

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 28.07.2020

Pronounced on: 31.07.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

C.M.A.No.566 of 2016

Saravanan,
S/o.Selvaraj,
is residing at Kandhasamy Nagar,
Thevanankuruchi Post,
Tiruchengode TK, Namakkal District.

...Appellant/Petitioner

/versus/

1. Sekar,
D.No.20, 2nd Main Road,
KPM Extension,
Bangalore North, Karnataka - 560 002.
(Notice to R1 may be dispensed with for the
set ex parte before the tribunal)

2. Reliance General Insurance Co., Ltd.,
3rd Floor, Sakthi Super Market Building,
No.408, Perundhurai Road, Erode - 638 011.

...Respondents/Defendants

Prayer: Civil Miscellaneous Petition is filed under Section 173
of Motor Vehicles Act, 1988, praying against the judgment and
decree in M.C.O.P.No.119 of 2013, dated 26.11.2015, on the file
of the Motor Accidents Claims Tribunal, Sub Court, Tiruchengode.

For Appellant : Mr.C.Paraneedharan

For R2 : Mr.S.Arun Kumar,
For R1 : ex parte.

J U D G M E N T

(The case has been heard through video conferencing)

The Appellant herein was injured in a motor accident on
03/04/2013 at about 01.00 P.M and sustained fracture of his
right leg and cut injury in his right finger. He was taken to

the Government Hospital, Thiruchengodu, Namakkal District and then shifted to a private Hospital at Thiruchengodu. He was treated as in-patient between 03/04/2013 and 17/04/2013 for his comminuted fracture D-3 Femur (R), comminuted fracture fibula (R) and PCL Avulsion fracture - fracture fibular neck (R). After surgery, he was discharged on 17/04/2013. The appellant was about 30 years old at the time of accident. Claiming compensation of Rs.5,00,000/- for the injuries sustained in the accident he preferred petition before the Motor Accident Claim Tribunal, Thiruchengodu.

2. The Tribunal, after considering the material placed before it, awarded Rs.2,10,834/- as compensation with interest at the rate of 7.5% from the date of institution of the claim till the date of payment.

3. Before the Tribunal, the appellant contented that he was weaver by profession running a weaving unit on lease. His monthly income is about Rs.10,000/-. Due to the accident, he lost income and earning capacity, incurred medical expenses, sustained permanent disability of 54% hence, he has to be compensated by the vehicle owner and the insurer.

4. In support of his claim, three witnesses and 14 exhibits were marked. The Tribunal held that the appellant has proved the accident was due to the negligence of the Lorry bearing Registration No. KA 01 B 7362 owned by the 1st respondent and insured under the 2nd respondent. The appellant has not produced any evidence to prove his income, hence fixed his income at Rs.5,000/- per month. The disability certificate (Ex.P-11) given by the Doctor examined as P.W-3 assessing the permanent disability as 54% was held excessive. The disability certificate given by the doctor who has not treated the appellant was held to be unreliable. Taking into consideration of the other evidences, the Tribunal fixed the disability as 38%. For each % of disability Rs.2000/- was fixed as compensation. A sum of Rs.1,05,834/- was awarded towards medical expenses as against the claim of Rs.2,15,000/-. The break up of compensation awarded by the Tribunal is extracted below:

Loss of earning	Rs.15,000/- (Rs.5000 x 3 months)
Transport to hospital	Rs.2,000/-
Extra nourishment	Rs.2,000/-
Medical Expenses	Rs.2,05,834/-

Pain and suffering	Rs.10,000/-
Permanent disability	Rs.76,000/- (38% x Rs.2000)
Total	Rs.2,10,834/-

5. In this Appeal, the Appellant put forth his grievance in the following manner:-

a).The Tribunal failed to consider the evidence of P.W-3 who gave the disability certificate (Ex.P-3) observing the patient and his X ray. The appellant who is a weaver by profession suffers 80% functional disability in respect of his earning capacity. No compensation given for the head injury.

b).The compensation given under the heads pain and suffering, extra nourishment is contravention to the principles laid down by the Supreme Court in Govind Yadava - Vs- New India Company Limited reported in 2011 (1) SCC 683.

c).No compensation awarded for attendant charges, loss of enjoyment of life and loss of amenities.

