



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2019

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

C.M.A(MD)No.778 of 2018

A.David Pradeep

.. Appellant/Claimant

Vs.

1.S.Ayyammal

2.The Manager,
The Oriental Insurance Co. Ltd.,
Kovilpatti.
[R1 - Notice dispensed with, vide
order dated 29.01.2019]

.. Respondents/
Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award, dated 13.09.2017, passed in M.C.O.P.No.489 of 2008 by the Motor Accident Claims Tribunal / Fourth Additional Sub Court, Madurai.

For Appellant : Mr.C.Vakeeswaran

For Respondent No.2 : Mr.K.Bhaskaran

JUDGMENT

It is a case of injury. The manner of the accident is not in dispute. The Tribunal has awarded a sum of Rs.1,35,000/- towards partial permanent disability, Rs.50,000/- towards pain and sufferings, Rs.15,000/- towards loss of earnings, Rs.5,000/- towards transportation, Rs.5,000/- towards nutrition, Rs.1,000/- towards loss of clothing and ornaments, Rs.50,000/- towards attendar's charges, Rs.50,000/- towards future medical expenses and Rs.2,30,100/- towards medical expenses, totally Rs.5,41,100/- as compensation. The Tribunal has directed the 2nd respondent / Insurance Company to pay the entire compensation amount with 7.5% interest per annum from the date of petition till the date of realization. The appellant / claimant has filed this appeal seeking to enhance the quantum of compensation.

<https://hcservices.ecourts.gov.in/hcservices>
2. The learned counsel appearing for the appellant / claimant would submit that due to the accident, the claimant sustained crush injuries on his right foot and left ankle and five surgeries have



been performed for the injuries sustained by him due to the accident. The claimant was earlier working as a collection executive in Airtel Mobile and earning a sum of Rs.8,500/- per month. Due to disability, now he lost his avocation and therefore, the Tribunal ought to have adopted multiplier method. But, the Tribunal has awarded only Rs.3,000/- per percentage of disability. Thus, he prayed to adopt multiplier method by fixing the notional monthly income as Rs.8,500/- and to enhance the compensation.

3.The learned counsel appearing for the second respondent / Insurance Company would submit that the claimant sustained only grievous injuries. The claimant has not proved Ex.P.21, salary certificate, by examining the issuing authority. Therefore, the Tribunal has rightly taken the disability of the claimant as 45% and awarded Rs.3,000/- per percentage of disability and therefore, the award passed by the Tribunal may not be interfered with.

4.Heard the learned counsel appearing for the appellant / claimant and the learned counsel appearing for the second respondent / Insurance Company and also perused the records carefully.

5.The date of accident is on 09.02.2007. Admittedly, it is not in dispute that due to accident, the claimant sustained crush injury of right foot on the planter aspect and medical side of foot with avulsion of distal planter skin and planter skin of all toes. The avulse planter skin is nonviable. He also sustained crush injury of left ankle and lower leg with composite tissues loss at lateral side of ankle exposing the joint and left ankle is not stable. At the time of the accident, the claimant was aged about 26 years. Before the accident, the claimant was stated to be working as a collection executive in Airtel Mobile and earning a sum of Rs.8,500/- per month. It is seen from Ex.P.7, Ex.P.9, Ex.P.11 and Ex.P.14, discharge summary of various hospitals, that the claimant has taken treatment from 09.02.2007 to 05.03.2007, 21.03.2007 to 26.03.2007, 02.10.2007 to 10.10.2007, 14.09.2012 to 19.09.2012, 11.12.2014 to 13.12.2004, 30.03.2015 to 04.04.2015 and 20.04.2015 to 04.05.2015 and a surgery was done on 03.10.2007. It is also seen from Ex.P.23 to Ex.P.27, case sheets, the claimant sustained crush injuries and also various grievous injuries. Considering the fact that the physical frame of the claimant has been shattered and the same cannot be restored and also considering the fact that the claimant has lost his avocation, the Tribunal, has rightly fixed the disability of the claimant as 45%, which cannot be interfered with.

