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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	01.12.2020
PRONOUNCED ON	08.12.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.NO.965 OF 2010

(THROUGH VIDEO CONFERENCING)

Vanagamudi ... Appellant

Vs.

1. Gayathiri

2. The Divisional Manager,
The United India Insurance Company Limited,
No.46, Katpadi Street,
Vellore. ... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 28.12.2004 made in M.A.C.T.O.P.No.246 of 2004 on the file of the Motor Accidents Claims Tribunal Judge cum Additional Sub Judge, Thiruvannamalai.

For Appellant : M/s.A.Subadra
for M/s.M.Malar

For R2 : M/s.R.Sreevidhya
for M/s.R.Ravichandran

R1 : Exparte

J U D G M E N T

The claimant is the appellant in this appeal. This Civil Miscellaneous Appeal has been filed against the impugned Judgment and Decree dated 28.12.2004 passed by the Motor Accidents Claims Tribunal (Additional Sub Court) Thiruvannamalai in M.A.C.T.O.P No.246 of 2004.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.40,500/- as compensation together with interest at 9% per annum from the date of claim petition till

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the date of deposit and costs to the appellant/claimant as against a total claim of Rs.1,00,000/-.

3. The Tribunal has awarded the compensation under the following heads:-

Heads	Amount
Loss of Income (10,000 x 17 x 15/100)	Rs.25,500/-
Loss of Annual Income	Rs.10,000/-
Pain and Sufferings	Rs. 5,000/-
Total	Rs.40,500/-

4. In this appeal, the appellant/claimant seeks enhancement of compensation primarily on the ground that the Tribunal erred in considering the annual income of the appellant/claimant as Rs.10,000/- per annum and while applying the multiplier, the Tribunal has wrongly applied multiplier of 17 as against 18 which was contrary to the decision of the Hon'ble Supreme Court in Sarla Verma (smt) and others vs Delhi Transport Corporation and Another, 2009 (6) SCC 12. It is submitted that the appellant was aged about 23 years at the time of accident and therefore, the correct multiplier that has to be adopted was 18.

5. It is further submitted that though P.W.2-Doctor (Mr.Ravindran) had assessed the permanent disability of the appellant as 30%, the Tribunal has considered only 15% permanent disability for the purpose of awarding compensation. It is therefore submitted that the amount awarded by the Tribunal for the injuries suffered by the appellant/claimant was liable to be enhanced.

6. Defending the impugned Judgment and Decree, the learned counsel for the 2nd respondent/Insurance Company submitted that the Tribunal has awarded higher compensation to the appellant/ claimant and therefore, prayed for dismissal of the present appeal.

7. I have considered the arguments advanced by the learned counsel for the appellant/claimant and the 2nd respondent/ Insurance Company. I have also perused the impugned Judgment and Decree and the Exhibits marked before the Tribunal by the appellant/claimant which are as follows:-

i. FIR
ii. M.V Report
iii. Wound Certificate for P.W.1

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iv.G.H Discharge Summary
v. Disability Certificate
vi.Xray

8. In the impugned Judgment, the nature of injuries suffered by the appellant/claimant are as follows:-

> "P.W.2-Doctor has examined the injured and on examination, he found that the injured has suffered fracture of the left skull which has resulted in haemorrhage in the left side of the brain, and the site of the fracture was found to be bent. He also stated that the mobility of the organs on the left side of the body was reduced and he concluded that there was permanent disability and accordingly he has given the Medical Certificate. Further during the cross examination, P.W.2- Doctor has denied that on initial examination, the injured was not treated as an inpatient and that the percentage of disability was stated on the higher side."

9. The facts on record indicate that the appellant/claimant was hospitalised for about 20 days. PW2 Doctor who deposed evidence for the appellant/claimant has deposed that the appellant/claimant had sustained a fracture on his skull and was united with the bend and disfigurement and there was contusion in the brain and the left side organ of the appellant/claimant were not functioning properly.

10. The Tribunal has however countermanded the same on the ground that the assessment of disability by PW2 was after 1 and ¼ years after the accident and therefore there could reduction of the disability. The liberty taken by the Tribunal to countermand the evidence of PW 2 in my view appears to be without any legal basis.

11. It is for the insurance company to have effectively cross-examined the witness produced by the appellant/claimant and it is not for the Tribunal to substitute its Judgement regarding disability.

