



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 09.10.2020	Pronounced on: 13.10.2020
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Coram::

The Honourable Dr.Justice G.Jayachandran

C.M.A.No.1562 of 2016

Mr.I.Hyder Ali,
S/o.Idayathullah,
No.3442, Kannaki Nagar,
Okkiyam Thuriapakkam,
Chennai - 600 096.

...Appellant

/versus/

1. S.Ashwin Sundar,
S/o.T.A.Shanmuga Sundaram,
Astalakshmi Nagar, Alapakkam,
Kancheepuram District - 600 116.

2. M/s.United India Insurance Co. Ltd.,
C/o.Motor Third Party Claims Office,
"Silingi Buildings" 4th Floor,
No.134, Greams Road, Chennai - 600 006. ... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment made in M.C.O.P.No.2806 of 2011 on the file of Motor Accident Claims Tribunal, V Judge, Small Causes at Chennai, dated 5th day of November 2015.

For Appellant : Mr.T.G.Balachandran

For R2 : Mr.J.Chandran

For R1 : ex parte

JUDGMENT

(The case has been heard through video conference)

This Appeal is filed by the claimant for enhancement of compensation.

2. The facts of the case is that, on 17.05.2011, at about 02.45hrs, when the claimant was on duty as Security Guard at Toll plaza, Perungudi, Rajiv Gandhi Salai, the mixer-lorry bearing registration No.TN-10-U-3895, hit the cement slab and ran over the right leg of the claimant. The claimant sustained fracture of right leg, laceration of left ankle and injuries over the body. He was admitted at Government Hospital, Chennai, as inpatient from 17.05.2011 to 17.06.2011, at VHS Hospital, Adyar, Chennai, from 15.11.2011 to 29.12.2011 and at Star light Hospital for 2 days. He underwent three surgeries on 17.05.2011, 13.06.2011 and 20.07.2011.

3. The Tribunal, based on his salary slip Ex.P.10 and letter from his employer awarded a sum of Rs.78,000/- (Rs.6,000 x 13 months), for loss of income during the treatment period. Based on the disability certificate Ex.P.15 awarded Rs.90,000/- (Rs.3,000 x 30%) for partial permanent disability caused due to the fracture of right tibia. Based on the medical bills, a sum of Rs.2,13,000/- was awarded. Under other non-conventional heads like pain and suffering, trauma and loss of amenities, transport charges and attender charges about Rs.1,30,000/- was awarded. In total, he was awarded a sum of Rs.5,08,500/- with 7.5% from the date of numbering the petition i.e., (01/08/2011) till the date of deposit.

4. The Appeal is filed for enhancement of compensation on the ground that, the injury has caused functional disability to the claimant. So multiplier method should have applied to assess loss of income. The Tribunal ought to have fixed the monthly income of the petitioner atleast as Rs.7,679/- as per Ex.P-10 instead of fixing as Rs.6,000/-. Since, Ex.P-11 proves that the claimant rejoined duty only after 23 months, the Tribunal should have taken 23 months as treatment period instead of 13 months. For three surgeries underwent by the claimant, for pain and suffering, loss of amenities and trauma. The compensation awarded by the tribunal is very less and hence, it should be enhanced.

5. Relying upon the judgment of the Hon'ble Supreme Court in Raj kumar vs. Ajay kumar reported in 2010(2) TNMAC 581 and the Managing Director, TNSTC Ltd., Villupuram vs. R.Hyder Ali reported in 2015 (2) TN MAC 624, the Learned Counsel for the appellant submitted that, the disability for the fracture of tibia and fibula, the tribunal should have fixed 30% loss of earning capacity and should have applied multiplier method.

6. The Learned Counsel for the Respondent submitted that, the tribunal has taken note of the injury sustained by the claimant, his avocation, income and the letter Ex.P.11 of his employer and had fairly fixed the compensation. The injury sustained by the claimant had not caused any disability to his earning capacity. After recovery, he had rejoined duty and drawing the same salary. For the fracture, the external fixation was done on 17.05.2011. ORIF was done on 16/11/2011. The claimant was fit for rejoining duty 6 months after the accident, therefore, the Tribunal has awarded a sum of Rs.78,000/- towards loss of income for 13 months.

7. The accident and negligence on the part of the mixer lorry driver is established through the F.I.R. The employment of the claimant is proved through Ex.P-10 and Ex.P-11. The site of accident is the work spot of the claimant where he was employed as Security Guard. Therefore, the Tribunal need not have doubted the veracity of Ex.P-10 and Ex.P-11 for not examining the author of the document. From Ex.P-10, the wage slip issued under Rule 78 (7) (b) of the Tamil Nadu Contract Labour Rules, 1975 in FORM-XIX, we find that, the gross wage paid to the claimant for the month of March 2011 was Rs.8,165/- and the net amount paid was Rs.7,679/-. From Ex.P-11, the letter issued by his employer we find that, the claimant rejoined duty on 03.04.2013. There is no record to show he was paid during his medical leave period or whether the claimant has resorted to Workmen Compensation Act, since the accident has occurred during the course of employment. Nevertheless, the evidence available indicates the net income of the claimant was Rs.7,679/- p.m and he was under treatment till 13.06.2012. (Discharge Summary Ex.P-6). Therefore, to computation of loss of income during the treatment period, the monthly income has to be taken as Rs.7,750/-p.m and the period of treatment has to be fixed as 23 months, taking note of his date of joining duty.

8. The Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in CDJ 2010 SC 1153, has clearly laid down the guidelines that unless the disability have bearing on the earning capacity or functional ability impeding his income, multiplier method need not be applied for non-scheduled injury. In the instant case, this Court finds from the disability certificate Ex.P.15, that the claimant sustained Grade-II compound injury of the right lower limb. For bone union, external fixation done. During the course of treatment, bone did not unit hence, BMAC injected at the non united site at Star light Hospital. The discharge summary issued by the Star light hospital is marked as Ex.P-6. As per Ex.P-11, the claimant has fully recovered from injury and had rejoined duty as Security

Guard on 03.04.2013. Therefore, this is not a fit case to apply multiplier for loss of earning capacity.

9. For the reason discussed above, the compensation awarded by the Tribunal is modified and enhanced as under:

Head	Tribunal in M.C.O.P	High Court in Appeal
Transportation, nourishing and food and miscellaneous expenditure.	Rs.15,000	Rs.25,000
Medical expenses	Rs.2,13,000	Rs.2,13,000
Attender Charges	Rs.12,500	Rs.15,000
Disability	Rs.90,000	Rs.90,000
Loss of earning during treatment period	Rs.78,000	Rs.7750 x 23 = Rs. 1,78,250
Damages for Pain and sufferings and trauma	Rs.50,000	Rs.50,000
Loss of amenities	Rs.50,000	Rs.50,000
Total compensation	Rs.5,08,500	Rs.6,21,250

10. Accordingly, the Civil Miscellaneous Petition is Partly Allowed. With costs and interest. The compensation of Rs.5,08,500/- awarded by the Tribunal is enhanced to Rs.6,21,250/-. The 2nd respondent herein is directed to deposit the award amount Rs.6,21,250/- with interest at the rate of 7.5% from the date of numbering the petition i.e., (01/08//2011) till the date of realisation. The Insurance Company shall deposit the award amount with interest within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdrawn the same on filing proper application. No order as to costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm
To,

The Motor Accident Claims Tribunal,
V Judge, Small Causes,
Chennai.

Copy to

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

+1cc to Mr.J.Chandran, Advocate Sr.34072

C.M.A.No.1562 of 2016

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