

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2020

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH
and
THE HONOURABLE MR. JUSTICE C. SARAVANAN

C.M.A.Nos.895 and 896 of 2018

A. Balasubramanian, S/o Anandan

.. Appellant in C.M.A.No.895 of 2018

N. Logesh, S/o. Nandagopal,
(Appellant as a Coma, rep. by his
mother Chitra as natural guardian and
next friend to the appellant)

.. Appellant in C.M.A.No.896 of 2018

Vs.

1. N.Nagarajan, S/o Balu

(since the first respondent remained ex-parte,
before the Tribunal, hence, the his presence may be
dispensed with)

2. The National Insurance Company Limited,
Division -III, 2nd Floor,
No.751, Anna Salai,
Chennai-600 002.

.. Respondents in both the appeals

Prayer:Civil Miscellaneous Appeal No.895 of 2018 filed under
Section 173 of the Motor Vehicles Act, 1988 against the Award
and Decree dated 27.11.2017 made in M.A.C.T.O.P.No.6287 of 2013
on the file of the Motor Accidents Claims Tribunal, II Court of
Small Causes, Chennai.

Prayer:Civil Miscellaneous Appeal No.896 of 2018 filed under
Section 173 of the Motor Vehicles Act, 1988, against the Award
and Decree dated 27.11.2017 made in M.A.C.T.O.P.No.6292 of 2013
on the file of the Motor Accidents Claims Tribunal, II Court of
Small Causes, Chennai.

For appellants : Ms.M.Malar in both appeals

For respondents : R-1 set ex-parte before Tribunal
in both appeals

Mrs. R. Srividhya
for Mr.R.Ravichandran
for R-2 in both appeals

COMMON JUDGMENT

(The Common Judgment of the Court was delivered by R.Subbiah, J)

These Civil Miscellaneous Appeals are heard through video conferencing today.

2. Since both these appeals arise out of the common Award passed by the Tribunal, they are being disposed of by this common judgment.

3. Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by Award dated 27.11.2017 passed in M.C.O.P.Nos. 6287 and 6292 of 2013 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, the present appeals are preferred by the claimants.

4. It is the case of the appellants/claimants that on 27.01.2013, at about 08.45 hours, the appellant-A.Balasubramanian (in C.M.A.No.895 of 2018) was riding his two-wheeler bearing Registration No.TN-19-J-0635 in which the appellant-N.Logesh (in C.M.A.No.896 of 2018) was riding pillion. When the vehicle was nearing Chengalpattu to Mailam, in front of Kolliankulam Lake, Mailam, a Bajaj Pulsar Motor Cycle, bearing Registration No.PY-01-BR-9151, owned by the first respondent and insured with the second respondent-Insurance Company was driven from the opposite direction in a rash and negligent manner and dashed against the two-wheeler, in which, the claimants were travelling. In the impact, both the claimants fell down and sustained grievous injuries. Both the appellants were working as Machine Operators in Suspa Company Limited in Guduvancheri at the relevant point of time. For the injuries they have sustained in the accident, they have filed two independent Claim Petitions being M.C.O.P.No. 6287 and 6292 of 2013 respectively seeking compensation claiming a sum of Rs.6 lakhs and Rs.1 crore respectively.

5. The Tribunal, after considering the oral and documentary evidence, awarded a sum of Rs.46,000/- in M.C.O.P. No.6287 of 2013 and Rs.3,58,000/- in M.C.O.P.No.6292 of 2013. According

to the claimants, the quantum of compensation awarded by the Tribunal is very low and therefore, they have come up with the present appeals for enhancement.

6. Since both these appeals are filed by the claimants seeking enhancement of the compensation amounts awarded by the Tribunal, we are inclined to examine as to whether the amount awarded by the Tribunal is required to be enhanced or not.

C.M.A.No.895 of 2018 (M.C.O.P.No.6287 of 2013) (claimant-A.Balasubramanian):

7. It is the case of the appellant that on account of the accident, he suffered fracture of greater tuberosity of left humerus. In order to prove the disability, he marked Disability Certificate issued by the Doctor as Ex.P-21. The Disability Certificate reveals that the disability suffered by the appellant/ is 40%. In spite of the production of the Disability Certificate Ex.P-21, the Tribunal has assessed the disability only at 4%. on the reasoning that the said Certificate was not issued by the Doctor who had treated him. Further, the Tribunal observed that the disability suffered by the victim cannot be said to be total permanent disability and it can be cured by giving physio-therapy treatment. Thus, according to the appellant, the Tribunal, on its own accord, fixed the disability at 4% and awarded a sum of Rs.3,000/- per percentage of the disability, totalling to a sum of Rs.12,000/- (3,000 x 4) under the head "disability". That apart, the Tribunal has awarded another sum of Rs.12,000/- towards "loss of income" during the period of treatment and another sum of Rs.10,000/- towards "pain and suffering". The Tribunal also awarded Rs.5,000/- towards transport to Hospital, another Rs.5,000/- towards "extra-nourishment" and Rs.2,000/- towards attender charges. Thus, the Tribunal awarded Rs.46,000/- as total compensation to the appellant.

