IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2020

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.2690 of 2010

(Through Video Conference)

N.Ravi ... Appellant/Petitioner

vs

1.K.Venkatesan

2.United India Insurance Co., Ltd.,
Motor Third Party Cell,
No.38, Anna Salai, Chennai.

(1st respondent set exparte in the lower court, hence notice may be dispensed with)

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 , against the Judgment and decree dated 11.08.2008 made in M.C.O.P.No.29 of 2006 on the file of the Motor Accident Claims Tribunal (II Judge, Small Causes Court) Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Mr.D.Baskaran

For R1 : Exparte

JUDGMENT

With consent of the learned counsel for the appellant and contesting respondent No.2, this appeal is taken up for hearing and is disposed finally.

2. The appellant/claimant has the filed the present Civil Miscellaneous Appeal against the impugned Judgment and decree dated 11.08.2008, passed by the Motor Accident Claims Tribunal (II Judge, Small Causes Court) Chennaimade in M.C.O.P.No.29 of 2006. In the present appeal, the appellant/claimant also seeks for enhancement of the compensation awarded in the impugned

Judgment and Decree. (For brevity hereinafter referred to as the Tribunal and the impugned order respectively).

3. By the impugned order, the Tribunal has awarded a sum of Rs.2,76,630/-together with interest at 7.5% from the date of the claim petition till the date of deposit, to the appellant/claimant

4. The brief facts of the case are that on 04.11.2005 at about 13.30 hrs., while the appellant was walking on the Old Mahabalipuram road at Thuraipakkam, Chennai near Panchayat School, a 407 Van bearing Reg.No.TN-09-Q-5379 driven by its driver in a rash and negligent manner knocked the appellant, as a result of which, the appellant sustained grievous injuries. The insured vehicle belongs to the 1st respondent and was insured with the 2nd respondent Insurance Company.

5. The appellant was aged about 35 years at the time of accident and was working as a load man and had claimed that he was earning a sum of Rs.6,000/- p.m. as per the Ex.P.3 Salary Certificate. The Tribunal held that the appellant has not proved the same through the person who issued the said Salary Certificate and thereafter, has fixed the monthly income of the appellant as Rs.4000/- p.m.

6. Before the Tribunal, the 2nd respondent disputed the claim for compensation. After considering the oral and documentary evidence on record, the Tribunal has awarded a sum of Rs.2,76,630/- as compensation together with interest at the rate of 7.5% per annum, from the date of claim petition till the date of deposit, under the following heads:

1	Permanent disability (Rs.4000x1/3x12x13)	Rs.2,49,631/-
2	Pain and suffering	Rs. 20,000/-
3	Transport to hospital	Rs. 2,000/-
4	Extra nourishment	Rs. 5,000/-
Total		Rs.2,76,631/- rounded off to Rs.2,76,630/-

7. Aggrieved by the same, the appellant has filed the present appeal.

8. The learned counsel for the appellant submits that the Tribunal erred in awarding a meagre compensation for his left leg was amputated below knee. Therefore, he submits that the Tribunal erred in awarding a meagre sum of Rs.2,76,631/- as compensation. He further submits that the Tribunal erred in deducting 1/3rd of the amount towards personal expenses though the case pertains to the injury resulting in permanent disability. It is further submitted that the age of the appellant was 36 years at the time of accident and therefore the Tribunal erred in adopting the multiplier of 13 instead of 15.

9. Further, the learned counsel for the appellant relied on the following decisions of the Hon'ble Supreme Court:

i) Sarla Verma vs.Delhi Transport Corporation, reported in 2009(2) TN MAC 1 (SC).
ii)National Insurance Co., Ltd., vs. Pranay Sethi & Others, reported in 2017(2) TN MAC 609(SC).

10. The learned counsel for the 2nd respondent submits that the impugned order passed by the Tribunal is well reasoned and requires no interference and therefore, this Civil Miscellaneous Appeal is liable to be dismissed.

11. I have considered the arguments of the learned counsel for both sides and perused the evidence on record and the impugned Judgment and Decree passed by the Tribunal.

12. It is noticed that the appellant was aged about 36 years at the time of accident and was working as a load man. The Tribunal has correctly awarded the notional income of the appellant as Rs.4,000/- p.m and has considered the disability as 60% as per the deposition of P.W.2-doctor.

13. The submission of the learned counsel for the appellant in this appeal appears to be in tune with the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, reported in (2011) 1 SCC 343 and the decision of Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, reported in (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, reported in (2014) 11 SCC 178.

