

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3251 of 2008

(Through Video Conferencing)

M.Bijumani

... Appellant/Petitioner

Vs.

1.K.Pachiappan

2.United India Insurance Co. Ltd.,

Motor Third Party Claims Offices,

No.38, Anna Salai, Chennai-2. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 05.02.2008 made in M.C.O.P.No.1788 of 2004, on the file of the Motor Accident Claims Tribunal (II Small Causes Court) Chennai.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.A.Dhiraviyanathan

For R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant against the impugned Judgment and Decree dated 05.02.2008 passed by the Motor Accident Claims Tribunal, (II Court of Small Causes) Chennai in M.C.O.P.No.1788 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.4,12,505/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit, to the appellant-claimant. In the present Civil Miscellaneous Appeal, the appellant-claimant seeks for an enhancement of compensation awarded by the Tribunal.

3. The appellant-claimant had filed a claim petition for compensation of Rs.10,60,500/- but restricted the claim to Rs.10,00,000/- by paying court fee on the same. In the claim petition, after considering the evidence on record, the Tribunal has awarded the aforesaid compensation of Rs.4,12,505/-.

4. The appellant-claimant met with an accident on 06.03.2004 at about 06.30.hrs. The appellant-claimant was riding a Suzuki motorcycle bearing Reg.No.TN-07-L-5202 from south to north direction at Ashok Nagar, 1st Avenue, when a lorry bearing Reg.No.MDN 8416 belonging to the 1st respondent and insured with the 2nd respondent-Insurance Company, allegedly driven by its driver in a rash and negligent manner at a high speed and dashed

against the appellant-claimant, as a result of which, the appellant-claimant sustained grievous injuries.

5. The break up of the amount awarded by the Lower Court are summarised below:-

S.No.	Heads	Amount awarded by the Tribunal
1	Compensation for partial and permanent disability	Rs. 70 , 000/-
2	Pain and suffering	Rs. 15,000/-
3	Transport to Hospital	Rs. 11,880/-
4	Extra nourishment	Rs. 3,000/-
5	Damages to cloth	Rs. 500/-
6	Medical Expenses	Rs.2,52,125 /-
7	Los of earning	Rs. 60,000/-
	Total	Rs.4,12,50 5/-

6. There are no disputes regarding the nature of injury suffered by the appellant-claimant. The nature of injuries suffered by the appellant are as follows:

- 1.Fracture of left tibia lateral condyle
- 2.Left temporal frontal parietal intracerebral hematoma
- 3.Left burst temporal lobe
- 4.Multiple injuries all over the body.

The appellant has also undergone the following surgery:-

- 2.Left temporal frontal parietal craniotomy and evacuation of
- 3.subdural haematoma and decompression.
- 4.Screw fixation for fractue lateral condyle, left tibia.

7. The learned counsel appearing for the appellant-claimant contended that the appellant-claimant has taken treatment as an

in-patient at Sooriya Hospital, Chennai from 06.03.2004 to 31.03.2004 and again at S.P.Fort Hospital, Trivandram from 12.05.2004 to 14.05.2004 as per Exs.P4 & P5/ Discharge Summaries. P.W.2-Doctor Orthopaedic Surgeon was examined and through whom Ex.P.15 was marked. He assessed the disability of the appellant as 30% for fracture of left tibia. P.W.3-Doctor, Civil Surgeon AMA was examined and through him Ex.P.17 Disability Certificate was marked. The said Disability Certificate assessed 55% partial and permanent disability of the appellant-claimant for the head injuries. It is submitted that as per the Exs.P15 & P17, the total disability of the appellant-claimant was 85% (30% + 55%). It is stated that the Tribunal however erred in reducing the percentage of disability to 70% to award a meagre sum of Rs.70,000/- at the rate of Rs.1,000/- per percentage of the disability.

8. It is further submitted that the appellant-claimant was entitled for an enhanced compensation towards permanent disability and towards loss of earning during treatment. It is further submitted that the appellant-claimant would be entitled to further compensation on account of the future prospects at 40% as per the decision of the Hon'ble Supreme Court in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

9. He further submitted that the Tribunal erred in fixing the monthly income of the appellant-claimant as Rs.10,000/- and the amounts awarded by the Tribunal under different heads are also meagre and prayed for an enhancement of compensation.

10. Per contra, the learned counsel for the 2nd respondent-Insurance Company submits that the compensation awarded to the appellant-claimant was a just compensation and there was no infirmity in the amount awarded vide the impugned judgement and decree and therefore prays for a dismissal of this Civil Miscellaneous Appeal.