8. Now, it is the submission of the learned counsel appearing for the appellant that the reasons assigned by the Tribunal for rejecting the Disability Certificate Ex.P-21 issued by the Doctor, are not valid. When the appellant/claimant had chosen to mark the said Disability Certificate through P.W.3 Doctor, the Tribunal, by relying upon the said document, ought to have awarded the compensation under the head "disability" by applying multiplier method. Thus, the learned counsel appearing for the appellant-claimant prays for enhancement of the compensation amount under the head "disability" by fixing the disability at 40% and by applying multiplier method.

9. The learned counsel appearing for the second respondent/Insurance Company made submissions in support of the award passed by the Tribunal.

10. Keeping the above submissions made on either side, we have carefully gone through the materials available on record. In our considered opinion, the reasons assigned by the Tribunal for reducing the disability from 40% to 4%, are legally unsustainable. When the appellant/claimant marked the Disability Certificate Ex.P-21 through P.W.3 Doctor and when no effective challenge had been made to the said document during the course of cross-examination of P.W.3 Doctor, the Tribunal ought to have relied upon the said Disability Certificate Ex.P-21 and fixed the disability at 40%. Instead of doing so, the Tribunal, on its own accord, reduced the disability of the appellant/claimant to 4%, which had resulted in awarding inadequate compensation of Rs.12,000/- under the head "disability". Hence, by fixing 40% as disability, the amount awarded by the Tribunal has to be enhanced. At the same time, we are of the opinion that there is no evidence to show that the disability suffered by the victim is permanent disability, and as such, the question of applying the multiplier method does not arise. In view of the same, we are of the opinion that by fixing the disability at 40% and awarding a sum of Rs.3,000/- per percentage of disability, the amount awarded by the Tribunal has to be enhanced. If 40% is fixed as the disability suffered by the appellant-claimant, and if Rs.3,000/- is awarded towards each percentage of the disability, the total compensation under the head "disability" works out to Rs.1,20,000/-. Hence, the sum of Rs.12,000/- awarded by the Tribunal under the head "disability" is hereby enhanced to Rs.1,20,000/-.

11. Further, the sum of Rs.2,000/- awarded under the head "attender charges", appears to be on the lower side. Considering the fact that the appellant/claimant was under treatment for a considerable period of time, the sum of Rs.2,000/- awarded by the Tribunal under the head "attender charges" is hereby enhanced to Rs.5,000/-. Except the enhancement of the amount awarded by the Tribunal under the above heads, the amounts awarded by the Tribunal under the other heads are confirmed. The break-up details of the enhanced compensation are tabulated below:

Sl.No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Disability	12,000	1,20,000
2	Attender charges	2,000	5,000

Sl.No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
3	Loss of income	12,000	12,000
4	Pain and suffering	10,000	10,000
5	Transport to hospital	5,000	5,000
6	Extra-nourishment	5,000	5,000
	Total	46,000	1,57,000

12. Thus, the total compensation awarded by the Tribunal in M.C.O.P.No.6287 of 2013 (pertaining to C.M.A.No.895 of 2018) is hereby enhanced from Rs.46,000/- to Rs.1,57,000/- (Rupees one lakh and fifty seven thousand only). The rate of interest at 9% awarded by the Tribunal is hereby confirmed. Accordingly, the compensation that is now awarded at Rs.1,57,000/- shall carry interest @ 9% per annum from the date of claim petition till the date of payment. The second respondent-Insurance Company is directed to deposit the said compensation of Rs.1,57,000/- within a period of six weeks from the date of receipt of a copy of this judgment, together with the said interest, and costs as awarded by the Tribunal. On such deposit being made, the appellant-A.Balasubramanian is permitted to withdraw the amount now computed, along with interest and costs, less the amount, if any already withdrawn, by filing necessary application before the Tribunal. The appellant-claimant shall pay necessary Court fee, if any, on the enhanced compensation.

C.M.A.No.896 of 2018 (M.C.O.P.No.6292 of 2013) (claimant-N.Logesh):

13. In respect of the appellant in C.M.A.No.896 of 2018 (M.C.O.P.No.6292 of 2013), the Tribunal, based on Exs.P-11 and P-8 Discharge Summaries, observed that he had suffered FTP acute SDH diffuse cerebral injury, FTP decompressive craniectomy (SDH). It was further noticed that during the course of treatment tracheostomy was done and there is paucity of movements and condition at discharge was E4 V1 M5 - moving all limbs. According to the appellant, the Tribunal did not consider Ex.P-26 Disability Certificate issued by P.W.4 Doctor on the ground that he had not treated the appellant. However, the Tribunal has come to the conclusion that the disability suffered by the appellant-victim is permanent in nature, and as such, he is entitled for compensation by applying multiplier method. Accordingly, the Tribunal by fixing a sum of Rs.6,000/- as the monthly income of the victim and applying multiplier '17' awarded a sum of Rs.3,06,000/- in proportion to 25% disability (6,000 x 12 x 17 x 25%). That apart, the Tribunal awarded a sum

of Rs.12,000/- towards "loss of income" and another sum of Rs.10,000/- towards "pain and suffering". Further, the Tribunal awarded Rs.5,000/- towards transport to Hospital and Rs.5,000/- towards extra-nourishment. The Tribunal also awarded Rs.2,000/- towards attender charges. That apart, Rs.17,300/- was awarded towards medical treatment based on medical bills. Thus, the Tribunal awarded Rs.3,57,300/-, rounded off to Rs.3,58,000/- in-toto to the appellant- claimant.

