IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.955 of 2017

Karthik ... Appellant /Petitioner

Vs

1.Ramachandran

2.Divisional Manager,
The Oriental Insurance Company Ltd.,
Vijayalakshmi Complex, 1st Floor,
No:32/12, Phase-2,
Sathuvachari,
Vellore. ...Respondents/Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 16.03.2016 made in MCOP No.31 of 2013 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Tiruvannamalai.

For Appellant : Mr.B.Jawahar
For R1 : No Appearance
For R2 : Mr.D.Baskaran

JUDGMENT

Being dissatisfied with the quantum of compensation awarded by the Tribunal, the appellant/claimant has preferred this appeal seeking enhancement of the same.

2.The case in brief, is as follows:

On the fateful day, ie. on 15.03.2012, the appellant was going as a pillion rider in the Hero Honda Splendour Plus two-wheeler bearing Reg.No.TN-04-T-4653 towards Thiruvannamalai. At about 04.00 p.m., when they were nearing Yettivadi bus stand, at Palathidam, a bus bearing Regn.No.TN25 M 6369 belonging to the first respondent and insured with the second respondent insurance company, came in a rash and negligent manner and dashed against the two wheeler. Due to the said impact, the appellant/claimant fell down and sustained severe injuries. Claiming compensation of Rs.20,00,000/-, the appellant filed a claim petition before the Tribunal. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.8,44,000/- with interest at the rate of 7.5% per annum from the date of petition. Feeling aggrieved, the appellant has come up with this appeal seeking enhancement of the compensation so awarded by the Tribunal.

3.The learned counsel for the appellant /claimant has submitted that at the time of accident, the appellant/claimant was aged about 31 years and was earning Rs.10,000/- per month by working in a computer centre; due to fracture in thigh bone, his right leg was amputated; he initially took treatment in Vellore Government Hospital and thereafter at CMC, Vellore and various private hospitals for better treatment and spent around Rs.4,00,000/- towards medical expenses and transportation; the doctor assessed his disability at 80% and hence, the Tribunal ought to have adopted multiplier method and awarded a reasonable compensation under the head "loss of income". He further submitted that the Tribunal has not awarded any amount towards loss of amenities and enjoyment of life. Thus, according to the learned counsel, the compensation awarded by the Tribunal needs substantial enhancement.

4.The learned counsel for the second respondent/Insurance Company submitted that the Tribunal has rightly dealt with the materials and evidence on record and has correctly awarded the compensation which is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

5.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6.Inasmuch as the present appeal is preferred by the appellant/claimant for enhancement of the compensation, there is no need to traverse the facts leading to the accident. In other words, the finding that the accident occurred due to the negligent driving of the driver of the bus belonging to the first respondent and insured with the second respondent, has become final.

7.As regards the compensation awarded by the Tribunal, according to the learned counsel for the appellant/claimant, since the appellant/claimant sustained 80% permanent disability due to amputation of right leg, which led to total functional disablement, the Tribunal ought to have adopted the multiplier method, while calculating compensation under the head "loss of income due to permanent disability".

8.This Court finds some substance in the said submission made on the side of the appellant/claimant. It is not in dispute that the right leg of the appellant/claimant was amputated and as a sequel, he has to perforce lead the rest of his life with one artificial limb and thus, the permanent physical disability suffered by him would affect his mobility to a great extent. In such circumstances, the appellant/claimant requires to be adequately compensated, since the case of an injured and disabled person is more pitiable and the feeling of hurt, helplessness, despair and often destitution enures everyday; the support that is needed by a severely handicapped person comes at an enormous price - physical, financial and emotional, not only on the victim, but even more so on his family and attendants and the stress saps their energy and destroys their equanimity. Viewing from that angle, this Court is of the opinion that adopting the multiplier method for determining the compensation under the head "loss of income due to permanent disability", would meet the ends of justice.

9.As per the evidence of the appellant, he was aged 31 years at the time of the alleged incident and was earning Rs.10,000/- per month by working in a computer centre. But he failed to prove the same by any admissible evidence. Hence, the Tribunal has taken a sum of Rs.5,000/- as his monthly income, which in the opinion of this Court, appears to be on the lower side and hence, the same is enhanced to Rs.7,500/-. Further, in the lack of deposition of the concerning doctor, who carried out the surgery and amputated the leg of the appellant/claimant and looking into his physical condition and the work he has been doing, his functional disability is taken as 50%. It was held in the case of Oriental Insurance Company Ltd Vs. Vijay Kumar Mittal and others [III (2007) ACC 676] that while estimating loss of income, the Court has to take into account the future prospects of the injured. Taking the multiplier of 16, being the age of the appellant as 31 years and adding the future prospect at 40%, the loss of income on account of disability is calculated as 7,500 + 40% of 7,500 x 12 x 50% x 16 = Rs. 10,08,000/-. Therefore, the award of the Tribunal at Rs.1,60,000/- is enhanced to Rs.10,08,000/- on this Count.

10.P.W.1/appellant/claimant was aged 31 years at the time of accident and was a bachelor. His right leg was amputated due to fracture of right femur. He has to live for rest of life with one artificial leg. He will not be able to live in the same manner as he used to do earlier to the accident. He will face difficulties in his day today activities. He will not be able to enjoy the life. He will need assistance in order to travel and move around and will most likely use a crutch to walk. The prospects of his marriage have considerably reduced due to amputation of right leg. In Raj Kumar Vs. Ajay Kumar & Anr. (2011) 1 SCC 343, it was held that a person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury; this means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries, and his inability to earn as much as he used to earn and could have earned. In view of the same, this Court feels it just and proper to award a sum of Rs.40,000/- towards loss of amenities and enjoyment of life.

11.However, there is no modification with regard to the compensation awarded under other heads. Thus, the compensation awarded by the Tribunal is enhanced from Rs.8,44,000/- to Rs.17,32,000/-, the break-up details of which, would run thus:

Sl. No.	Head	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income due to disability	1,60,000/-	10,08,000/-
2	Pain and suffering	35,000/-	35,000/-
3	Extra nourishment	20,000/-	20,000/-
4	Transport charges	20,000/-	20,000/-
4	Loss of Amenities and enjoyment of life	...	40,000/-
5	Artificial limb	1,50,000/-	1,50,000/-
6	Attendant charges	20,000/-	20,000/-
7	Loss of income during treatment period	10,000/-	10,000/-
8	Medical charges	4,29,000/-	4,29,000/-
	Total	8,44,000/-	17,32,000/-

12.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. The second respondent Insurance Company is directed to deposit the aforesaid compensation amount with interest at 7.5% per annum from the date of petition and costs, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal shall transfer the same to the bank account of the appellant / claimant through RTGS within a period of one week thereafter.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Chief Judicial Magistrate,
  Motor Accidents Claims Tribunal,
  Tiruvannamalai.

2.The Section Officer,
  VR Section, Madras High Court.

+1 CC to Mr.D.Baskaran, Advocate sr 83793
+1 CC to Mr.B.Jawahar, Advocate sr 83892.

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RSI(CO)
SP(24/08/2020)