

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	15.12.2020
Pronounced On	23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3207 of 2019

(Through Video Conferencing)

Pregash ... Appellant/Petitioner

Vs.

1.S.Selvi

2.The Divisional Manager,
The New India Assurance Co.Ltd.,
TP Hub, Puducherry. ... Respondents

Civil Miscellaneous Appeal filed under Section 19 of the Family Court Act, 1984, to set aside the order dated 09.08.2018 made in M.A.C.T.O.P.No.298 of 2015 on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Puducherry.

For Appellant : Mr.P.Sanjay Gandhi

For 2nd Respondent : Ms.S.R.Sumathy

J U D G M E N T

C.SARAVANAN, J.

The claimant is the appellant in this Civil Miscellaneous Appeal. This appeal has been filed against the impugned Judgment and Decree dated 09.08.2018 passed by the learned Additional Sub Judge, Motor Accident Claims Tribunal at Puducherry in M.A.C.T.O.P.No.298 of 2015. The appellant seeks for enhancement of compensation.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.13,70,000/- together with interest at 7.5% per annum from the date of claim petition till the date of deposit, to the appellant / claimant for the injuries suffered by him.

3. The brief facts of the case are that on 17.01.2015, at about 09.20 p.m. when the appellant was riding his motorcycle bearing registration No.PY-01-AZ-2801 along with one Gnanavel

on the Bharathiar Main Road, Vettaikaran Street Junction, Karaikal, a Huyundai Sonata Car bearing registration No.TN-21-F-0678 belonging to the 1st respondent insured with the 2nd respondent Insurance Company was driven by its driver in a rash and negligent manner and hit the said motorcycle of the appellant. As a result of the accident, the appellant/claimant suffered grievous injuries and was taken to Government Hospital, Karaikal. Due to the accident, the appellant/claimant sustained the following injuries:-

- i. Major Crush Injury Right Knee with Non Viable Right Leg,
- ii. Abrasion, and
- iii. Laceration all over the body.

4. Later, the appellant's right leg above the knee was amputated. Therefore, the appellant filed a claim petition for compensation of Rs.60,00,000/-. The Tribunal has awarded the aforesaid compensation of Rs.13,70,000/- under the following heads:-

Heads	Amount
Permanent Disability	Rs. 2,25,000/-
Pain and Sufferings	Rs. 1,50,000/-
Rich and Nutritious Food	Rs. 25,000/-
Loss of income	Rs. 1,00,000/-
Transportation	Rs. 20,000/-
Medical Expenses	Rs. 8,40,000/-
Attendant* Charges	Rs. 10,000/-
Total	Rs.13,70,000/-

* Attender

5. In this appeal, the appellant seeks for enhancement of compensation awarded by the Tribunal.

6. It is the case of the appellant that the Tribunal failed to award a just compensation by restricting the compensation under the head of permanent disability for a paltry amount of Rs.2,25,000/- even though the Tribunal has clearly rendered a finding that there was a permanent disability due to the accident as his right leg above the knee was amputated.

7. It is submitted that the appellant was a volleyball player and a coach and due to the amputation of knee, he was disabled and therefore, the Tribunal ought to have awarded higher compensation on account of disability.

8. It is submitted that merely because the appellant was later employed as a P.T. Master in Government of Puducherry

under the quota meant for physically handicapped does not ipso facto mean that multiplier cannot be applied particularly in the light of 75% permanent disability as per Ex.P8 Disability Certificate.

9. It is further submitted that the Hon'ble Supreme Court in Erudhaya Priya Vs. State Express Transport Corporation Limited, 2020 SCC OnLine SC 601 while dealing with a similar case adopted the multiplier and awarded the compensation. The learned counsel for the appellant also relied on the following decisions:-

- i. Alluri Kotaiah Vs. V.Kasiviswanadham and Another, 1993 SCC OnLine AP 444 : 1993 (3) ALT 145.
- ii. Mohammad Abdul Kalam Vs. C.Shrinivas Raghwan and Others, 2007 SCC OnLine MP 541 : 2008 ACJ 2852.
- iii. Kavita Vs. Deepak and Others, (2012) 8 SCC 604.
- iv. U.P.State Road Transport Corporation and Others Vs. Trilok Chandra and Others, (1996) 4 SCC 362.
- v. Abati Benzbaruah Vs. Dy. Director General, Geological Survey of India and Another, (2003) 3 SCC 148.
- vi. Sandeep Khanuja Vs. Atul Dande and Another, (2017) 3 SCC 351.
- vii. New India Assurance Co. Ltd. Vs. Charlie, (2005) 10 SCC 720.

10. Per contra, the learned counsel for the 2nd respondent Insurance Company submitted the impugned Judgment and Decree passed by the Tribunal was well reasoned and requires no interference. It is further submitted that no further amount can be awarded towards permanent disability as the appellant has been gainfully employed by the Government of Puducherry as is evident from the deposition of the appellant before the Tribunal.

11. We have considered the arguments advanced by the learned counsel for the appellant and the learned counsel for the 2nd respondent Insurance Company. We have also perused the impugned Judgment and Decree passed by the Tribunal and the evidences on record.

