

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2020

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A.No.1759 of 2009

V.Bhoominathan - Died *

2. Bhoomadevi

3. Minor Kannadasan

Represented by his Mother and Next friend Bhoomadevi

4. AlzhaguAppellants/Petitioners

* Appellants 2 to 4 brought on record as
Legal Representatives of the deceased
sole appellant viz., V.Bhoominathan vide
Court order dated 05.09.2019 made in
MP Nos.1 to 3 /14 in MP Nos.1 to 3 of 2014

Versus

1. V. Mahendran

2. M/s.United India Insurance Company Ltd.,

C/o. Motor Third party Claims Offices,

No.38, Anna Salai,

Chennai - 2.

...Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in MCOP No.3099 of 2004 on the file of Motor Accident Claims Tribunal, Chennai - IV Judge, Small Causes Court at Chennai, dated 10.11.2008.

For Appellant : Mr.T.G.Balachandran

For Respondents : Ms.I.Malar for R2

R1 - Exparte

JUDGMENT

(This appeal was taken up for hearing through Video conferencing)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 10.11.2008 passed by the Motor Accidents Claims Tribunal, IV Small Causes Court, Chennai in MCOP No.3099 of 2004.

2. A person by name V.Bhoominathan sustained injuries on 30.04.2004 as a result of an accident caused by an Ambassador car bearing Regn. No.TN-09-R-0444 owned by the first respondent

and insured with the second respondent. He preferred a claim before the Motor Accidents Claims Tribunal seeking compensation of Rs.8,28,500/- against the respondents for the injuries sustained by him as a result of the accident.

3. The Motor Accidents Claims Tribunal (IV Small Causes Court), Chennai by its award dated 10.11.2008 passed in MCOP No.3009 of 2004 directed the second respondent to pay V.Bhoominathan a sum of Rs.1,06,500/- together with interests and costs as compensation to the first appellant.

4.The details of the impugned award are as follows :

Heads	Amount awarded by the Tribunal (Rs.)
Loss of earnings	12,000
Transport to Hospital	5,000
Extra Nourishment charges	4,000
Damage to clothing and articles	500
Cost of Purchase of medicines and private treatment	4,000
Mental Stress and strain	10,000
Pain and sufferings	10,000
Permanent disability	60,000
Total	1,06,500

5. Aggrieved by the quantum of compensation awarded by the Tribunal under the impugned award, dated 10.11.2008, V.Bhoominathan filed this appeal seeking for enhancement of compensation, since according to him, the compensation awarded by the Tribunal is low and that the Tribunal has not considered the actual disability suffered by him, which is supported by the evidence of his Doctor (PW2).

6. During the pendency of this appeal, V.Bhoominathan died on 01.07.2010 and his wife, his mother and his son were brought on record as his Legal Representatives by this Court by its order dated 05.09.2019 passed in MP Nos.1 to 3 of 2014 in CMA No.1759 of 2009.

7. The second respondent / insurance company has not preferred any appeal as against the impugned award and therefore, the findings as regards the cause of the accident has now attained finality.

8. Heard T.G.Balachandran , learned counsel for the appellants and Ms.I.Malar, learned counsel for the second respondent. The first respondent remained ex-parte both before the Tribunal and before this Court.

9. According to the learned counsel for the appellants, V.Bhoominathan sustained Fracture in femur part (left hip) and fracture of humerus bone in the neck resulting in a disability of 60%, which rendered him unable to do any job. According to him, as deposed before the Tribunal, V.Bhoominathan was a Bar Bender in Steel Fabrication Works earning Rs.150/- per day, totally amounting to Rs.4,000/-p.m. on an average. According to him, the Tribunal under the impugned award failed to take note of the fact that the claimant was unable to walk without a walking stick and he was also unable to do any job. According to him, the Tribunal failed to take note of the evidence of the Doctor (PW2), who had deposed that due to the breaking of the plate and screws fixed on V.Bhoominathan, he was unable to sit and raise, walk without stick and he is having swelling and pain in his thigh region. According to him, the Tribunal ought to have applied the multiplier method but instead the Tribunal has erroneously awarded the disability compensation based on percentage basis. Further, it is his contention that the Tribunal has also awarded a meagre compensation under various heads without considering the actual suffering that the claimant was undergoing because of the injuries sustained by him due to the said accident.

