

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 18.07.2019
CORAM
THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
C.M.A. No. 2459 of 2017

Moorthy @ Panja Moorthy

..Appellant/Petitioner

Vs.

1. Shanthi

(R1 remained ex parte before the Tribunal and her presence may be dispensed with)

2. The United India Insurance

Co. Ltd.,
Divisional Office,
No.73-C, MTH Road,
Ambathur,
Chennai - 600 053.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal as against the judgment and decree dated 20.02.2013 passed in MACT O.P. No. 222/2010 on the file of the Motor Accidents Claims Tribunal, IV Additional District Judge, Ponneri.

For Appellant :: Mr.F. Terry Chellaraja

For Respondents:: Mr.D. Bhaskaran for R2

J U D G M E N T

The Civil Miscellaneous Appeal has been preferred by the claimant aggrieved over the quantum of compensation of Rs.7,70,800/- awarded by the Tribunal for the disability sustained due to the injuries suffered by him in the accident which occurred on 28.01.2010 when he was standing on the right side at MRH Road, Thuthukudi Vellaisamy Street Junction, Madhavaram and was hit down by a tanker lorry belonging to the 1st respondent insured with the 2nd respondent driven rashly and negligently.

2. Heard Mr.F. Terry Chellaraja, learned counsel for the appellant and Mr. D. Baskaran, learned counsel for the 2nd respondent.

3. There is no appeal by the Insurance Company and therefore, the finding regarding negligence given by the

Tribunal has attained finality.

4. The only question to be decided is with regard to the quantum of compensation.

5. The claimant, at the time of accident, was aged about 27 years and he was working as a Loadman earning Rs.300/- per month. The claimant sustained spinal cord fracture, grievous head injury and injury on his right eyebrow and he was paralysed below hip as proved by P.W.2's doctor's evidence and discharge summaries Exs.P3 to P6. The claimant underwent an operation for fixing of plate in the spinalcord along with screw. The disability certificate Ex.P12 will show that there was 100% disability resulting in 100% loss of earning capacity. The claimant who was examined as P.W.1 stated that he could not walk and he was paralysed below hip and someone has to lift him to place him on the wheel chair in which he can sit for only two hours. Other than eating on his own, he cannot do any other work and he does not have control over attending nature's call. Therefore, he has to rely upon a third person for every work.

6. From the above, it is clear that the claimant cannot do anything and the Tribunal rightly determined 100% disability and 100% loss of earning capacity and the same is confirmed.

7. In the absence of proof regarding the monthly income, the Tribunal notionally fixed Rs.3200/- as monthly income. The said amount determined by the Tribunal is too low. The Honourable Supreme Court, in its judgment in Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 627, determined the monthly income of a vegetable vendor at Rs.6500/- for the injuries sustained by him in the accident, which took place in the year 2008 whereas in the instant case, the accident had taken place in 2010. Therefore, this Court re-determines the monthly income at Rs.9000/- per month.

8. The age of the claimant is 27 years as proved by Ex.P2 Accident Register copy and therefore, 40% has to be added towards future prospects as per the judgment of the Honourable Supreme Court in Pranay Sethi's case (2017 ACJ 2700). If 40% is added towards 'future prospects', then the total monthly income of the claimant comes to (Rs.9000/- + 40%(Rs.9000)) Rs.12,600/-. For the age of 27years, the appropriate multiplier is 17 as per the judgment of the Honourable Apex Court in Smt. Sarla Verma & Ors V. Delhi Transport Corporation and Another reported in 2009 ACJ 1298 SC. Applying the said multiplier, "Loss of Income" comes to (Rs.12,600 x 12 x 17) Rs.25,70,400/-.

9. As far as the other heads are concerned, the Tribunal awarded only Rs.25,000/- towards "Pain and Suffering". Considering the nature of injuries and period of treatment in the hospital as an in-patient for 65 days and the surgery underwent by him, this Court enhances the amount to Rs.3 lakhs.

10. Only a sum of Rs.10,000/- was awarded towards "Transportation and Extra Nourishment". The said amount is too low. For taking treatment, the claimant would have visited the hospital many times and he would have spent much more. Therefore, Rs.10,000/- awarded is enhanced to Rs.50,000/-. Likewise, for "Extra Nourishment", another sum of Rs.50,000/- is awarded.

11. The sum of Rs.83,000/- awarded for "Medical Expenses" as per Ex.P11 series is confirmed.

12. Towards "Future Medical Expenses", no amount was awarded and this Court awards a sum of Rs.2 lakhs under the said caption, which would also include expenses for replacing the wheel chair.

13. As far as "Loss of Amenities" is concerned, the Tribunal has not awarded any amount. Considering the status of the claimant, i.e., paralysis of limbs below hip, this Court awards Rs.2lakhs.

