

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27.09.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.262 of 2014

Fakir Mohamed

...Appellant/ Petitioner

.Vs.

1.K.Selvamani

2.M/s.New India Assurance Co. Ltd.,

No.43, Moore Street,

Chennai - 600 001.

...Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 31.07.2009 passed in MCOP.No.3833 of 2004 on the file of the Motor Accident Claims Tribunal / Small Causes Court No.V, Chennai.

For Appellant : Mr.T.G.Balachandran

For Respondents : Mr.G.Udhayashankar for R2

R1 - set exparte

JUDGMENT

The appellant is the claimant in MCOP.No.3833 of 2004 on the file of the Motor Accident Claims Tribunal / Small Causes Court No.V, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rules 3 of M.A.C.T. Rules praying to award compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident on 12.05.2004.

2. The case of the claimant is that on 12.05.2004, at about 19.30 hours, when he was travelling in an auto bearing Registration No. TN 09 AE 1305 along G.N.Chetty Road, a speeding Ambassador Car bearing Registration No. MDN 7673 belonging to the first respondent and insured with the second respondent hit the auto, as a result of which, the auto capsized and the claimant sustained grievous injuries all over his body. The specific contention of the claimant is that the accident took place due to the rash and negligent driving of the driver of the Ambassador Car belonging to the first respondent and that since the first respondent's vehicle was insured with the second respondent, New India Assurance Company Limited, both of them are jointly and severally liable to pay compensation.

3. The first respondent, owner of the Ambassador Car bearing Registration No. MDN 7673 remained absent before the Tribunal and therefore, he was set ex-parte. The second

respondent, New India Assurance Company Limited, contested the claim petition on all the grounds available to the insurer. The learned Motor Accidents Claims Tribunal / V Judge, Small Causes Court, Chennai after analysing the evidence on record, awarded a compensation of Rs.1,36,000/- (SIC. Rs.1,41,000/-) together with interest at the rate of 9.5% per annum to the claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

4. Mr.T.G.Balachandran, learned counsel appearing for the appellant / claimant contended that though the claimant was an auto driver by profession and Dr.N.Saichandran (PW2) had assessed the partial permanent disability as 45%, a meagre amount of Rs.67,500/- was awarded by the Tribunal towards partial permanent disability. He would further contend that as per the discharge summary (Ex.P4) issued by Government Royapettah Hospital, Chennai, the claimant took treatment as an in-patient from 12.10.2004 to 23.06.2004 as he sustained crush injury on his right foot with fracture of 1st and 4th metatarsal bone. His further contention is that since SSG with 'K' wire was fixed on his right foot he is not able to continue his profession as an auto driver. He therefore contended that multiplier method alone should be adopted in the instant case. He also pointed out that the Tribunal awarded meagre amounts under various heads. He therefore prayed for enhancement of compensation.

5. Per contra, Mr.G.Udhayashankar, learned counsel appearing for the second respondent, New India Assurance Company Limited contended that the Tribunal after considering the nature of injuries sustained by the claimant had awarded just compensation of Rs.67,500/- under the head partial permanent disability and therefore there is no need for enhancing the same. He also pointed out that there is an error while calculating the total Award amount and it should be Rs.1,36,000/- and not Rs.1,41,000/-. He further contended that the rate of interest 9.5% per annum awarded by the Tribunal is very high and it should also be reduced to 7.5% per annum.

6. A perusal of the discharge summary shows that the claimant was admitted as an in-patient from 12.10.2004 to 23.06.2004 and an operation was performed on his right foot as he had sustained crush injury on his right foot with fracture of 1st and 4th metatarsal bone. Dr.N.Saichandran (PW.2) had assessed the partial permanent disability as 45%. A Division Bench of the Hon'ble Supreme Court of India in the decision in Rajkumar vs Ajaykumar and Another reported in 2011 (1) SCC 343 has held in paragraph nos. 9 and 10 of the said Judgment are extracted hereunder:

"9. 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 a 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 disability (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."