12. At the same time, the Tribunal has to determine the functional disability of the appellant as per the decision of the Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343. In other words, the Tribunal has to determine functional disability on account of permanent disability and/or permanent partial disability while awarding compensation. The

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Tribunals is required to find out the impact of the disability on the earning capacity of the injured person while awarding compensation.

13. For this purpose, the Tribunal has to necessarily rely on the evidence of the expert. PW2 - Doctor has opined that the appellant had suffered 30% disability. The Tribunal has applied 15% disability for computing the compensation by considering the yearly income of the appellant as Rs.10,000/-.

14. In my view, adoption of 15% functional disability would be a fair assessment. The 2nd respondent Insurance Company also has not raised serious objection to the application of multiplier for awarding compensation.

15. Adoption of annual income of Rs.10,000/- for the purpose of computation of compensation appears to be very low as the Tribunals are bound to award a just compensation. Therefore, monthly income of the appellant at Rs.1,750/- can be considered for awarding a just compensation in absence of direct evidence to substantiate the income of the appellant.

16. The Tribunal has not awarded any amounts towards future prospects. Therefore, considering the age of the deceased, 40% of the notional income has to be added to the income of the appellant/claimant as per decisions of the Hon'ble Supreme Court in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

17. Similarly, the Tribunal has not awarded any amounts towards Extra Nourishment and therefore, a sum of Rs.5,000/- is awarded under the head of Extra Nourishment. A sum of Rs.5,000/- awarded towards pain and suffering by the Tribunal appears to be low and same is enhanced to Rs.7,500/-.

18. Interest on the amount of compensation at 9 % per annum awarded by the Tribunal appears to be high. Same is reduced to 7.5% per annum from the date of the claim petition. Similarly, this appeal has been filed with the delay of 275 days. Therefore, no interest shall be paid for the aforesaid delay period of 275 days.

19. Adoption of the multiplier 17 instead of 18 falls foul of the decision of the Honourable Supreme Court in Sarala Verma referred to supra. Therefore, the compensation awarded to the appellant is re-quantified as follows:-

Heads and Calculation	Amount
Loss of earning capacity due to permanent disability:- # Monthly Income of the appellant- Rs.1,750/- # Annual Income before the accident (1,750 x 12) - Rs.21,000/- # Loss of future earning per annum at 15% (21,000 x 15/100) : Rs.3,150/- ** Add: Future Prospectus at 40% (3150 x 40/100) : Rs.1,260/- ---------------- : Rs.4,410/- ---------------- * Multiplier applicable with reference to the age : 18 (4410 x 18) : Rs.79,380/-	Rs.79,380/-
Pain and Sufferings	Rs. 7,500/-
Extra Nourishment	Rs. 5,000/-
Total	Rs.91,880/- Rounded off to Rs.92,000/-

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

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

** As per the decision of the in Sanjay Verma Vs. Haryana Roadways, (2014) 3 SCC 210 and V.Mekala Vs. Malathi and Another, (2014) 11 SCC 178.

20. Thus, the compensation of Rs.40,500/- awarded by the tribunal is enhanced to Rs.92,000/- together with interest at 7.5% per annum from the date of claim till the date of deposit.

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21. Though the Tribunal has directed the respondents to deposit the compensation jointly or severally, I am of the view that it is the 2nd respondent Insurance Company which is liable to pay the compensation to the appellant as the 2nd respondent Insurance Company has contracted a contract of indemnity to indemnify the 1st respondent against any liability that may be fastened against the owner of the vehicle under the Motor Vehicles Act, 1988.

22. Therefore, the 2nd respondent Insurance Company is directed to deposit the aforesaid compensation of Rs.92,000/- together with interest at 7.5% per annum from the date of filing of the claim petition till the date of deposit except for the delayed period of 275 days in filing this appeal and costs awarded by the Tribunal, less any amount already deposited, within a period of six weeks from the date of receipt of a copy of this Judgment.

23. On such deposit, the appellant/claimant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn, by filing suitable applications before the Tribunal.

24. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To:-

The Motor Accidents Claims Tribunal,
Additional Subordinate Judge,
Thiruvannamalai.

Copy To
The Section Officer,
VR Section, High Court, Madras-104.

+1cc to M/s.M.Malar, Advocate, S.R.No.39627

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SPD(CO)
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