14. No amount was awarded towards "Attendant Charges". As proved by medical reports and also confirmed by the Tribunal, there is 100% disability. The evidence of P.W.s 1 and 2 would prove that the claimant cannot move about on his own and he has to be placed on a wheel chair with someone's help so that he can move about. Eversince he has become immobile, he has to depend on a third party for each and every work. The Honourable Supreme Court in the judgment rendered in Kavitha V. Deepak and Others reported in 2012 2 TN MAC 362 (SC) awarded Rs.6 lakhs towards "Attendant Charges" @ Rs.2000/- per month for 25 years to the injured claimant, a 30 year old woman, who sustained injuries in the accident which occurred on 02.05.2004 whereas in this case, the claimant sustained injuries in the year 2010 and it is impossible to get an attendant for less than Rs.5000/-. Therefore, this Court takes Rs.5000/- per month and calculating for 25 years, awards Rs.15 lakhs towards "Attendant Charges".

15. The appellant is a married person and he is paralysed below hip and has become incapable of performing his marital obligations and therefore, there is loss marital bliss/pleasure, towards which a sum of Rs.2,50,000/- is awarded.

16. Hence, the total compensation payable to the claimant is as hereunder:

Loss of Income	::	Rs.25,70,800/-
Pain and Suffering	::	Rs. 3,00,000/-
Transportation Expenses	::	Rs. 50,000/-
Extra Nourishment	::	Rs. 50,000/-
Loss of Amenities	::	Rs. 2,00,000/-
Future Medical Expenses	::	Rs. 2,00,000/-

Medical Expenses :: Rs. 83,000/-

Attendant Charges :: Rs.15,00,000/-

Loss of Marital Bliss:: Rs. 2,50,000/-

Total :: Rs.52,03,800/-

The rate of interest awarded by the Tribunal @ 7.5% per annum stands confirmed.

17. Since there was a delay of 1347 days in filing the appeal, the appellant is not entitled to interest for the delay period.

18. The claimant shall pay additional court for the enhanced amount within a period of two weeks from the date of receipt of a copy of this order. If the requisite court-fee is not paid by the claimant, the Tribunal is directed to deduct the requisite court fee from the compensation amount awarded to the claimant and thereafter, transfer the remaining award amount to the claimant's account.

19. The 2nd respondent Insurance Company is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, after deducting the amount already deposited if any within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal shall permit the appellant to withdraw only Rs.15 lakhs through RTGS. Out of the remaining sum, a sum of Rs. 25 lakhs shall be deposited in interest bearing fixed deposit in any one of the Nationalised Banks till his lifetime and interest accruing on such deposit can be withdrawn two months once. The balance amount shall also be deposited in interest bearing fixed deposit in any one of the Nationalised Banks for the benefit of his three daughters so that it will be helpful for their education and marriage.

20. The Civil Miscellaneous Appeal is allowed. No costs.

Sd/-
Asst.Registrar (CO)

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Sub Asst. Registrar

nv

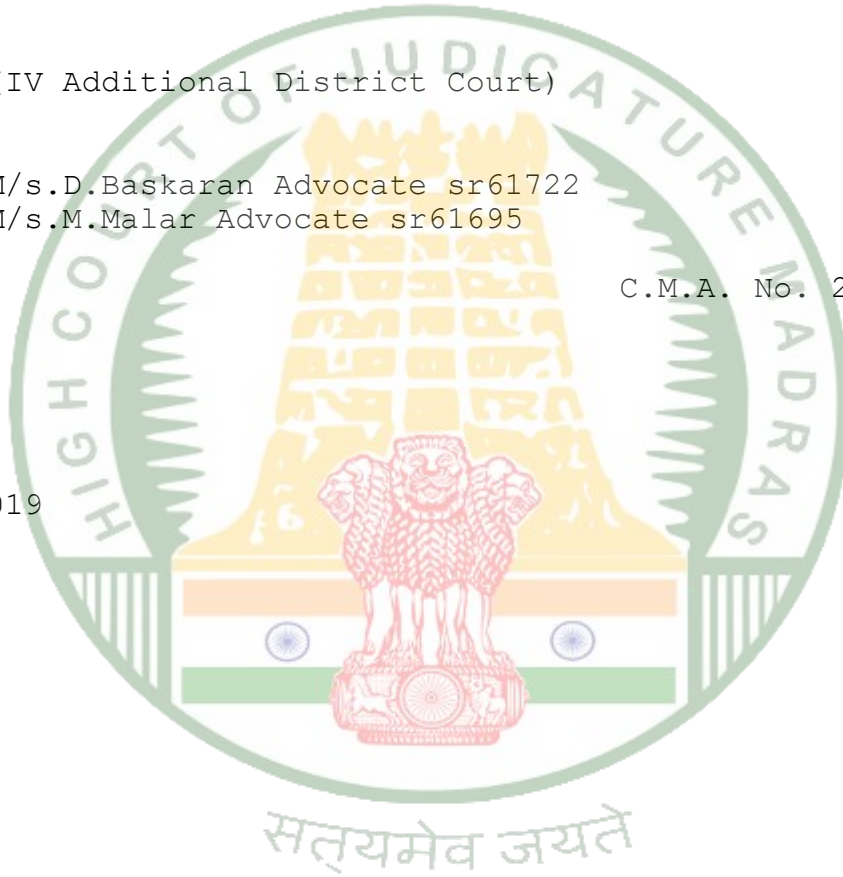
To
The MACT (IV Additional District Court)
Ponneri.

+1 cc to M/s.D.Baskaran Advocate sr61722

+1 cc to M/s.M.Malar Advocate sr61695

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