10. The learned counsel for the appellant in particular drew the attention of this Court to the evidence of the Doctor (PW2), who examined V.Bhoominathan.

11. Per contra, the learned counsel for the second respondent / Insurance Company would submit that the compensation awarded by the Tribunal is a just compensation. It is also her contention that the cause of the death of V.Bhoominathan was not on account of the accident and further no evidence has been placed before the Tribunal or before this Court to prove that V.Bhoominathan died as a result of the accident and hence, according to her, the second respondent / Insurance Company is not liable to compensate the claimants (Legal Representatives of V.Bhoominathan) any further than what was assessed by the Tribunal.

12. This Court has perused the materials and evidence available on record before the Tribunal.

13. Before the Tribunal, the original claimant (V.Bhoominathan) filed five documents, which were marked as

Exs.P1 to P5 and they included the copy of the FIR (Ex.P1), Discharge summary issued by the Government Royapettah Hospital (Ex.P2), Photographs with negative(Ex.P3), Disability Certificate(Ex.P4) and Xray (Ex.P5). Two witnesses were examined on the side of the original claimant(V.Bhoominathan) viz., V.Bhoominathan himself as PW1 and his Doctor, who examined him viz., Dr.Mathiyalagan as PW2. The Disability Certificate for Bhoominathan was issued by the Orthopedician Doctor, K.J.Mathiyalagan fixing the disability of Boominathan at 60%. K.J. Mathiyalagan, the Doctor (PW2) has deposed before the Tribunal that due to the injuries sustained by V.Bhoominathan, he cannot walk without any support. The deposition of the Doctor (PW2) is as under :-

On 12.9.08, I examined Thiru Boominathan, aged 40 years. He had sustained fracture on his left thigh and left hand in a car accident that took place on 30.04.04. He underwent treatment in the Royapettah hospital, Chennai as inpatient for 57 days, underwent surgery for his thigh bone fracture, metal rods and screws were fixed. On present examination, he suffers from pain and swelling on his left thigh. He is unable to walk without walking stick. He is finding difficult to sit on the floor and to climb upstairs. He suffers from pain and swelling on his left shoulder. He is not able to lift his left shoulder beyond 60 degrees. He is finding difficult to hold and lift articles. From the X-Ray photograph, it is found that the bone has not joined. The metal plate was found broken. He should undergo a surgery again and metal plate should be fixed afresh. The left hand bone and joined crossly.

14. Even during the cross examination by the second respondent / Insurance Company, the Doctor (PW2) has reiterated the statements made by him in his chief examination. However, the Tribunal under the impugned award by non application of mind to the evidence of PW2(Doctor) has erroneously observed that the Doctor has not deposed "that the injuries sustained in the accident and the disability will affect the earning capacity of the petitioner". As seen from the injuries sustained by V.Bhoominathan as evidenced by the Disability certificate (Ex.P4) as well as the deposition of PW2(Doctor), it is clear that Bhoominathan had sustained grievous injuries which will certainly disable him from doing his regular work as a Barbender in Steel Fabrication Works which requires lot of physical strain.

15. The Tribunal has fixed the notional income of V.Bhoominathan at Rs.4,000/-p.m. There is no evidence placed before the Tribunal or before this Court that V.Bhoominathan died only due to the injuries sustained on account of the accident. The accident happened in the year 2004 and

V.Bhoominathan died only in the year 2010 after a gap of almost six years. When no evidence has been placed that the cause of the death was due to injuries sustained on account of the accident, this Court cannot accept the contention of the learned counsel for the appellants that the deceased V.Bhoominathan died only as a result of the accident and the appellants 2 to 4/ claimants are entitled for loss of future prospects. However, considering the nature of injuries sustained by V.Bhoominathan as indicated earlier, he would certainly have been unable to do his regular work as a Barbender in Steel Fabrication Works till the date of his death as the said work will involve physical work / activity and only fit persons will be in a position to do such kinds of works. Therefore, instead of applying the multiplier method for awarding the disability compensation, this Court is of the considered view it is just and reasonable that the appellants can be adequately compensated, if the loss of earning to Bhoominathan is taken into consideration from the date of the accident till the date of death. The Tribunal has fixed the monthly income of V.Bhoominathan at Rs.4,000/-. Over a period of time from the date of the accident i.e. in the year 2004 till the date of death i.e. in the year 2010, periodically, there is a possibility that V.Bhoominathan would have earned a much higher income. However, since no evidence has been placed on record before this Court regarding the probability of getting more income, this Court fixes the average income of V.Bhoominathan between 2004, being the year of the accident and 2010 being the year of the death on notional basis and accordingly a sum of Rs.5,000/- p.m. is fixed by this Court for the said period. The accident happened on 30.04.2004 and V.Bhoominathan died on 01.07.2010 and the total period is six years. If Rs.5,000/- is taken into consideration, his loss of income from the date of the accident till the date of the death for the period of a 74 months (6 years), works out to Rs.3,70,000/- (Rs.5,000/- x 74) and the same is fixed by this Court.