6. The learned counsel appearing for the 2nd respondent/insurance company would submit that, the Tribunal has rightly assessed the disability after comparing the Discharge summary (Ex.P-5) issued by the hospital which treated the appellant and the disability certificate issued by P.W-3 after one year of the accident. The Court having found that the disability certificate (Ex.P-11) issued by P.W-3 did not correlate to the accident injuries and patently excessive and also admitted by the witness (P.W-3) himself that, he has added 3% more for pain and suffering, the disability certificate Ex P-11 lost its credibility and the evidentiary value whatever little it carried. Hence, submitted that the fixation of disability as 38% is in consonance with the medical records.

7. In respect of income and functional disability canvassed in the appeal, the learned counsel for the respondent would state that, the claim have no basis. Before the Tribunal, the appellant could not establish that he was earning his livelihood as weaver and his earning capacity has been restricted due to the injuries. As far as the other non pecuniary damages the counsel submit that any fair enhancement at the discretion of the court may be fixed taking note of the principle laid by the Supreme Court in Raj Kumar -vs- Ajay Kumar Case (2011 (1) SCC 343.

Disability:

Regarding the motor accident, the police has registered the complaint on 05/04/2013 based on the information given by

the appellant herein. In the FIR (Ex.P-1) the appellant had stated that while he with his mother Maheswari. On pillion, proceeding in the two wheeler TVS 50 bearing Registration No.TN 36 Q 2207, the Toras Lorry bearing Registration No.KA 01 B 7362 from the opposite side dashed. He sustained injury and got admitted in the hospital. His right leg got fractured and his right finger injured. His mother did not sustain any injury. In the discharge summary (Ex.P-5) the diagnosis and the procedure adopted for treatment is mentioned as under:

Diagnosis: comminuted fracture D-3 Femur (R), comminuted fracture fibula (R) and PCL Avulsion fracture - fracture fibular neck (R).

Procedure: SC Nailing - Right Femur, Rush nailing right fibula and conservative treatment for PCL avulsion - right.

9. On examination they found swelling and tenderness over right thigh. Abnormal mobility positive. Active toe movements present and no distal neuro vascular deficit.

10. While the fact being so, the PW-3 the doctor on examining the appellant on 24/06/2016, after two years from the date of accident has given the disability certificate with calculation for the assessment of percentage of disability certificate. This certificate is marked as Ex.P-11. The perusal of this disability certificate, we find strangely certain injuries not found on the appellant at the time of accident. Particularly, in the disability certificate for the malunited fracture of lateral malleolus of right ankle PW-3 has assessed 17% disability. Whereas in the said accident, the appellant never sustained injury or fracture at lateral malleolus of right ankle. The three fracture injures sustained by the appellant in the accident as found in the discharge summary are D-3 Femur bone, fibula and fibular neck. Lateral malleolus is found at the foot end of the fibula and not at the knee end. Whereas Fibular neck is near the knee joint. In this case the injury has caused fibula bone fracture, the right knee ligament fracture and fracture of fibular neck. The disability certificate Ex P-11 bristles with few more embellishments which has forced the tribunal to record that the certificate Ex P-11 is excessive.

11. The Tribunal after recording so, taken note of the evidences regarding the injuries and has assessed the disability as communitied fracture D-3 Femur (R) 20%, communitied fracture fibula (R) 8% and PCL Aultion fracture - fracture fibular neck (R) 10%. total disability 38%. After perusal of the evidence and the reasoning given by the tribunal for arriving the said percentage of disability, this court finds no error in it for

interference.

12. The Tribunal has awarded Rs.78,000/- for permanent disability giving Rs.2000/- for each % of disability (38 % x 2000). Though the assessment of percentage is upheld, this Court finds that the multiplier of Rs.2000/- is low and to be enhanced to Rs.3000/-

13. Earning:

The appellant claims that he was running a weaving unit taken on lease and earning Rs.10,000/- per month. However, he has not produced any proof for his income or trade. While so, the Tribunal has fixed the monthly income as Rs.5000/-. In the absence of evidence to ascertain the income or calling, the minimum wage fixed by the state can be relied upon as a yardstick. During the year 2013, courts at the most had fixed Rs.6,500/- as monthly income for weavers. The appellant was treated as inpatient for 15 days (03/04/2013 to 17/04/2013). For three months he would have lost income hence to be compensated accordingly.

