, Ex.P3-Rough Sketch, Ex.P4-Charge sheet, Ex.P5-Wound certificate, Ex.P6-TN-33-A-2291 lorry MVI Report, Ex.P7-TN-33-AP-9274 Lorry MVI Report, Ex.P8-Judgment, Ex.P9-Medical Bills, Ex.P10-X-ray (4 nos), Ex.P11 - Discharge summary, Ex.P12 - Salary certificate, Ex.P13 - X-ray and Ex.P14 - Disability certificate. On the side of the respondents, neither any witness was examined nor any documents were marked.

4. The Tribunal, on appreciation of both on oral and documentary evidence, came to the conclusion that the accident occurred due to the rash and negligent driving of the Tipper lorry by its driver, and held that the respondents are jointly and severally liable to pay the compensation of Rs.1,81,055/- to the appellant/claimant with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The break up details of which is shown below:-

Loss of income	: Rs. 27,000/-
Disability	: Rs. 44,000/-
Pain and suffering	: Rs. 30,000/-
Extra nourishment	
and damages to cloths	: Rs. 15,000/-
Transport expenses	: Rs. 5,000/-
Medical expenses	: Rs. 48,055/-
Future Medical expenses	: Rs. 12,000/-

	Rs.1,81,055/-

5. Not being satisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has come out with the present appeal, seeking enhancement of the same.

6. The learned counsel appearing for the claimant submitted

that the claimant sustained grievous fractures on his left thigh, left knee, right knee and right hand. As soon as the accident occurred, he was admitted in C.K.Hospital, Erode, for four days. Ex.P.5/Wound Certificate would show that the claimant sustained a punctured wound, measuring 1/2x1/2 inch lateral aspect at (L) thigh; abrasion, measuring 2x2 inch medical aspect at (L) thigh; apart from swelling, tenderness, deformity and abnormal mobility distal third at (L) thigh. Further, Ex.P.10/X-ray would clearly show that there was a metal plate inserted in the left thigh for reunion of the fractured bone and the same may require replacement in future. Ex.P.12 is the salary certificate of the claimant, which would reveal that the claimant was working as a lorry driver and was earning a sum of Rs.10,000/- per month. In addition to prove the same, P.W.3, the employer of the injured was also examined. Dr.K.Periyasamy, P.W.4 assessed the permanent disability suffered by the claimant as 22% and issued Ex.P.14/Disability Certificate. Thus, all these documents would go to show that the claimant sustained fractures and undergone surgery for fixation of plates and on account of the accident, he is not able to drive as he used to do before, and apart from that he finds difficult to sit and walk. However, the Tribunal has awarded only a meager sum of Rs.1,81,055/- as compensation to the claimant. It is further submitted that the Tribunal failed to apply multiplier method while determining the compensation towards loss of income and hence, prayed for enhancement of the award passed by the Tribunal under various heads.

7. Per contra, the learned counsel appearing for the third respondent/Insurance Company submitted that the Tribunal has awarded a just and fair compensation of Rs.1,81,055/-, by taking into consideration various aspects and the same need not be disturbed at this juncture.

8. Heard the learned counsel for the appellant and the learned counsel for the third respondent.

9. On perusal of the award, it is seen that the Tribunal having found that the appellant/claimant had suffered fractures in his left thigh, left knee, right knee and right hand due to the accident, and awarded only a meager sum of Rs.1,81,055/- as compensation. This Court, taking into consideration the injuries sustained by the appellant, his nature of work, (lorry driver) and is unable to sit and walk as before, is of the view that the compensation awarded by the Tribunal towards Loss of earning capacity due to disability is meager, and it is just and necessary to fix appropriate notional income. The Hon'ble Supreme Court, in the case of 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 in the year 2008. In the present case, the claimant, being a lorry driver, this Court deems it fit to fix a sum of Rs.7,500/- as notional income. It is further seen that the Tribunal has failed to add any amount towards future prospects. As per the ratio laid down by the Hon'ble Supreme Court, in the case of National Insurance Company Limited Vs. Pranay Sethi reported in 2017-13 SCALE 12, the appellant is entitled to 40% of the notional income towards future prospects.

10. Similarly, as per the principles laid down by the Hon'ble Apex Court in the case of Sarlavarma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the Tribunal ought to have applied the appropriate multiplier method while determining the compensation under the head of 'Loss of Income'. Since the injured was aged 23 years old at the time of accident, multiplier '18' is to be adopted to determine the compensation towards loss of income. It is relevant to note that the appellant underwent surgery on his left thigh for insertion of metal plate. However, the Tribunal, based on the assessment made by Dr.K.Periyasamy, who was examined as P.W.4, Doctor has fixed the disability at 22 %, has confirmed the disability as 22%, without applying the multiplier. Therefore, this Court, for the purpose of arriving at just compensation, is inclined to take functional disability of the claimant as 14%. Accordingly, the compensation for loss of earning capacity due to the functional disability suffered by the appellant is calculated as under:-

Monthly income	= Rs.7,500/-
Future prospects	= Rs.40%
Multiplier	= 18
$7500 \times 12 + 40\% \times 18 - 14\%$ (towards disability)	
7500×12	= Rs.90,000/-
$\text{Rs.90,000/-} + 40\% (36000)$	= Rs.1,26,000/-
$\text{Rs.1,26,000/-} \times 18$	= Rs.16,20,000/-
$16,20,000 - 14\%$	= Rs.2,26,800/-

11. Thus, this Court deems it fit to award Rs.2,26,800/- towards loss of earning capacity for the functional permanent disability suffered by the appellant. Since this Court has fixed the compensation by applying the multiplier method, separate compensation awarded by the Tribunal as Rs.44,000/- towards disability, is set aside.

12. Insofar as the compensation awarded by the Tribunal under the following heads, viz., "Pain and Suffering", "Extra Nourishment and Damages for clothes", "Transportation", "Medical

Expenses, "Future medical expenses", the same stands confirmed. Thus, the total compensation payable to the claimant is as hereunder:-

S.No	Head	Amount granted
1	Loss of income due to functional permanent disability at 22%	Rs.2,26,800/-
2	Transportation	Rs. 5,000/-
3	Extra nourishment and damages to cloths	Rs. 15,000/-
4	Medical expenses	Rs. 48,055/-
5	Pain and sufferings	Rs. 30,000/-
6	Future Medical expenses	Rs. 12,000/-
7	Loss of income	Rs. 27,000/-
Total		Rs.3,63,855/-

13. The third respondent / Insurance Company is directed to deposit the entire amount awarded by this Court with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. On such deposit being made, the Tribunal shall transfer the amount to the claimant's bank account through RTGS within a period of two weeks thereon. The claimant is directed to pay the requisite court fee, if any, within a period of one week from the date of receipt of a copy of this order.

14. In the result, the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.1,81,055/- is enhanced to Rs.3,63,855/-. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

dpq

To

1. The Subordinate Judge,
Motor Accidents Claims Tribunal/
Special Subordinate Court, Erode.
2. The Section Officer,
VR Section, High Court,
Madras-600 104.

+1cc to Mrs.R.Sree Vidhya, Advocate, S.R.No.17794

C.M.A.No.1592 of 2014

EV(CO)
CS/16/07/2019