

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.3131 of 2014

MGR Appu

... Appellant/Petitioner
..Vs..

1.S.Srinivasan

(Remained exparte before the Tribunal)

2.New India Assurance Company Limited,
No.45, Moore Street,
Chennai 1.

3.J.K.Rajadiraviyam

(Remained exparte before the Tribunal)

4.The Oriental Insurance Company Limited,
No.115/16, Prakasam Salai,
Broadway, Chennai 108.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 10.06.2014 in M.A.C.T.O.P.No.4662 of 2012 on the file of the Motor Accidents Claims Tribunal cum Small Causes Court No.III, Chennai.

For Appellant : Mr.F.Terry Chellaraja for
M/s.M.Malar

For Respondents : R1 & R3- Set Exparte
before Claims Tribunal
R2 - Neethiperumal
R4 - S.Arunkumar

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal cum Small Causes Court No. III, Chennai, in and by its award dated 10.06.2014 in M.C.O.P.No.4662 of 2012, the claimant has filed the present appeal, seeking enhancement of the compensation.

2. On 15.08.2012, at 17.30 hours, when the appellant/claimant was riding his motor cycle bearing Registration No. PY 01 AN 7311 from Nesapakkam to Ramapuram at Kamarajar Street near Nellai Stores, at that time, two motor cycles, bearing Registration Nos.TN 09 BC 3921 and TN 73 Y 5576 belonging to the first and third respondents came from the opposite direction in a rash and negligent manner and hit the appellant/claimant, as a result of which, the appellant/claimant sustained grievous injuries all over his body. Hence, the appellant/claimant made a claim petition in a sum of Rs.8,00,000/- as compensation.

3. The first and third respondents/owners of the vehicles remained absent before the Claims Tribunal, and therefore, they were set ex-parte.

4. The 2nd and 4th respondents contested the claim petition by filing individual counter statements, thereby, denying their liability and also disputing the age, occupation, income of the appellant/claimant and also contended that the claim sought for is excessive and thus, prayed for dismissal of the claim petition.

5. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining three witnesses as P.W.2 to P.W.4 and marked 13 documents as Ex.P.1 to Ex.P.13. On the side of the Respondents, three witnesses were examined as R.W.1 to R.W.3 and marked 7 documents as Ex.R.1 to Ex.R.7.

6. The Claims Tribunal, on the basis of both oral and documentary evidence, held that the accident had occurred due to the rash and negligent riding of the two motor cycles by the first and third respondents, and the second and fourth respondents, being the insurers of the respective offending vehicle, each are liable to pay 50% of the total compensation, and thereafter, they are at liberty to recover the same from the owners of the vehicle without filing any separate petition. By coming to such conclusion, the Tribunal has made calculation under different heads and passed an award for a total compensation amount of Rs.1,77,426/- with interest at the rate of 7.5% p.a from the date of petition till the date of deposit. The breakup details of the compensation are as follows:-

S.No	Head	Amount granted
1.	Loss of income	Rs.25,000/-
2.	Transportation	Rs.10,000/-
3.	Extra Nourishment	Rs.7,000/-

S.No	Head	Amount granted
4.	Medical expenses	Rs.45,426/-
5.	Pain and sufferings	Rs.30,000/-
6.	Disability at 30%	Rs.60,000/-
Total		Rs.1,77,426/-

7. Not being satisfied with the quantum of compensation, the claimant/injured has filed the present Appeal, as already stated above.

8. The learned counsel appearing for the appellant/claimant submitted that the Tribunal awarded a meager sum of Rs.1,77,426/- as compensation as against the claim of Rs.8,00,000/- made by the appellant/claimant. The learned counsel further submitted that, due to the accident, claimant sustained Grade II compound fracture of 4th and 5th metatarsal right foot. PW.2, Dr.Saravana Bhavanantham, who examined the appellant/claimant, assessed the disability at 50% and even during the course of examination, P.W.2 deposed that due to the accident, the claimant sustained 50% disability and there were i) arthritis of right ankle joint and ii) metatarso phalangeal joints, iii) muscles of foot invertors, evertors, dorsiflexors, plantar flexors were weak and movements were painful and limited by 15 degrees to 20 degrees, and therefore, he cannot stand or walk for long time, climb the stair case, sit cross legged and do his work as before. The same was corroborated by the evidence of PW.1/claimant. Therefore, the learned counsel contended that, when the disability sustained by the claimant are grave in nature, and P.W.2/Doctor assessed the disability at 50%, the Tribunal fixed the disability at 30% and fixed a sum of Rs.2,000/- towards per percentage of disability and arrived at a sum of Rs.60,000/- under the head Disability, which is very meager.

