

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2019

CORAM:

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CMA.NO.185 OF 2014

R.Baskar

... Appellant/Petitioner

Vs.

1. A.Kumar

2. The Royal Sundaram Allianz Insurance Co. Ltd.
Now at Subramaniam Buildings,
No.1, Club House Road,
I-Floor, Chennai-2. Respondents/Respondents

Prayer:-

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the quantum of compensation awarded in M.C.O.P.No.4696 of 2010 on 21.12.2011 by the III Judge, Motor Accident Claim Tribunal, Court of Small Causes, Chennai.

For Appellant : Mr.K.R.Ponnusamy
for M/s.Anand and Suryas

For Respondents : Mr.M.B.Gopalan (for R2)
Exparte for R1

सत्यमेव जयते
J U D G M E N T

The appellant is the claimant in MCOP No.4696 of 2010 on the file of the III Judge, Court of Small Causes, Chennai and he filed the 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 accident that took place on 08.07.2010 at about 10.30 hours, when he was driving an auto rickshaw bearing registration No.TN-04-V-5740 on C.T.H.Road, Padi.

2. According to the claimant, a lorry bearing registration No.TN-22-BT-1199, belonging to the first respondent and insured

with the 2nd respondent, was driven by its driver rashly and negligently and hit the auto rickshaw, as a result of which, he sustained grievous injuries all over his body and that the owner of the lorry and the insurance company are jointly and severally liable to pay compensation to him.

3. The first respondent, the owner of the lorry remained absent before the Tribunal and therefore, he was set exparte. The 2nd respondent contested the claim petition.

4. The learned III Judge, Court of Small Causes, Chennai, after analysing the evidence on record, awarded a compensation of Rs.4,76,300/- to the claimant with interest at the rate of 7.5% p.a. from the date of claim petition. Not satisfied with the quantum of compensation awarded by the Tribunal, the appellant has filed the present appeal.

5. The learned counsel appearing for the appellant/claimant contended that the claimant had sustained a crush injury on his left hand upto the wrist joint and therefore, he is unable to move his left hand. His specific contention is that the claimant was a driver by profession and was aged 28 years on the date of accident and he had sustained permanent disability on account of the accident. His next contention is that though Dr.N.Saichandran (PW2), who issued permanent disability certificate (Ex.P8) had assessed the permanent disability of the claimant as 55%, the Tribunal had reduced the same to 40%, without assigning any reason. It is also his contention that when the claimant has clearly stated in his claim petition that he was earning a sum of Rs.500/- per day, the Tribunal has fixed the monthly income of the claimant as Rs.4,500/- and the same should be enhanced.

6. Per contra, Mr.N.B.Gopalan, learned counsel appearing for the 2nd respondent contended that the claimant did not adduce any documentary evidence to show that he was earning a sum of Rs.500/- per day, as alleged by him in the petition and therefore, the Tribunal was right in fixing the monthly income of the claimant as Rs.4,500/-. He also contended that since this is not a case of amputation, 55% of disability assessed by Dr.Saichandran (PW2) is on the higher side and therefore, the Tribunal was right in fixing the disability as 45%. His further contention is that the award passed by the Tribunal under various heads are perfectly in order and need not be disturbed at this stage.

7. A perusal of the records shows that the claimant/appellant was a driver by profession. The claimant had sustained crush injury on his left hand upto wrist joint. Dr.Saichandran (PW2) had clearly mentioned in the disability certificate (Ex.P8) that the claimant cannot move his left hand and assessed partial permanent disability as 55%. The medical records, especially the discharge summary (Ex.P2) clearly shows that the claimant had suffered major crush injury with skin loss in his hand and on the date of accident, he was aged 28 years. The claimant/appellant has also produced his driving license to prove that he is a driver by profession. The accident took place in the year 2010 and therefore, his monthly income can be easily fixed as Rs.7,500/-.

8. In the decision in Raj Kumar Vs. Ajay Kumar & Anr. reported in 2011(1) SCC 343, a Division Bench of Honourable Supreme Court held thus.

"The Tribunal the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do

as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head

of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation."

By applying the principles laid down in the above decision, multiplier method has got to be adopted as far as the present case is concerned and in fact, the Tribunal has rightly adopted the same. However, the Tribunal has fixed the monthly income of the claimant as Rs.4,500/-. As already held by this court, the monthly income of the claimant is fixed as Rs.7,500/-. Further more, Dr.Saichandran (PW2) had assessed partial permanent disability as 55% and the Tribunal without assigning any reason had reduced the same as 45%.

9. Mr.K.R.Ponnusamy, learned counsel appearing for the appellant/claimant contended that the claimant cannot use his left hand and cannot drive any vehicle in his entire life time and therefore, the same should be equated to an amputation. The arguments advanced by the learned counsel appearing for the appellant in this regard is totally acceptable. As per the decision in Sarla Verma and others Vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the proper multiplier is 17, since the age of the claimant was 28 years on the date of accident.