7. Admittedly in the instant case, the claimant is an auto driver by profession and he had sustained crush injury with fracture of 1st and 4th metatarsal bone right foot. SSG with 'K' wire was fixed on his right foot. In the facts and circumstances of the present case, adopting multiplier method is very much warranted. Since the age of the claimant was 40 years on the date of the accident, the proper multiplier to be adopted in the instant case is 15 as per the decision rendered in *Saravanna and others vs. Delhi Transport Corporation and*

another reported in (2009) 6 SCC 121. Dr.Saichandran (PW2) had assessed the partial permanent disability suffered by the claimant as 45%. However it cannot be taken up to be the whole body disability. Therefore, 20% of disability is taken up for calculating partial permanent disability. Since no proof showing the income of the claimant is filed, the notional income is fixed at Rs.3,000/-, considering the year of accident. On account of the accident, the claimant would not have been in a position to attend to his regular work for atleast six months and therefore, a sum of Rs.18,000/- (Rs.3,000/- X 6 months) is awarded towards loss of income.

Calculation

$$= \text{Rs.}3,000/- \times 12 \times 15 \times 20/100$$

$$= \text{Rs.}1,08,000/-$$

8. The award passed by this Court under various heads is extracted hereunder:

S. No.	Head	Amount granted
1.	Partial permanent disability	Rs.1,08,000/-
2.	Pain and sufferings	Rs.25,000/-
3.	Extra nourishment	Rs.5,000/-
4.	Transportation	Rs.5,000/-
5.	Loss of amenities	Rs.10,000/-
6.	Attender's charges	Rs.5,000/-
7.	Loss of income	Rs.18,000
8.	Damage to clothes	Rs.500/-
Total		Rs.1,76,500/-

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,36,000/- to Rs.1,76,500/- which would carry interest at the rate of 7.5% per annum.

10. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,36,000/- to Rs.1,76,500/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) Both the first respondent as well as the second respondent, New India Assurance Company Limited, are directed to deposit the enhanced compensation amount i.e., Rs.1,76,500/- jointly and severally (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.3833 of 2004 on the file of the Motor Accident Claims Tribunal / Small Causes Court No.V, Chennai within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

mtl
To

The Motor Accidents Claims Tribunal,
The V Judge,
Small Causes Court,
Chennai.

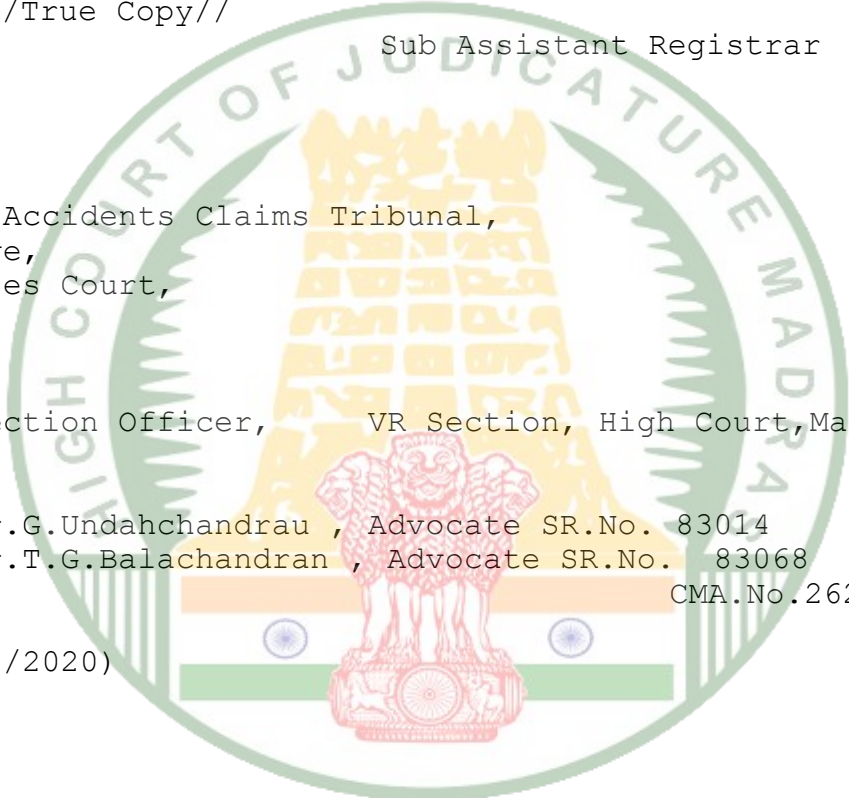
Copy to:
The Section Officer, VR Section, High Court, Madras.

+1cc to Mr.G.Undahchandrau , Advocate SR.No. 83014

+1cc to Mr.T.G.Balachandran , Advocate SR.No. 83068

CMA.No.262 of 2014

mr co
A.SK(11/11/2020)



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