

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

CMA.No.1572 of 2013

D.Kumar

...Appellant/Petitioner

vs.

1.A.K.Venkataraman

2.Royal Sundaram Alliance Insurance Co. Ltd.,  
No.45 & 46, Whites road,  
Chennai - 600 014.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 10.01.2012 in M.C.O.P.No.2406 of 2008 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

For Appellant : Mr.C.Munusamy  
for M/s.C & K Law firm

For respondents: Mr.K.Vinodh  
for Mrs.Elveera Ravindran  
for R2  
R1 - exparte

J U D G M E N T

The appellant is the claimant in M.C.O.P.No.2406 of 2008 on the file of the IV Judge, Court of Small Causes, Chennai. He filed the above claim petition under Section 166 of the Motor Vehicles Act, 1988, and Rule 3 of the MACT Rules seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that took place on 02.07.2008.

2. On 02.07.2008, at about 19.30 hours, the appellant / claimant was boarding a bus bearing Registration No.TN 09 J 9399, near MRC staff quarters, MRC road, Guindy. At that time, the driver of the bus drove the bus in a rash and negligent manner, due to which, the appellant / claimant fell down and the left side front wheel of the bus ran over his left leg and he sustained grievous injuries. The contention of the appellant /

claimant is that the accident took place due to the rash and negligent driving of the driver of the said bus. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

3. Before the Tribunal, on the side of the appellant / claimant, PW1 and PW2 were examined and Exs.P1 to P6 were marked. On the side of the respondents, no documentary or oral evidences were marked.

4. The owner of the bus remained absent before the Tribunal and therefore, he was set ex-parte. The Royal Sundaram Alliance Insurance Company contested the claim petition. After analysing the evidence on record, the Tribunal awarded compensation of Rs.7,50,000/- together with interest at the rate of 7.5% per annum. Not satisfied with the award passed by the Tribunal, the appellant has filed this appeal seeking enhancement of compensation.

5. The learned counsel appearing for the appellant / claimant submitted that the appellant / claimant had taken inpatient treatment at Government General Hospital from 03.07.2008 to 14.07.2008 and had also undergone a surgery as per discharge summary (Ex.P2). The learned counsel also submitted that even after the prolonged treatment, he is not in a position to continue his avocation, since his left leg was amputated. Dr.Thiagarajan (PW2) had assessed the permanent disability at 60% and the Tribunal has erroneously reduced the same to 50%. He submitted that the disability should be fixed at 100%, since he could not do any work as before. He further submitted that the Tribunal has awarded only meagre amounts towards extra nourishment and pain and sufferings. He also prayed for enhancement of compensation under other heads.

6. The learned counsel appearing for the second respondent submitted that the Tribunal after considering both oral and documentary evidences in a proper perspective, awarded compensation, which is not meagre. The appellant / claimant has not made out any case for enhancement of compensation and prayed for dismissal of the appeal.

7. Heard the learned counsel appearing for the appellant and second respondent and perused the materials available on record.

8. In the claim petition, it was stated that the appellant / claimant was a Cleaner / Labourer, aged 20 years, earning a sum of Rs.4,500/- per month. The Tribunal has also taken up the same as monthly income for calculating loss of earning power. The Tribunal has adopted multiplier '16'. However, as per the decision rendered in Sarlavarma and others

vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121, the multiplier to be adopted in the instant case is '18'. From the materials on record, it is seen that this is a case of amputation, and hence the disability fixed by the Tribunal at 50% is correct and the same is taken up for calculating loss of earning power.

Loss of earning power (in Rupees) =  $4,500 \times 12 \times 18 \times 50 \%$   
 $= 4,86,000$

Since multiplier method is adopted to award loss of earning power, this Court is of the view that Rs.27,000/- awarded towards loss of income can be reduced to Rs.10,000/-. This is a case of amputation and the accident is of the year 2008 and hence Rs.5,000/- awarded towards transport to hospital is very meagre and the same is enhanced to Rs.20,000. Based on the inpatient treatment taken by the appellant / claimant, the Tribunal awarded Rs.10,000/- and Rs.25,000/- towards extra nourishment and attender's charges and the same are hereby confirmed. Rs.1,000/- awarded towards damage to clothing is also hereby confirmed. The Tribunal has also properly assessed the pain and suffering based on the injury suffered by him as Rs.50,000/- and it is also hereby confirmed. Once again, clearly, this is a case of amputation and therefore, Rs.2,00,000/- fixed by the Tribunal towards loss of amenities is just and it is hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S.No | Description           | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) |
|------|-----------------------|---------------------------------|-----------------------------------|
| 1    | Loss of earning power | 4,32,000                        | 4,86,000                          |
| 2    | Loss of income        | 27,000                          | 10,000                            |
| 3    | Transport to Hospital | 5,000                           | 20,000                            |
| 4    | Extra nourishment     | 10,000                          | 10,000                            |
| 5    | Damage to clothing    | 1,000                           | 1,000                             |
| 6    | Medical Expenses      | -                               | -                                 |
| 7    | Attender's charges    | 25,000                          | 25,000                            |
| 8    | Loss of amenities     | 2,00,000                        | 2,00,000                          |
| 9    | Pain and sufferings   | 50,000                          | 50,000                            |
|      | Total                 | Rs.7,50,000/-                   | Rs.8,02,000/-                     |

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at

Rs.7,50,000/- is hereby enhanced to Rs.8,02,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent is directed to deposit the enhanced award amount now determined by this Court with interest, less the amount already deposited if any, to the credit of MCOP.No.2406 of 2008 on the file of the IV Judge, Small Causes Court / Motor Accident Claims Tribunal, Chennai within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant / claimant is permitted to withdraw the enhanced award amount with interest, less the amount if any, already withdrawn. No costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The IV Judge  
Small Causes Court,  
Motor Accident Claims Tribunal,  
Chennai.

Copy to  
The Section Officer,  
V.R Section,  
High Court, Madras.

+1 CC to Mr.C.Munusamy, Advocate sr 7758

+1 CC to M/s. Elveera Ravindran, Advocate sr 8167.

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RSV(CO)  
SP(01/09/2020)