12. Though the impugned order seems to indicate that the claim petition was filed under Section 163(A) read with Section 166(1)(a) of the Motor Vehicles Act, 1988, on perusing the claim petition filed by the appellant before the Tribunal, it is evident that the claim petition was filed only under Section 166(1)(a) of the Act.

13. Further, if the claim petition was filed under Section 163(A) of the Motor Vehicles Act, 1988, the compensation to be awarded for a person aged about 32 years would be restricted to Rs.16,32,000/- (163.20 x 10,000).

However, in the claim petition, the appellant has prayed for a compensation of Rs.60,00,000/- and had paid requisite court fee. Therefore, the claim petition filed by the appellant and the award passed by the Tribunal has to be construed as having filed under Section 166 of the Motor Vehicles Act, 1988.

14. The nature of injuries suffered by the appellant is not in dispute. The avocation of the appellant as a volleyball player and a coach is not in dispute. He was earning a sum of Rs.15,000/- per month at the time of the accident.

15. As per Section 166 of the Motor Vehicles Act, the just compensation has to be awarded. The Hon'ble Supreme Court in Nagappa Vs. Gurudayal Singh and Others, (2003) 2 SCC 274 has also held that not only the Tribunal and the High Court but also the Hon'ble Supreme Court is bound to award a just compensation to a victim or/and their dependants in case of death due to the motor accident under the provisions of the Motor Vehicles Act, 1988.

16. In this case, the Tribunal has considered a monthly income of the appellant as Rs.10,000/- on the ground that he has not produced any documents to substantiate that he was earning a sum of Rs.15,000/- per month.

17. In V.Mekala Vs. Malathi and another, (2014) 11 SCC 178, the Hon'ble Supreme Court has considered a notional income of a XI Standard student as Rs.10,000/- p.m. for awarding compensation.

18. The evidence suggests that the appellant was an accomplished player and a coach as is evident from Exs.P22 to P28. Considering the fact that the appellant was an accomplished player and a coach, we find sufficient force in the submission of the learned counsel for the appellant that the Tribunal ought to have assumed Rs.15,000/- per month as the income of the appellant for awarding compensation.

19. The fact that the appellant has been subsequently employed as a P.T. Master under the physically handicapped Quota meant for handicapped persons also makes us believe that the appellant may have earned a sum of Rs.15,000/- per month at the time of the accident as was stated in the claim petition.

20. The evidence on record indicates that the appellant was working as a volleyball coach on a temporary basis and quit the said work during August, 2016 after he got employed with the Government of Puducherry as P.T. Master under the quota meant for physically challenged person. The accident is of the year 2015 (i.e. 17.01.2015). Ex.P9 Salary Certificate dated 28.01.2015 produced by the appellant also shows that the appellant was earning a sum of Rs.15,000/- per month.

21. We are therefore satisfied that the appellant would have been earning a sum of Rs.15,000/- per month as a volley ball coach. The appellant had also stated in his claim petition that there was a likelihood of his getting employed as a P.T. Master and would earn a sum of Rs.38,960/- per month.

22. The next issue that arises for consideration is whether the appellant is entitled for the enhanced compensation towards permanent disability. The Tribunal has awarded a sum of Rs.2,25,000/- to the appellant towards permanent disability.

23. The appellant in the present case was a volleyball player and a coach and was aged about 32 years at the time of the accident. His right leg above the knee has been amputated. Therefore, it is not possible for the appellant either participate in Tournament as a volleyball player or act as a coach due to the disability. The permanent disability has been assessed at 75%. Therefore, ordinarily the appellant would have been entitled for a higher compensation without any deduction in view the Ex.P8 Permanent Disability Certificate given by the Indira Gandhi Govt. General Hospital, Puducherry and District Disabled Rehabilitation Centre, PCDW and DAP, Puducherry.

24. For determining the correct compensation to be awarded in case of permanent disability or partial permanent disability, the Hon'ble Supreme Court has given a test in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343.

25. As per the said decision, the Tribunals have to arrive at the functional disability based on the assessment of permanent/ permanent partial disability by the experts. The Tribunal and the Courts have to assess the impact of the such disability on the earning capacity of the claimant.

26. In this case, the appellant has also not produced any evidence to substantiate that there was indeed a loss of income due to the injuries suffered by him due to the accident except to state that due to the injury his family was suffering.

27. During the cross examination, the appellant admitted that he was drawing a sum of Rs.48,000/- per month after getting employed with the Government of Puducherry.

28. Sine qua non for claiming compensation under the head of "loss of income", on account of permanent disability there should be actual loss of income. The view was taken by us recently in The Branch Manager, United India Insurance Company Limited Vs. Jayakumar and Another, in C.M.A.Nos.1630 & 1663 of 2016 in our order dated 11.11.2020.

29. As the evidence indicates that the appellant was employed as a P.T.Master by the Government of Pondicherry and was earning a sum of Rs.48,000/- as per his own admission during the cross examination, we cannot awarded any amount towards permanent disability to the appellant.

30. Though the appellant prayed for exaggerated compensation for a sum of Rs.60,00,000/-, we are of the view that the appellant cannot be awarded the aforesaid amount as he has not established any loss of income.