9. It is further contended by the learned counsel that even if, the appellant/claimant files an appeal as against 163A under the Motor vehicles Act, for the injuries, the compensation would be decided only by applying the multiplier method, as held by the Honourable Supreme Court in the decision of Rajkumar vs Ajaykumar & Another reported in 2011 (1) SCC 343. The learned counsel further contended that, the claimant was aged about 29 years at that time of the accident and he was working as labour in Two and Four Wheelers Water Service Centre . However, due to the injuries, he was not in a position to continue his work for a long period. Hence, he submitted that the compensation awarded under the head of Disability requires appropriate enhancement.

10. The learned counsel appearing for the appellant/claimant submitted that the age of the claimant was 29 years at the time of the accident and he was working as Labour in two and four wheeler water service centre and earning a sum of Rs.300/- per day. However, the Tribunal, while determining the compensation towards Loss of income, fixed a sum of Rs.25,000/-which is meager. In this connection, the learned counsel placed reliance on the decision of the Honourable Supreme Court, in the case Syed Sadiq Vs. United India Insurance Company, reported in 2014 (1) TNMAC 459 (SC), wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/-per month. The learned counsel, therefore, submitted that, when the Hon'ble Apex Court took notional income of a vegetable vendor at Rs.6,500/- per month for the accident occurred during the year 2008, the loss of income fixed by the Tribunal at Rs.25,000/-, for a person who sustained injuries in the accident occurred in the year 2012 is meager. Therefore, the learned counsel requested this Court to fix the monthly notional income of the claimant atleast to a sum of Rs.6,500/- per month and to determine the Loss of Income accordingly. The learned counsel furthermore submitted that the Tribunal has failed to award any amount towards "Attender's Charges", "Loss of amenities" and "Damages to clothes" and prays for appropriate enhancement of the award passed by the Tribunal.

11. On the other hand, the learned counsel appearing for the second and fourth respondents strongly opposed the submissions made by the learned counsel for the appellant/claimant by contending that, as per Ex.P.2, Discharge Summery, the injuries sustained by the appellant/claimant are only Grade II compound fractures of 4th and 5th metatarsal right foot and the appellant/claimant was treated as inpatient only for five days, i.e., from 15.08.2012 to 20.08.2012. The learned counsel further argued that PW.2/Dr.Saravana Bhavanantham not treated the claimant and he only assessed the disability of the claimant as 50%. Therefore, it would not be appropriate for this Court to determine the compensation based on the disability assessed by P.W.2 and therefore, he suggested this Court to refer the claimant before the Medical Board for re-assessment of the disability. The learned Counsels also submitted that the present Appeal preferred by the claimant is to cheat the Court for enhancing the award amount, however, the fact remains that, the compensation awarded by the Tribunal under other heads are on the higher side. Hence, he prayed to refer the matter before Medical Board for ascertaining appropriate disability.

12. Heard both sides and perused the materials on record.

13. In the present case, certainly, there is no need to refer the claimant to the Medical Board for determining the disability. No doubt, this Court has got wide power to refer the claimant to the Medical Board for re-assessment of percentage of the disability as held by the Hon'ble Supreme Court, in Rajkumar's case (supra). However, since the claimant himself not raised objection and accepted the disability at 30% as determined by the Tribunal and the respondents also asserted the same without any appeal, this Court is of the view that there is no need to refer the matter for Medical Board to determine the disability. In such circumstances, the appellant/claimant pleaded that it would be appropriate to determine the compensation by taking into consideration the nature of injuries sustained by the claimant and the Disability Certificate issued by the PW.2/Doctor and by applying the multiplier method, instead of fixing the compensation on the basis of percentage of the disability.

