



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 15.10.2020

Coram::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.577 of 2015

Jafferullah,
S/o.Shapjan,
No.119, Masque Street,
Dhukkapet Village and Post,
Sengam Taluk,
Tiruvannamalai Taluk. Appellant/Petitioner

/versus/

1. Kasthuri,
Malsamelpatti Village,
Saelpatti Taluk,
Uthangarai Taluk,
Krishnagiri District.
2. The Manager,
Shriram General Insurance Company Limited,
No.E8, EPIP-RIICO Industrial Area,
Sitapura, Jaipur,
Rajasthan - 22. ... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 31.01.2013 and made in M.A.C.T.O.P.No.411 of 2011 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Tiruvannamalai. सत्यमेव जयते

For Appellant : Ms.A.Subadra
for Ms.M.Malar

For R2 : Mr.S.Dhakshnamoorthy,

For R1 : exparte

JUDGMENT

(The Case has been heard through Physical Hearing)

Heard the Learned Counsel for the Appellant and the Learned Counsel for the respondent No.2.

2. The Claimant has preferred this appeal for enhancement being dissatisfied with the quantum of compensation awarded for the injury sustained. The Tribunal, after considering the disability certificate given by P.W.2 and the medical records had assessed 60% functional disability for the injury sustained by the claimants and fixed Rs.3,000/- as notional income of the claimant and awarded Rs.2,80,800/- by applying the multiplier. Besides a sum of Rs.1,16,070/- was awarded for the medical expenses based on the bills and for other non-conventional head, the Tribunal has awarded a sum of Rs.4,20,800/-, as total compensation.

3. The Learned Counsel appearing for the appellant would submit that the Tribunal has failed to fix the monthly income of the claimant who was Mason by profession at Rs.10,000/- per month. Further, the Tribunal has not awarded enough compensation under the other non-conventional heads like loss of amenity, damages to cloths and articles, Transportation charges, attender chargers and future medical expenses.

4. The Learned Counsel appearing for the Insurance Company would submit that the claimant has not produced any documents to prove his income. Since, the injury has not caused any impairment in earning capacity and the injuries are not total permanent disabilities mentioned under the Schedule, the application of multiplier is not correct.

5. The Claimant is a mason by profession at the time of accident. He was 48 years old. The injury sustained by him in the accident is extracted in the discharge summary issued by M.I.O.T Hospital. As per the medical records, the claimant has sustained the following injuries.

- (i). Fracture in the right ankle right foot,
- (ii). Left wrist hair line fracture and
- (iii). Disfigurement due to right leg skin lost.

6. The Doctor, who has clinically examined the claimant, after few years, has assessed the disability at 60%. (50% for fracture at right ankle and 10% for left wrist hair line fracture). The said disability certificate (Ex.P.9) relied upon by the claimant is taken by the Tribunal as functional disability of the claimant.

7. It is well settled principle of law that the physical disability need not be same as functional disability causing impediment for earning. The Doctor, who has deposed in favour of the claimant has stated that the movement of left leg of the claimant is restricted and the compounded grade-III fracture, mel malleolus right ankle with de-gloving injury right foot with disfigured look.

8. The Accident occurred on 04.09.2011. The impugned award is dated 31.01.2013. The structured standardised formula

enunciated by the Hon'ble Supreme Court in the judgments like., (i).Raj kumar vs. Ajay kumar reported in 2010(2) TNMAC 581, and National Insurance Company Ltd., Vs. Pranay Sethi and others reported in 2017 (2) TN MAC 609 (SC) were not available for the Tribunal to apply such structured formula.

9. The Tribunal, while converting the physical disability into functional disability should have taken note of the avocation of the claimant and the nature of injury. In Raj Kumar Vs. Ajay kumar reported in 2010(2) TNMAC 581, the Hon'ble Supreme Court has already spelt out that how the physical disability on the actual earning capacity has to be ascertained.

"9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence:

(i) whether the disablement is permanent or temporary;

(ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement,

(iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to

ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether

(i) the claimant is totally disabled from earning any kind of livelihood, or

(ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or

(iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood."

10. In this case, the Hon'ble Supreme Court has also cautioned the Tribunal about the unscrupulous doctors who without treating the injured, readily give disability certificates to help the claimants.

11. In the instant case, the Tribunal has erred in accepting the disability certificate given by the doctor, who has not treated the claimant. It has erroneously taken the partial permanent disability as total functional disability to adopt multiplier. It has not considered the future prospect of the daily wage/claimant.

12. Since at the appellate stage, this Court has advantage of the guiding principles laid by Hon'ble Supreme Court, this Court apply those structured formula in this case to arrive at just compensation. Accordingly, the notional income of the claimant is fixed at Rs.4,500/-p.m and 25% of it added towards future prospects. Disability is only physical and partial. However, the claimant being a Mason the functional disability is fixed as 30%. Accordingly, the loss of earning is computed as $(Rs.4,500 + 1125) \times 12 \times 13 \times 30/100 = Rs.3,10,050/-$

13. The award passed by the Tribunal is therefore modified as below:-

Loss of income during treatment period $Rs.4,500 \times 2$	Rs.9,000/-
Loss of earning capacity $(Rs.4,500 + 1125) \times 12 \times 13 \times 30/100$	Rs.3,10,050/-
Transportation expenses	Rs.5,000/-

Loss of income during treatment period Rs.4,500 x 2	Rs.9,000/-
Extra Nourishment	Rs.5,000/-
Medical Bills	Rs.1,16,000/-
Attender Charges	Rs.4,000
Pain and Sufferings	Rs.15,000/-
Total	Rs.4,65,050/-

Rounded off to Rs.4,65,000/-

14. Therefore, this Court holds that the appellant is entitled for a sum of Rs.4,65,000/- with 7.5% interest from the date of petition till the date of realization. Accordingly, the compensation is enhanced from Rs.4,20,800/- to Rs.4,65,000/-. The 2nd respondent/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 appellant is permitted to withdraw the same on filing proper application.

15. Accordingly, the Civil Miscellaneous Appeal is Partly-Allowed. No costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Motor Accident Claims Tribunal,
Additional Subordinate Judge, Tiruvannamalai.

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

+1cc to M/s.M.Malar , Advocate SR.No. 34561

+1cc to Mr.S.Dhakshanamoorthy, Advocate SR.No. 34525

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A.SK(28.04.2021)