14. Non pecuniary damages:

The Tribunal though awarded Rs.10,000/- for pain and sufferings, it has overlooked the loss of amenity component. For a person with 38% disability due to femur bone fracture and fibula bone fracture, the restriction on enjoyment of amenities has to be compensated. Hence, this Court awarded additional compensation of Rs.10,000/- under the head of loss of amenities. Thus, after the modification and enhancement in the compensation, the total compensation entitle for the appellant shall be as below:

Loss of earning	Rs.16,500/- (Rs.6500 x 3 months)
Transport to hospital	Rs.2,000/-
Extra nourishment	Rs.2000/-
Medical Expenses	Rs.1,05,834/-
Pain and suffering	Rs.10,000/-
Permanent disability	Rs.1,14,000/- (38% x Rs.3000)
Loss of amenities	Rs.10,000/-
Total	Rs.2,60,334/-

15. Thus, a sum of Rs.49,500/- is enhanced in this appeal shall paid within a period of three months from today, with interest at the rate of 7.5% p.a from the date of numbering

the petition till the date of payment. In all other aspects, the judgment and decree of the lower Court do stand.

16. Accordingly, the Civil Miscellaneous Appeal is Allowed. No order as to costs.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

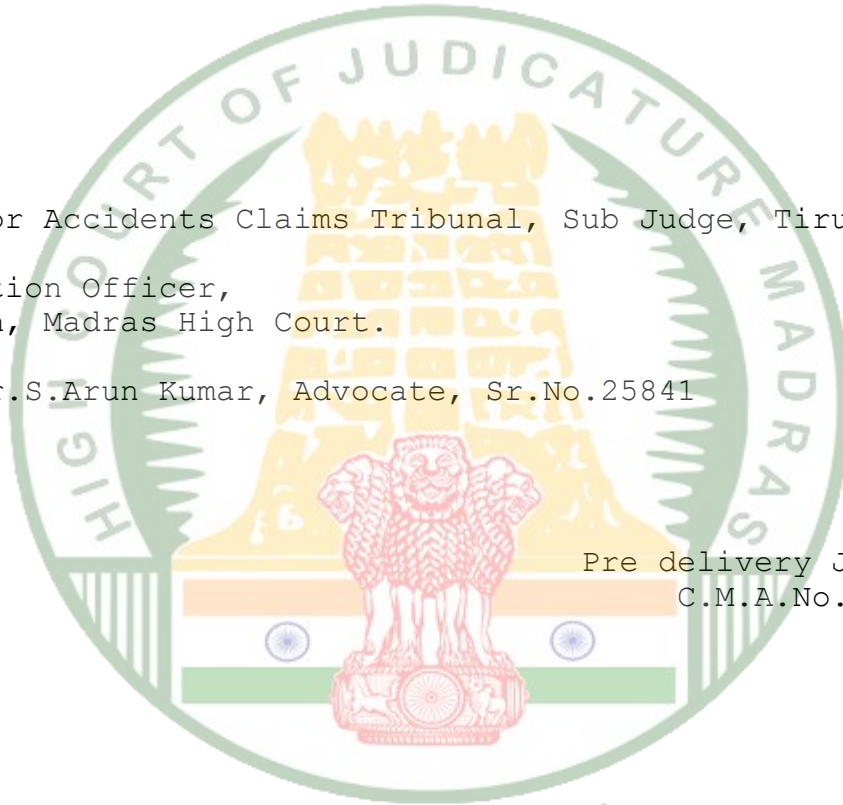
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To,

1.The Motor Accidents Claims Tribunal, Sub Judge, Tiruchengode.

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

+1cc to Mr.S.Arun Kumar, Advocate, Sr.No.25841



Pre delivery Judgment in
C.M.A.No.566 of 2016

KS (CO)
GS (21/08/2020)

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