IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	27.07.2020
Pronounced On	17.08.2020

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.1888 of 2009

(Through Video Conferencing)

R.Lakshmanan ... Appellant/Claimant

Vs.

1.A.V.Ganesh Kumar

2.M/s.United India Insurance Company Limited,
Motor Third Party Claims Office,
No.38, Anna Salai,
Chennai - 2. ... Respondents/Respondents

(R1 - exparte in lower court)

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.C.O.P.No.5203 of 2005, on the file of Motor Accident Claims Tribunal, Chennai, II Judge Small Causes Court at Chennai dated 04.03.2009.

For Appellant : Mr.T.G.Balachandran

For R2 : M/s.R.Sreevidya

J U D G M E N T

The claimant is the appellant in this Civil Miscellaneous Appeal and seeks for enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Chennai in its judgement and decree dated 04.03.2009 in M.C.O.P.No.5203 of 2005.

2. By the impugned Judgment and Decree, the Tribunal has awarded a sum of Rs.1,44,990/- as compensation together with interest at 9.5% per annum from the date of deposit till the date of deposit, to the appellant/claimant as against a sum of Rs.4,00,000/- claimed by the appellant/claimant in the claim petition.

3. The appellant/claimant aged 40 at the time of filing of the claim petition is said to have met with an accident on 01.10.2005 at about 2.45 hours, when he was riding a cycle and proceeding from Kandan Chavadi to Kotturpuram in Chennai, when insured tipper lorry of the 1st respondent insured with the 2nd respondent is said to have knocked him down, as a result of which the appellant/claimant sustained multiple injuries, namely, fracture of spine in L 4 and L5, fracture of left elbow and etc.

4. It is submitted that as a result of the injury suffered by the appellant/claimant's left lower limb became monoplegic with supra condynur fracture as per Exhibit P6 Discharge Summary.

5. In this appeal, it is contended by the appellant/claimant that the Tribunal erred in awarding a restricted compensation even though PW2 Doctor had assessed 60% permanent disability. The appellant/claimant had produced Exhibit P7 X-Ray and Exhibit P8 Disability Certificate. It is submitted that the Tribunal ought not to have reduced the disability assessed by the PW2, to 53%.

6. It is submitted that the appellant/claimant has suffered partial permanent disability of 60%. It is submitted that as a result of the injury suffered by the appellant/claimant, he is incapable of carrying his vocation as a painter after injury. It is submitted that 60% partial permanent disability sustained by the appellant/claimant has rendered him incapable of doing had any physical work and since the appellant/claimant is not educated, he cannot get employed and is entitled for higher compensation of Rs.5,97,500/ as per the claim petition.

7. It is further submitted that as a painter, the appellant/claimant was earning a sum of Rs.200/- per day and therefore income of the appellant/claimant should have been taken as Rs.6000/- per month and not as Rs.4000/- considered by the Tribunal. Learned counsel for the appellant/claimant relied on the decision of the Supreme Court in Syed Sadiq Vs. United India Insurance Co. Ltd., (2014) 2 SCC 735. The learned counsel for the appellant/claimant submits that though the Tribunal has awarded the interest 9.5% per annum, the interest can be restricted to 7.5% per annum while enhancing the compensation.

8. The learned counsel for the appellant/claimant has relied on the decision of the Hon'ble Supreme Court in Sri Ramachandrappa Vs. Royals Sundaram Alliance Insurance Company, 2011 (2) TNMAC 190 SC.

9. Per contra, the learned counsel for the 2nd respondent

Insurance Company submits that the PW2 is not the Doctor who treated the appellant/claimant. It is further submitted that Disability Certificate issued by PW2 was almost 4 years after the accident and therefore his assessment of permanent partial disability is to be disbelieved. It is further submitted that the appellant/claimant has not produced any contemporaneous documents to substantiate that he continued medical treatment for the injuries suffered by him.

10. It is further submitted that the medical records particularly the discharge summary Ex.P4 filed for the injuries by the appellant/claimant, which also reveals that the condition of the appellant/claimant was stable at the time of discharge. Under these circumstances, it is submitted that the compensation awarded by the Tribunal may be confirmed and this appeal filed by the appellant is liable to be dismissed.

11. The learned counsel for the 2nd respondent Insurance Company has relied on an unreported decision/order dated 27.02.2020 of this court in C.M.A.No.118 of 2020 between M/s.Cholamandalam MS General Insurance Co. Ltd. and G Sivaraja and another.

12. I have considered the arguments advanced by the learned counsel for the appellant/claimant and the learned counsel for the 2nd respondent. I have also perused the evidence on record and the impugned Judgment and Decree. I am of the view the Tribunal has not awarded a just compensation to the appellant/claimant.

13. The appellant/claimant suffered grievous injuries. There was injury to the spine i.e fracture L4 and 5. That apart, there is monoplegia of left lower limb indicating that the appellant/claimant has paralysis of left limb. There

14. The Ex.P8 Disability Certificate filed by the appellant/claimant also shows a partial permanent disability of 60%. That apart, the appellant/claimant's left elbow was also fractured due to the accident. Medical literature seems to indicate that there is no scope for complete recovery from monoplegia of left lower limb. Thus, the Tribunal ought to have awarded higher compensation.

15. On the other hand, learned counsel for the 2nd respondent Insurance Company submits that compensation can be awarded at Rs.2000/- per percent of the functional disability determined by the tribunal.

16. In Raj Kumar v. Ajay Kumar and Another, (2011) 1 SCC 343, the Hon'ble Supreme Court observed that "Permanent

disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident.).