11. I have considered the arguments advanced by the learned counsel for the appellant-claimant and the learned counsel for the 2nd respondent-Insurance Company. I have also perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

12. Admittedly, the appellant-claimant was graduate in B.Com. He was also having experience in Accounts and Audit Assistance. He was a Sales Tax Consultant as per Ex.P.13 of the Deputy Commissioner, Agricultural Income Tax and Sales Tax. Though the appellant-claimant claimed to be earning a sum of Rs.25,000/- p.m., the Tribunal had come to the conclusion that the income of the appellant-claimant was to be restricted to

Rs.10,000/- p.m. In absence of direct evidence regarding the monthly income of the appellant-claimant, the notional income arrived by the Tribunal is upheld.

13. The claimant suffered a permanent disability as a result of injuries. The assessment of compensation under the head of "loss of future earnings" would depend upon the effect and impact of such permanent disability on his earning capacity. The extent of permanent disability would not necessarily result in a corresponding loss of earning capacity in the future. The Hon'ble Supreme Court in *Raj Kumar v. Ajay Kumar*, (2011) 1 SCC 343 : (2011) 1 SCC (Civ) 164, has summarised the position as follows:-

- (i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.
- (ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that the percentage of loss of earning capacity is the same as the percentage of permanent disability).
- (iii) The doctor who treated an injured claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard to the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.
- (iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

(*) This case having been posted on Friday, the Twentieth day of November, Two Thousand and Twenty under the caption 'For Being Mention' in pursuant to the order of this Court dated 24/08/2020 and made herein in the presence of above said Advocates, the Court made the following order:

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14. Considering the same, in my view, the Tribunal has not awarded just compensation under the heads of loss of earning

capacity and future prospects as per the decision of the Hon'ble Supreme Court reported in Raj Kumar Vs. Ajay Kumar, (2011) 1 SCC 343 and National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680. The compensation awarded under the other heads are therefore liable to be modified. Therefore, the compensation awarded by the Tribunal in the impugned Judgment and Decree is re-quantified as follows:-

<i>Heads and Calculation</i>	<i>Compensation enhanced by this Court</i>
Loss of earning power # Monthly Income : Rs.10,000/- # Annual Income (10,000 x 12) : Rs.1,20,000/- # Loss of future earning power per annum at 35% (1,20,000 x 35/100) : Rs.42,000/- * Add: Loss of earning capacity on Future Prospectus at 40% (42,000 x 40/100) : Rs.16,800/- ----- : Rs.58,800/- ----- * Applicable multiplier with reference to the age : 32 (58,800 x 16) : Rs.9,40,800/-	Rs.9,40,800/-
Permanent Disability (35 x 1000)	Rs. 35,000/-
Transport Expenses	Rs. 5,000/-
Extra Nourishment	Rs. 20,000/-
Loss of amenities	Rs. 30,000/-
Attender charges	Rs. 20,000/-
Pain and Sufferings	Rs. 25,000/-
Medical Expenses	Rs.2,52,125/-

<i>Heads and Calculation</i>	<i>Compensation enhanced by this Court</i>
Total	Rs.13,27,925/- rounded off to Rs.13,28,000/-

As per the decision in Raj Kumar's case (*supra*).

* As per the decision in National Insurance Company Limited Vs. Pranay Sethi and Others, (2017) 16 SCC 680.

Thus, the total award amount is enhanced to Rs.13,28,000/- from Rs.4,12,505/- awarded by the Tribunal.

15. The appellant-claimant is directed to pay deficit Court fee on the enhanced amount of compensation before this Court, within a period of two weeks from the date of receipt of a copy of this Judgment and produce the proof of payment before the Tribunal to withdraw the amount of compensation.

16. The 2nd respondent-Insurance Company is directed to deposit the award amount of compensation of Rs.13,28,000/- together with interest at 7.5% from the date of claim petition till the date of such deposit, before the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

17. On such deposit, the appellant /claimant is permitted to withdraw the same together with interest, less the amount already withdrawn if any, by filing suitable application before the Tribunal.

18. Accordingly, this Civil Miscellaneous Appeal is partly allowed with the above observations. No cost.

Sd/-
Assistant Registrar

(*) PARAGRAPH 14 TO 18 DATED 24/08/2020 DELETED AND
CORRECTED PORTION SUBSTITUTED AS PER ORDER OF THIS
COURT DATED 20/11/2020

/TRUE COPY/

Sub-Assistant Registrar

To

1.The Motor Accidents Claims Tribunal,
(II Court of Small Causes),
Chennai.

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

+lcc to Mr.A.Dhiraviyanathan, Advocate, SR.NO. 37507

NRL (CO)
KKN 20.04.2021

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