



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.08.2020

Pronounced on: 19.08.2020

WEB COPY

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.1456 of 2016

E.Anandhan @ Anand

...Appellant/Petitioner

/versus/

1.G.Kannaiyan

2.M/S.The New India Assurance Co.Ltd.,
Macmillan House, II Floor,
No.21, Patullos Road,
Chennai-600 002.

...Respondents/Respondents

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act against the Decree and Judgment made in M.C.O.P.No.1458 of 2008 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court -V, Chennai dated 03.12.2011.

For Appellant : Mr.T.G.Balachandran

For R2 : M/s.J.Michael Visuvasam for R2

For R1 : Exparte

J U D G M E N T

(The case has been heard through video conference)

This is an appeal filed by the claimant. Aggrieved by the quantum of compensation awarded for the injuries sustained in the motor accident, the claimant has preferred this appeal for enhancement of compensation.

2. On 11/01/2008 near Pozichalur Junction, Pammal Main Road, Chennai, while the claimant walking on the pedestrian was hit by a tipper lorry causing grievous injury to him. He preferred the claim petition seeking Rs.6,50,000 as compensation for the fracture he sustained in his right femur and other



injuries. The compensation was sought against the owner of the tipper lorry and the Insurance Company under which the lorry was insured.

WEB COPY

3. The Insurance Company contested the claim on the ground that the claim is very excessive. It was the negligence of the claimant which caused the accident. The petitioner was guilty of contributory negligence by not following the traffic rules.

4. The Tribunal appreciating the oral evidence of the claimant and the Doctor who gave the disability certificate and in the light of the exhibits relied by the claimant, ordered composition of Rs.110,000 with interest at the rate of 9% p.a., from the date of petition till the date of realisation.

5. Unsatisfied with this quantum, appeal is filed on the ground that for the fracture sustained on the right femur, the Doctor PW-2 has assessed the disability at 45%. Whereas only Rs.70,000 granted towards partial permanent disability as against the claim of Rs.1 lakh. The injury has caused impairment to the earning capacity of the claimant. The Tribunal has not considered adequately to compensate the loss of earning capacity. The claimant was about 19 years old at the time of accident. Therefore he should have been adequately compensated for the loss of amenities. The Tribunal ought to have applied multiplier and awarded compensation accordingly.

6. The learned counsel appearing for the Insurance Company would submit that at the time of accident, the claimant was 19 years old. He had no income of his own. He was in the hospital for 20 days and got discharged after complete cure. The disability certificate given by PW-2 is not based on the facts but imaginary and excessive. PW-2 was not the doctor who treated the claimant. The Tribunal rightly pointed out that the percentage of disability mentioned in the certificate Ex.P-3 is in respect of the part of the body and not for the whole body. The fracture was temporary in nature. Therefore, there was no need to apply multiplier. Even in the absence of evidence to show the proof of earning capacity or functional disability, the Tribunal has liberally awarded Rs.1,10,000 as compensation with 9 % interest instead of 6% or 7.5% , which is contrary to the standard norms regarding rate of interest.

7. The learned counsel for the respondent would further submit that the excessive interest allowed to stay, there will be no need for interference in respect of other heads.



8. Heard the learned counsels. Records perused.

9. The claimant was 19 years old at the time of accident. There is no proof to show that he was employed and earning. Except the claimant evidence no document produced regarding the occupational income of the claimant. Therefore, the Tribunal has fixed Rs.5000 as notional income for a 19 years old boy with no qualification or skill to mention. Rs.10,000 has been awarded under the head of loss of earning during the period of treatment since he was in the hospital for 20 days being treated as inpatient from 11/01/2008 to 30/01/2008 in the Government Hospital, Chennai. Towards pain and suffering of the fracture on the right femur Rs 20,000 has been awarded. For medical care, transport, purchase of nutritious food, attender expense etc a total sum of ? 10,000 has been awarded. Taking into consideration the disability certificate Ex P- 3 a sum of ? 70,000 has been awarded towards permanent disability.

10. The 4 exhibits relied by the claimant are, Ex.P-1 FIR, Ex.P-2 Discharge summary, Ex.P-3 Disability certificate and Ex.P-4 is the x-ray. Regarding the disability and the x-ray, the Tribunal has discussed why the evidence of PW-2 cannot be relied upon. PW-2 did not give any treatment to the claimant. Ex.P-4 X-ray produced without any report and 45% of disability is for part of the body and not for the whole body.

11. This Court finds that the award of the Tribunal towards disability and loss of income during the period of treatment is just and fair. While awarding compensation towards medical expense, transport, purchase of nutritious food, attender expense etc., the Tribunal has awarded a consolidated sum of Rs.10,000. The consolidated amount towards these heads, in view of this court, has to be enhanced reasonably according to the facts.

12. Taking note of the nature of injuries and the period of hospitalization, award is fixed as below:-

Permanent disability	Rs. 70,000/-
Medical expense	Rs. 10,000/-
Pain and sufferings	Rs. 20,000/-
Transport	Rs. 5,000/-
Nutritious food	Rs. 5,000/-



WEB COPY

Permanent disability	Rs. 70,000/-
Attender expense	Rs. 6,000/- (Rs 1,500 x 4 months)
Loss of earning	: Rs. 20,000/- (Rs 5000 x 4 months)
Total	Rs. 1,36,000/-

Though 9% interest for the compensation fixed is on the higher side, it will be detrimental to the claimant if reduced. Hence the interest rate is confirmed.

13. Accordingly, the award is enhanced from Rs.110,00 to Rs.1,36,000/- with interest at the rate of 9% from the date of petition till the date of deposit. The Insurance Company shall deposit the money within eight weeks from today. On such deposit, the claimant is entitle to withdraw the money on petition.

14. In the result, C.M.A.No.1456 of 2016 partly allowed with costs.

Sd/-
Assistant Registrar(CS-I)

//True Copy//

Sub Assistant Registrar

rpl

To

1.The Motor Accident Claims Tribunal,
Additional District Judge, Fast Track Court -V,
Chennai

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

+1cc to M/s.J.Michael Visuvasam, Advocate, S.R.No.27243

C.M.A.No.1456 of 2016

CA(CO)
GMY(19/08/2021)