16. The compensation awarded by the Tribunal under the impugned award towards a) extra nourishment, b) damage to clothing, c) purchase of medicines and private treatment, d) pain and suffering and Transport is also low. The Tribunal has failed to consider the nature of injuries sustained by Bhoominathan before arriving at the said assessment. This Court is of the considered view that the compensation under the heads a) extra nourishment is enhanced from Rs.4,000/- to Rs.5,000/-; b) damage to clothing is enhanced from Rs.500/- to Rs.1000/-; c) purchase of medicines and private treatment is enhanced from Rs.4,000/- to Rs.10,000/-; d) pain and sufferings is enhanced from Rs.10,000/- to Rs.25,000/- and Transportation costs is enhanced from Rs.5,000/- to Rs.10,000/-.

17. The Tribunal under the impugned award failed to award any compensation towards a) attender charges and b) loss of amenities. In the considered view of this Court, the Tribunal ought to have considered the nature of injuries sustained by V.Bhominathan and awarded compensation towards attender charges and loss of amenities also. Accordingly, this Court awards a sum of Rs.10,000/- towards Attender charges and Rs.25,000/- towards loss of amenities.

18. Since, this Court has awarded a sum of Rs.3,70,000/- as compensation towards loss of income for the period from the date of accident till the date of death of Bhominathan, the compensation awarded by the Tribunal under the heads a) Loss of earnings; b) Mental Stress and strain and c) permanent disability will not arise.

19. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
Loss of dependency Rs.5,000/-p.m. X 74 months	-	3,70,000
Loss of earnings	12,000	-
Transport to Hospital	5,000	10,000
Extra Nourishment charges	4,000	5,000
Damage to clothing and articles	500	1,000
Cost of Purchase of medicines and private treatment	4,000	10,000
Mental Stress and strain	10,000	-
Pain and sufferings	10,000	25,000
Permanent disability	60,000	-
Attender charges	-	10,000
Loss of amenities	-	25,000
Total	1,06,500	4,56,000

20. In the result, this appeal stands partly allowed by enhancing the compensation from Rs.1,06,500/- to Rs.4,56,000/-, as indicated above. No costs.

21. The second respondent / Insurance Company is directed to deposit the entire award amount as awarded by this Court together with interest at 7.5% p.a. from the date of filing of the claim petition till the date of realization and costs, less the amount, if any, already deposited to the credit of MCOP.No.3009 of 2004, within a period of four weeks from the date of receipt of a copy of this Judgment.

22. Insofar as the apportionment of the award amount as awarded by this Court is concerned, the Tribunal is directed to apportion the award amount to the 2 to 4th appellants in the following manner i.e. 40% of the award amount to the second appellant, who is the wife of the first appellant; another 40% of the award amount to the third appellant, who is the son of the first appellant and balance 20% of the award amount to the fourth appellant, who is the mother of the first appellant. On such deposit being made, the Tribunal is directed to transfer the amount to the bank account of the second and fourth appellants / major claimants through RTGS within a period of two weeks thereafter. The requisite Court fee, if any shall be paid by the appellants before receiving the copy of this Judgment.

23. Insofar as the share of the third appellant /minor claimant is concerned, the same shall be deposited in Fixed deposit in any one of the Nationalized Banks, till he attains the age of majority and the interest accrued thereon shall be withdrawn by the guardian of the minor claimant once in three months, directly from the Bank. If the third appellant / minor claimant has attained the age of majority, it is open for him to file a formal petition before the Tribunal to obtain payment out of his share of apportionment.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

vsi2

To

1. The IV Judge,
Motor Accidents Claims Tribunal,
Small Causes Court at Chennai

2.The Section Officer,
V.R. Section, High Court of Madras, Chennai - 104.

C.M.A.No.1759 of 2009

SP(24/08/2020)