14. In Sanjay Verma's case (supra), the Hon'ble Supreme Court took note of its earlier decision in Reshma Kumari Vs. Madan Mohan, reported in (2009) 13 SCC 422 and held as follows:-

> 15. Answering the above reference a three-Judge Bench of this Court in Reshma Kumari v. Madan Mohan [(2013) 9 SCC 65 : (2013) 4 SCC (Civ) 191 : (2013) 3 SCC (Cri) 826] (SCC p. 88, para 36) reiterated the view taken in Sarla Verma [Sarla Verma v. DTC, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] to the effect that in respect of a person who was on a fixed salary without provision for annual increments or who was self-employed the actual income at the time of death should be taken into account for determining the loss of income unless there are extraordinary and exceptional circumstances. Though the expression "exceptional and extraordinary circumstances" is not capable of any precise definition, in Shakti Devi v. New India Insurance Co. Ltd. [(2010) 14 SCC 575 : (2012) 1 SCC (Civ) 766 : (2011) 3 SCC (Cri) 848] there is a practical application of the aforesaid principle. The near certainty of the regular employment of the deceased in a government department following the retirement of his father was held to be a valid ground to compute the loss of income by taking into account the possible future earnings. The said loss of income, accordingly, was quantified at double the amount that the deceased was earning at the time of his death.
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> 16. Undoubtedly, the same principle will apply for determination of loss of income on account of an accident resulting in the total disability of the victim as in the present case. Therefore, taking into account the age of the claimant (25 years) and the fact that he had a steady income, as evidenced by the income tax returns, we are of the view that an addition of 50% to the income that the claimant was earning at the time of the accident would be justified.

15. The amount awarded under the conventional heads appear to be meagre and is therefore partially enhanced. The Tribunal has awarded a meagre amount of Rs.20,000/- towards pain and sufferings and Rs.2,000/- towards conveyance charges and Rs.3,000/- towards extra nourishment. They are enhanced to Rs.50,000/-, 10,000/- and 10,000/- respectively. The Tribunal has awarded only a sum of Rs.1,000/- towards transportation and therefore, it is enhanced to Rs.3,000/-. No amount has been awarded by the Tribunal under the heads of attender charges,

loss of amenities and medical expenses and the above heads are hereby awarded a sum of Rs.20,000/- towards attender charges, Rs.50,000/- towards loss of amenities and Rs.5,000/- towards medical expenses. Therefore, the amount of compensation awarded under various heads are modified as follows:-

Loss of earning capacity		
i) Income per month	Rs.4,000/-	
ii) Add future prospects (Rs.4000+40%)	Rs.5,600/-	
iii) loss of income for 12 months (Rs.5600 x 12)	Rs.67,200/-	
iv) loss of income applying multiplier of 15 (Rs.67,200 x 15)	Rs.10,08,000/-	
v) permanent disability at 60% (Rs.10,08,000x 60%)	Rs.6,04,800/-	Rs.6,04,800/-
Pain and sufferings		Rs. 50,000/-
Conveyance expenses		Rs. 10,000/-
Extra Nourishment		Rs. 10,000/-
Attender charges		Rs. 20,000/-
Loss of amenities		Rs. 50,000/-
Medical expenses		Rs. 5,000/-
Total		Rs.7,49,800/-

The above said compensation of Rs.7,49,800/- is rounded off to Rs.7,50,000/-.

16. In the result, it is ordered as follows:

i) The Civil Miscellaneous Appeal is partly allowed.
ii) The appellant/claimant is directed to pay the additional court fee for the enhanced award amount before the Tribunal.
iii) The 2nd respondent/Insurance company is directed to deposit the enhanced award amount of compensation of Rs.4,73,370/- (7,50,000 - 2,76,630) together with interest at the rate of 7.5% per annum from the date of petition till the date of such deposit, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) If the amount awarded by the Tribunal has not deposited, the 2nd respondent/Insurance Company is also directed to deposit the same together with interest as directed by Tribunal in the impugned Judgment and Decree, less the amount already deposited if any, within the aforesaid period.

v) On such deposit being made, the appellant/claimant is permitted to withdraw the same together with interest, after adjusting the amount, if any, already withdrawn, by filing suitable application before the Tribunal. No cost.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

kkd/jen
To:

The Motor Accident Claims Tribunal,
(II Judge, Small Causes Court),
Chennai.

Copy to

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

C.M.A.No. 2690 of 2010

mp[co]

srg 26/03/2021