

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.01.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.1415 of 2013

Suresh S/o. Ramaiah ..Appellant/ Petitioner

Versus

1.Anand, S/o. Ramasamy

2.The Manager,
Universal SOMBO General Insurance Corporation,
Capital Towers, 5th Floor,
No.554, 555, Anna Salai,
Thenampet, Chennai - 18

(Since the 1st respondent was set ex-parte before the
Tribunal, notice is dispensed with.)

..Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal filed against the order
and decree dated 26.09.2012 made in M.C.O.P.No.610 of 2011 on
the file of the Motor Accident Claims Tribunal cum Subordinate
Court, Sankari.

For Appellant : Mr.C. Kulantaivel

For 2nd Respondent : Mrs.Vijayakamala
R1 - Exparte

J U D G M E N T

This appeal is arises out of M.C.O.P. No.610 of 2011
dated 26.09.2012 on the file of the Motor Accident Claims
Tribunal cum Subordinate Court, Sankari.

2. The claimant/ the appellant herein has filed M.C.O.P.
No.610 of 2011 seeking for a compensation of Rs.20,00,000/-
before the Tribunal for having sustained grievous injuries in
a road accident. The Tribunal after trial, came to the
conclusion that the claimant/the appellant herein is entitled
to a sum of Rs.8,53,000/- along with interest @7.5% p.a.
thereon.

3. Being aggrieved over the award, the claimant has
filed the present appeal seeking for enhancement of
compensation of award passed by the Tribunal.

4. Heard, the learned counsel for the appellant and the learned counsel for the 2nd respondent.

5. On consideration of both oral and documentary evidence, the Tribunal has come to the conclusion that the accident has taken place due to the rash and negligent driving on the part of the Tipper Lorry 's Driver and directed the 1st respondent/Owner of the Lorry and 2nd respondent/Insurance Company to deposit the award amount of Rs.8,23,000/- along with interest @7.5% p.a. jointly and severally.

6. The 1st respondent/owner of the Lorry is ex-party before this Court as well as the Tribunal.

7. It is seen from the award that the Tribunal has fixed permanent disability of the injured as 50% and determined the monthly notional income of the injured to be Rs.5,000/- applying the multiplier of 12 recording age of appellant was 29 years on the basis of Driving Licence at the time of the accident whereas multiplier of 17 is applicable to the claimant/appellant herein.

8. On perusal of Disability Certificate-Ex.P14, the injuries and conditions of the claimant/appellant herein are diagnosed as under:

"He is suffering from Severe pain Right Knee Joint and Inability to walk past 1 year due to Ipsilateral Infected Non Union Supracondylar Fracture Right Femur and Infected Non Union Tibia of Right Leg sustained injuries due to RTA at about 1 year ago. He underwent Four Surgical line of Treatment in various dates in C.M. Hospital, Namakkal for the Fractures sustained due to trauma 1 year back. 1. Open Reduction and Internal Fixation with Femur Plate 2. Closed Reduction and inter locking medullary Nail Fixation 3. Wound Debridement 4. Split Skin Grafting. He ended with infected Thigh bone and Leg bone Right side with Nonunion. He was unable to walk or flex his Right knee. Even amputation was suggested for the control of Limb infection & NonUnion.

He was admitted our Hospital for Limb saving procedure. He underwent Ilizarov fixation for both Right Thigh & Right Leg. He under regular walk and to achieve Union of Femur & Tibia. But the loss of Knee Movement, Shortening, Ankle & Foot Joint stiffness due to previous infection will be a permanent disabilities.

He was Driver at the time of accident. He cannot continue the driver job. It is highly difficult to the work using Right Lower Limb.

These are all permanent disabilities and he is physically handicapped amounting to loss of functional capacity with permanent disability of 70% (Seventy percent only). The disability is calculated based on Government India Ministry of Welfare uniform Definitions of the physically handicapped code Annexure V, 1986."

9. The factum of the accident and the manner of the accident has to be rash and negligence and entitlement of the claimant/plaintiff under Section 163A is not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

10. After going through oral and documentary evidence of P.W.2, Doctor, coupled with the Ex.P14, disability certificate of 70% and other medical records, this Court is considered view that disability suffered by the petitioner is fixed 55% instead of 50% awarded by the Tribunal. It will be appropriate to fix his notional monthly income at Rs.10,000/- instead of Rs.3,000/- as awarded by the Tribunal despite the appellant had drawn monthly salary of Rs.18,000/- as per Ex.P.16 and considering the age of the deceased was 29 at the time of accident, the correct multiplier to be applied is '17' as such the 'loss of income' is calculated as follows:-

" Rs.10,000 X 12 X 55% X 17 = Rs.11,22,000/-"

Thus, a sum of Rs.11,22,000/- is granted as compensation under the head "Loss of earning capacity". Further, total of the compensation along with other heads has been awarded as follows :

SL. No.	Particulars	Amount (in Rs.)
1	Loss of earning capacity as stated above	11,22,000.00
2	Pain, shock and Sufferings	25000.00
3	Extra-nourishment	10000.00
4	Transport	15,000.00
5	Attendance Charges	10,000.00
6	Medical Expenses	4,08000.00
7	Operational Charges	30,000.00
8.	Loss of amenities	5000.00
Total Amount		To 16,25,000.00

11. Thus, the compensation awarded by the Tribunal has been enhanced by Rs.7,72,000/- from Rs.8,53,000/- to Rs.16,25,000/- with interest @ 7.5% per annum from the date of petition till the date of deposit of the compensation. The

Insurance Company is directed to deposit the award amount enhanced by this Court to the credit of M.C.O.P. No.610 of 2011 after deducting the amount already deposited if any, within a period of eight weeks from the date of receipt of copy of this order and on such deposit, the appellant/claimant is permitted to withdraw the same along with the interest without filing any formal petition. The Appellant is directed to pay Court Fee for the enhancement award amount in this appeal if any.

12. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

lbm

To

- 1.The II Judge, Motor Accident Claims Tribunal
cum Subordinate Court, Sankari.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.C.Kulanthaivel , Advocate SR.No. 6115
+1cc to M/s.R.Vijaya kamala , Advocate SR.No. 6767

C.M.A.No.1415 of 2013

A.SK(23/09/2020)

सत्यमेव जयते

WEB COPY