17. Thus, what requires to be assessed by the Tribunal is the effect of the partial permanent disability on the earning capacity of the appellant/claimant and after assessing the loss of earning capacity in terms of a percentage of the income. It has to be quantified in terms of money, to arrive at the future loss of earnings (by applying the standard multiplier method used to determine loss of dependency).

18. In Sri Ramachandrappa Vs. Royals Sundaram Alliance Insurance Company, 2011 (2) TNMAC 190 SC, the Hon'ble Supreme Court held that compensation is usually based upon the loss of the claimant's earnings or earning capacity, or upon the loss of particular faculties or members or use of such members, ordinarily in accordance with a definite schedule. It observed that the Courts have time to again observed that the compensation to be awarded is not measured by the nature, location or degree of the injury, but rather by the extent or degree of the incapacity resulting from the injury. The Tribunals are expected to make an award determining the amount of compensation which should appear to be just, fair and proper.

19. In the aforesaid case, the appellant/claimant, a coolie, who suffered permanent partial disability, was awarded a sum of Rs 1,13,900/- with interest at the rate of 6% p.a. from the date of the claim petition till the date of deposit by the Tribunal as against the claim of the appellant/claimant for Rs 5,50,000/-. The High Court marginally increased the compensation. The Hon'ble Supreme Court enhanced the compensation further by another sum of Rs.2,00,000/ to the appellant/claimant taking into consideration the future economic loss, nothing that claimant would suffer because of permanent partial disability, which would not permit him to work as a coolie or do any other job, the medical expenses incurred, pain and sufferings, loss of income during treatment, period of loss

of future amenities and discomfort. The said order enhancing the compensation was ordered under Art. 142 of the Constitution of India.

20. Therefore, the same yardstick cannot be straight away applied while deciding the merits of the present case to award the amount of the compensation claimed. At the same time, it is use guidance for determining a just compensation under Section 168 of the Motor Vehicles Act, 1988.

21. The learned counsel for the appellant/claimant has given a calculation and has prayed for an enhanced compensation of Rs.4,52,510/- over and above the amount of Rs.1,49,990/- already awarded by the Tribunal though both before the Tribunal and in this appeal the appellant/claimant had restricted the total claim amount to Rs.4,00,000/-.

22. Therefore, the question of considering the enhanced compensation for a further sum of Rs.4,52,510/- over and above the amount of Rs. 1,49,990/- totaling Rs.5,97,500/- or was to be allowed should be restricted to Rs.57,100/- as was suggested by the learned counsel for the 2nd respondent Insurance Company. Both the enhanced amount and suggested for enhancing amounts appear to be disproportionate.

23. The accident is said to have taken place in the year 2005. Therefore the notional income of the appellant/claimant can be considered as Rs.6,000/- in the light of the decision of the Supreme Court in Syed Sadiq Vs. United India Insurance Co. Ltd., (2014) 2 SCC 735, where the notional income of a vegetable vendor in the year 2008 was taken as Rs.6500/- per month.

24. Considering the nature of injuries suffered by the appellant/claimant which has resulted in partial paralysis of his left limb which has impacted the functionality of the limb, I am inclined to modify the compensation awarded by the Tribunal as per the decision of the Hon'ble Supreme Court in Raj Kumar Vs. Ajay Kumar and Another, (2011) 1 SCC 343:

Monthly Income	: Rs.5,000/-
Annual Income before the Accident (5,000 x 12)	:Rs.60,000/-
Loss of future earning per annum at 20% (60,000 x 20/100)	: Rs.12,000/-
Future Prospectus at 25% (12,000 x 25/100)	: Rs. 3,000/-
	: Rs.15,000/-

Multiplier applicable with reference to the age-40
(15,000 x 15) : Rs.2,25,000/-

Heads	Compensation awarded by the Tribunal	Compensation re-quantified by this Court
Loss of future earning and future prospectus	* Rs.79,500/-	Rs.2,25,000/-
Pain and Sufferings	Rs.20,000/-	Rs. 30,000/-
Transport	Rs. 2,000/-	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
Damages to cloth	Rs. 500/-	Rs. 500/-
Medical expenses	Rs. 7,990/-	Rs. 7,990/-
Loss of amenities of life	Rs.10,000/-	Rs. 25,000/-
Loss of earning during the treatment	Rs.20,000/-	#Rs. 25,000/-
Attender charges	-	Rs. 5,000/-
Total	Rs.1,44,990/-	Rs.3,33,490/-

* 53 x 1,500 = 79,500/-
# 5,000 x 5 = 25,000/-

25. Therefore, the amount of compensation of Rs.1,44,990/- awarded by the Tribunal is enhanced to Rs.3,33,490. Therefore, the 2nd respondent Insurance Company is directed to deposit the difference amount of compensation of Rs.1,88,500/- (3,33,490 - 1,44,990), together with interest at 7.5% per annum from the date of claim petition till the date of such deposit, within a period of six weeks from the date of receipt of a copy of this Judgment.

26. If the amount of compensation awarded by the Tribunal has not deposited by the 2nd respondent Insurance Company, it is directed to deposit the same together with interest as fixed by

the Tribunal, less if any amount already deposited, within the aforesaid period.

27. On such deposits, the appellant/claimant is permitted to withdraw the same together with interest, less if any amount already withdrawn, by filing suitable application before the Tribunal.

28. This Civil Miscellaneous Appeal is partly allowed. No cost.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

jen

To:

The Motor Accident Claims Tribunal
(II Judge Small Causes Court, Chennai),
Chennai.

Copy To

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

+1cc to Mr.T.G.Balachandran, Advocate, S.R.No. 26903

SS(CO)
GN(20/04/2021)