14. The next question to be decided by this Court is as to whether the 30% of disability fixed by the Tribunal is just and proper. Even though, if this Court decides to apply the multiplier method to determine the compensation, in the present case, PW.2/Doctor, though not treated the claimant/appellant, assessed the disability as 50%, whereas the Tribunal taken only 30% disability. In these circumstances, this Court is of the view that it would be appropriate to fix the disability as 7.5% (i.e 1/4 of 30%) and apply the multiplier method as held by the Hon'ble Supreme Court in Rajkumar case (supra) referred to by the appellant/claimant, Therefore, this Court is inclined to adopt the multiplier as '17', as per the ratio laid down by the Hon'ble Apex Court in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121.

15. Insofar as the compensation awarded by the Tribunal towards 'Loss of income' is concerned, as rightly pointed out by the learned counsel appearing for the appellant/claimant, the loss of income of the claimant fixed by the Tribunal at Rs.25,000/- is too low. Thus, taking into consideration, the decision of the Honourable Supreme Court in Syed Sadiq case (supra) wherein, it is held that even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, a sum of Rs.6,500/- per month should be awarded towards loss of income, this Court is inclined to fix a sum of Rs.6,500/- as monthly notional income of the claimant herein.

16. Further, from the award impugned herein, it is seen that the Tribunal has not awarded any amounts towards future prospects, especially, when the claimant was aged just 29 years on the date of accident. As held by the Hon'ble Supreme Court in

the decision rendered in the case of National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC) for the age group of 29 years, 40% should be added towards future prospects.

17. In view of the above, the award passed by the Tribunal under the head of Disability at Rs.60,000/- is hereby set aside. The disability of the claimant is fixed at 7.5%, as stated above. Thus, by fixing monthly notional income of the deceased at Rs.6,500/-; adding 40% towards future prospects, and applying the multiplier '17', the Loss of earning capacity of the claimant works out to Rs.1,39,230/- in the following manner:
Calculation:

Notional Income = Rs.6,500/-
40% Future Prospects = Rs.2,600/-
Total = Rs.6,500/- + Rs.2,600/-
= Rs.9,100/-
Loss of earning capacity
= Rs.9,100/- x 17 x 12 x 7.5/100
= Rs.1,39,230/-

18. As rightly pointed out by the learned counsel for the appellant/claimant, the Tribunal has failed to award any amount towards "Attender's Charges", "Loss of amenities" and "Damages to clothes" and this Court is inclined to award a sum of Rs.2,000/- towards "Attender's Charges", Rs.5,000/- towards "Loss of amenities" and Rs.1,000/- towards "Damages to clothes". The compensation awarded by the Tribunal under other heads, viz., i) Transportation at Rs.10,000/-; ii) Extra Nourishment at Rs.7,000; iii) Pain and Sufferings at Rs.30,000/- and iv) Medical Expenses at Rs.45,426/- are concerned, the same are found to be just and reasonable and requires, no modification. Thus, the revised compensation awarded by this Court under various heads is extracted hereunder:

S.No	Head	Amount granted
1.	Loss of earning capacity	Rs.1,39,230/-
2.	Transportation	Rs. 10,000/-
3.	Extra nourishment	Rs. 7,000/-
4.	Attender's Charges	Rs. 2,000/-
5.	Pain and Sufferings	Rs. 30,000/-
6.	Damage to clothes	Rs. 1,000/-
7.	Medical Bills	Rs.45,426/-
8.	Loss of amenities	Rs. 5,000/-
Total		Rs.2,39,656/-

Thus, the appellant/claimant is entitled to a sum of Rs.2,39,656/- together with interest at the rate of 7.5% per annum from the date of claim till the date of deposit.

19. In the result,

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

(ii)The compensation awarded by the Tribunal is enhanced from Rs.1,77,426/- to Rs.2,39,656/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

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

(iv)The second and fourth respondents/Insurance Companies are directed to deposit 50% each of the total compensation awarded by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any and thereafter, they are at liberty to recover the same from the respective owners of the vehicle without filing any separate petition. 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.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

vkr

To

The Motor Accidents Claims Tribunal,
The Small Causes Court No.III, Chennai.

C.M.A.No.3131 of 2014

PP(CO)

SP(30/08/2019)