6.The Hon'ble Supreme Court and this Court have time and again held that if there is categorical evidence that because of injury and consequential disability, the injured lost his employment or avocation completely and has to be idle till the rest of his life, in that event, loss of income or earning may be ascertained by applying multiplier method". As stated earlier, in this case, the claimant was working as a collection executive in Airtel Mobile and

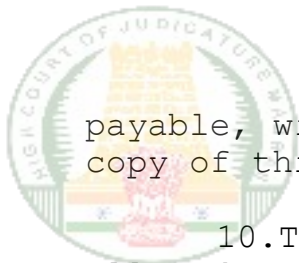


he sustained crush injuries on his right foot and left ankle. Therefore, he lost his avocation. The Tribunal, without considering the said aspect, has awarded Rs.3,000/- per percentage of disability. Therefore, this Court is inclined to adopt the multiplier method for arriving at reasonable compensation towards disability.

7.It is not in dispute that the claimant was aged about 26 years at the time of the accident. As stated earlier, the claimant was stated to be working as a collection executive in Airtel Mobile and earning Rs.8,500/- per month as income. The claimant has produced Ex.P.21, salary certificate, but he has not proved the same by examining his employer. The Tribunal after considering the same and also following the decision of the Hon'ble Supreme Court in **Syed Sadiq and others Vs. Divisional Manager, United India Insurance Company Limited**, reported in **2014 ACJ 627**, has fixed the notional monthly income of the deceased as Rs.5,000/- based on the salary certificate. As per the decision in **National Insurance Company Ltd., Vs. Pranay Sethi case**, reported in **2017 (2) TN MAC 609 (SC)**, the claimant is entitled to 40% future prospects and if 40% of future prospects is added, the monthly income of the claimant comes to Rs.7,000/- [$5000 \times 40/100 = 2000 + 5000 = 7000$] and accordingly, the annual income comes to Rs.84,000/- [$7000 \times 12 = 84,000$]. As per the decision in **Sarla Verma Vs. Delhi Transport Corporation**, reported in **2009(2) TN MAC 1 (SC)**, if multiplier No.17 is adopted considering the age of the claimant, the loss of income due to disability comes to Rs.14,28,000/-. Since the claimant sustained 45% disability, the loss of income due to disability comes to Rs.6,42,600/- [$14,28,000 - 7,85,400 = 6,42,600$].

8.In view of the award of loss of income due to disability, Rs.15,000/- awarded by the Tribunal under the head of loss of earnings, is set aside. The award passed by the Tribunal on the other heads ie., Rs.50,000/- towards pain and sufferings, Rs.5,000/- towards transportation, Rs.5,000/- towards nutrition, Rs.1,000/- towards loss of clothing and ornaments, Rs.50,000/- towards attendar's charges, Rs.50,000/- towards future medical expenses, are confirmed. The Tribunal has also awarded Rs.2,30,100/- towards medical expenses based on Ex.P.20, medical bills, which cannot be interfered with. Thus, the total award amount is enhanced from Rs.5,41,100/- to Rs.10,33,700/-.

9.In view of the above, the award passed by the Tribunal is enhanced from Rs.5,41,100/- to Rs.10,33,700/- with 7.5% interest per annum from the date of petition till the date of deposit. The 2nd respondent / Insurance Company is directed to deposit the amount now awarded, less the amount already deposited, with accrued interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the entire amount with accrued interest and costs by filing an application before the Tribunal. The appellant / claimant is directed to pay the Court fee, if any to be



payable, within a period of four weeks from the date of receipt of a copy of this judgment.

10. This Civil Miscellaneous Appeal is, accordingly, partly allowed. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Motor Accident Claims Tribunal,
Fourth Additional Sub Court, Madurai.

Copy to: The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1 CC to Mr. K. BHASKARAN, Advocate SR-72584.

+1 CC to Mr. C. VAKEESWARAN, Advocate SR-72590.

JUDGMENT MADE IN
C.M.A (MD) No. 778 of 2018
01.07.2019

CS (16.09.2019) 4P 6C