31. Though the appellant has stated that his family was suffering as he was the sole bread winner for his family, evidence also suggests that the appellant did not lose his employment as a coach after the accident. On the contrary, he appears to have left the job of a coach in August, 2016 on getting employed as a P.T.Master. In his claim petition also, he had stated that he was likely to get employed and would earn a sum of Rs.38,960/- per month.

32. On the other hand, even as per his own deposition, the appellant was earning a sum of Rs.48,000/- per month. The evidence also indicates that the appellant has not suffered any loss of income after he took up the employment as a P.T.Master with the Government of Puducherry. Therefore, in absence of loss of income, no compensation can be granted for the loss of income due to permanent disability.

33. The evidence of R.W.1 also indicates that the appellant continued to be a volleyball coach on temporary based and quit the same after he got employed with the Government of Puducherry during August 2016.

34. Considering the nature of injuries suffered by the appellant, we are inclined to enhance the compensation towards loss of income for a period of 20 months, i.e, between 17.01.2015 and 31.08.2016 even though there is no evidence to prove that there was indeed any loss of income due to the permanent disability of the appellant.

35. Though not established that the appellant had lost his employment for a period of 20 months since the date of accident and the date of his employment in August, 2016 as a P.T.Master with the Government of Puducherry, we are inclined to award a sum of Rs. 3,00,000/- as loss of income at Rs.15,000/- per month for a period of 20 months (Rs.15,000 x 20). Therefore, there shall be an enhancement of Rs.2,00,000 over and above Rs.1,00,000/- awarded by the Tribunal towards loss of income.

36. There amount of Rs.2,25,000/- awarded towards permanent disability appears at Rs.3000/- per percent of disability to be reasonable. However, the Tribunal has not awarded any amount towards loss of amenities. The Hon'ble

Supreme Court has in a number of cases held that compensation can be granted towards permanent disability as well as loss of future earnings, for one head relates to the impairment of person's capacity and the other relates to the sphere of pain and suffering and loss of enjoyment of life by the person himself. In this connection reference may be made to the following cases:-

- i. K. Suresh Vs. New India Assurance Co. Ltd., (2012) 12 SCC 274.
- ii. Kumari Kiran Vs. Sajjan Singh, (2015) 1 SCC 539 : (2015) 1 SCC (Cri) 737.
- iii. Subulaxmi Vs. T.N. State Transport Corpn., (2012) 10 SCC 177 : (2012) 4 SCC (Civ) 1100.
- iv. Ramesh Chandra Vs. Randhir Singh, (1990) 3 SCC 723 : 1990 SCC (Cri) 512.
- v. B. Kothandapani Vs. T.N. State Transport Corpn. Ltd., (2011) 6 SCC 420 : (2011) 3 SCC (Civ) 343.
- vi. Laxman Vs. Oriental Insurance Co. Ltd., (2011) 10 SCC 756 : (2012) 3 SCC (Civ) 1095.

37. In Laxman Vs. Oriental Insurance Co. Ltd., (2011) 10 SCC 756, the Hon'ble Supreme Court held that if a victim of an accident suffers permanent or temporary disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the pain, suffering and trauma caused due to the accident, loss of earning and the victim's inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident. Therefore, we are inclined to hold that the appellant is entitled for compensation towards loss of amenities which the Tribunal has not awarded.

38. Since the appellant's right leg above knee has been amputated, we are inclined to award a sum of Rs.15,00,000/- towards loss of amenities considering the fact that the appellant was a sports person and has been permanently disabled from taking part in any normal physical activity.

39. Under these circumstances, the compensation of Rs.13,70,000/- is enhanced by another sum of Rs. 17,00,000/- (15,00,000 + 2,00,000). It is further noticed that the appellant filed this appeal with a delay of 77 days. Therefore, it is made clear that no interest shall be paid for the delayed period on the compensation.

40. The 2nd respondent Insurance company is directed to deposit a sum of Rs.30,70,000/- (13,70,000 + 17,00,000) together with interest at 7.5% per annum from the date of filing of the claim petition (i.e. 03.03.2015) till the date of deposit except the aforesaid delay period of 77 days in filing this appeal, less any amount already deposited and costs awarded by the Tribunal, within a period of six weeks

from the date of receipt of a copy of this Judgment.

41. It is noticed that this Court by an order dated 17.07.2019 in C.M.P.No.14780 of 2019 in C.M.A.Sr.No.38756 of 2019 has permitted the appellant to pay the court fee of Rs.5,680/- instead of Rs.45,673/-. Since the amount of compensation is enhanced, the appellant is directed to pay the deficit court fee on the enhanced amount of compensation and file the proof of payment of court fee before the Tribunal to withdraw the compensation.

42. On such deposit, the appellant is permitted to withdraw the same together with interest and costs, less any amount already withdrawn, by filing suitable application before the Tribunal.

43. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

jen

To:

1.The Additional Sub-Judge,
Additional Subordinate Court,
Motor Accident Claims Tribunal,
Puducherry.

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

C.M.A.No.3207 of 2019

BR(CO)
CB(22/03/2021)

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