10. The compensation awarded by the Tribunal under various heads is extracted here under.

Sl. NO.	Heads	Amount in Rs.
1.	Loss of Income for 6 months	27,000
2	Transportation	10,000
3	Extra nourishment	10,000
4	Damage to clothes	500
5	Medical Expenses	5,000
6	Pain and suffering	20,000
7	Attender charges	5,000
8	Disability of 40% as permanent	3,88,800
9	Loss of amenities of life and mental agony to the claimant	10,000
	Total	4,76,300

Considering the facts and circumstances of the present case, the same is enhanced as extracted here under.

Sl. No	Heads	Amount in Rs.
1.	Loss of Income for 6 months 7500x6	45,000
2	Transportation	10,000
3	Extra nourishment	10,000
4	Damage to clothes	500
5	Medical Expenses	5,000
6	Pain and suffering	50,000
7	Attender charges	10,000
8	Partial permanent disability 7500x17x12x55%	8,41,500
9	Loss of amenities of life and mental agony to the claimant	50,000
	Total	10,22,000

This amount shall carry interest at the rate of 7.5% p.a. from the date of claim petition till the date of deposit.

11. In the result,

(i) The civil miscellaneous petition is allowed. No costs.

((ii) The quantum of compensation awarded by the Tribunal is enhanced from Rs. 4,76,300/- to Rs. 10,22,000/-.

(iii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, within a period of three weeks from the date of this order.

(iv) The second respondent is directed to deposit the enhanced compensation amount i.e., 10,22,000/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date claim petition till the date of deposit, within a period of four weeks from the date of receipt of a copy of this order.

(vi) On such deposit being made by the second respondent, the appellant/claimant is at liberty to withdraw the same after following due procedure of law.

Sd/-
Assistant Registrar(AD-I)

//True Copy//

Sub Assistant Registrar

mst

To

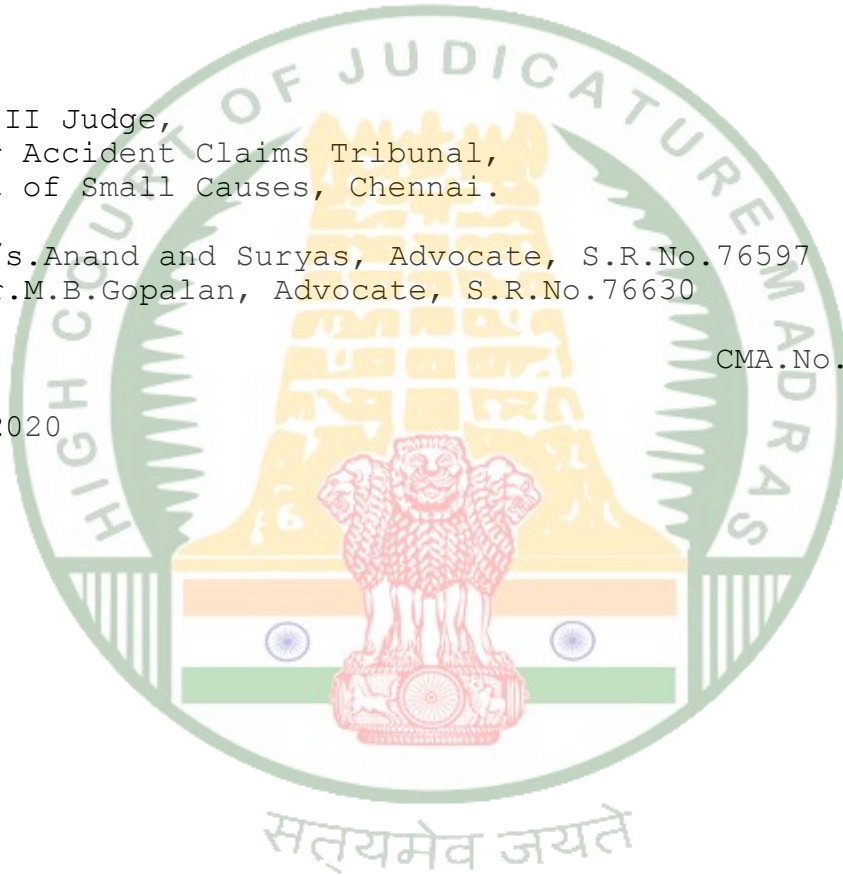
1. The III Judge,
Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.

+1cc to M/s.Anand and Suryas, Advocate, S.R.No.76597

+1cc to Mr.M.B.Gopalan, Advocate, S.R.No.76630

CMA.No.185 of 2014

MR (CO)
CS/17/02/2020



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