14. The learned counsel for the appellant-claimant submitted that on account of the accident, the appellant-claimant had sustained the following injuries, as stated in Exs.P-11 and P-8 Discharge Summaries:

"FTP acute SDH diffuse cerebral injury, FTP decompressive craniectomy (SDH), tracheostomy was done, paucity of movements and condition at discharge is E4 V1 M5 - moving all limbs."

15. Since Ex.P-26 Disability Certificate was not issued by the Doctor who had treated the appellant-claimant, the Tribunal did not take into account the same and the Tribunal, on its own accord, had fixed the disability at 25%. Thereafter, by fixing a sum of Rs.6,000/- per month as notional monthly income of the appellant-claimant, and adopting multiplier "17", awarded a sum of Rs.3,06,000/- ($6,000 \times 12 \times 17 \times 25\%$) as the loss of future earning capacity. In this regard, the learned counsel for the appellant-claimant submitted that the appellant was working as Machine Operator and on account of the disability suffered by him, he had become bed-ridden and immobilised. He had totally lost his earning capacity. Now, he cannot carry on his work on his own and throughout his life, he would be in vegetative state. The Tribunal, without considering all these aspects fixed 25% as his disability, on its own accord, and awarded a paltry sum of Rs.3,06,000/- under the head "loss of future earning capacity" and it needs enhancement. In this context, the learned counsel for the appellant-claimant submitted that during the pendency of the present appeal, the appellant-claimant was referred to Medical Board, which had assessed the disability of the appellant at 83.33%. Therefore, based on the Medical Board's assessment, the amount awarded under the head "disability" may be increased, by fixing atleast a sum of Rs.14,000/- as the monthly income of the injured-victim. The learned counsel for the appellant-claimant further submitted that the amounts awarded by the Tribunal on the other heads appear to be on the lower side and the same also needs proper enhancement.

16. Per contra, the learned counsel appearing for the second respondent-Insurance Company submitted that though the appellant-claimant is immobilised, the percentage of disability fixed by

the Medical Board at 83.33% is extremely on the higher side. Therefore, by fixing the disability atleast at 40%, the amount awarded under the head "disability" may be modified.

17. Keeping in mind the submissions made on either side, we have carefully perused the materials available on record. During the pendency of the present appeal, the claimant-injured was directed to be produced before the Medical Board. The medical Board, on examining the claimant, assessed his disability at 83.33%. Further, the evidence recorded by the Tribunal shows that the movement of the limbs of the appellant-claimant are affected and he is totally immobilised thus, there is little scope for improvement in his health condition. Therefore, we are of the view that this is a fit case where the appellant-claimant is justified in seeking for enhancement of the amount of compensation awarded by the Tribunal. Further, the reasons assigned by the Tribunal for fixation of 25% disability, are not justified. In fact, by vague and bald reasons, the Tribunal fixed the disability at 25% on its own accord which resulted in awarding inadequate compensation to the appellant-claimant.

18. For the purpose of fixing a just and fair compensation, Ex.P16, salary slip of the injured claimant is taken note of where his salary is mentioned at Rs.12,000/- per month. The injured was aged 25 years at the time of accident and his prospects of earning in future is very bleak. However, considering the cost of living at the relevant point of time, we fix Rs.14,000/- as the monthly income of the claimant. Moreover, the Medical Board had given Certificate assessing the disability of the claimant at 83.33%. However, the disability can be taken as 85% (on being rounded off). Therefore, we add 40% of the income of the deceased towards future prospects while computing the loss of income. If 40% is added, the monthly income of the injured claimant can be arrived at Rs.19,600/- per month. (14,000 + 5,600 i.e. (14,000 x 40%)). The annual loss of income, would thus works out to Rs.2,35,200/- (Rs.19,600 x 12). By applying multiplier '17', the compensation payable to the claimant would works out to Rs.39,98,400/-. If 85% disability is fixed as stated above, the actual disability and earning capacity works out to Rs.33,98,640/-.

19. Admittedly, the claimant slipped to coma and is bed ridden. To take care of the claimant for the rest of his life, attendant charger has to be awarded. The Tribunal awarded a paltry sum of Rs.2,000/- towards attendant charges without taking note of the need to award such amount. The accident had taken place in the year 2013 and for the past seven years, it is stated that the claimant is bed ridden and his movements were restricted. In such circumstances, we feel that even if Rs.5,000/- is awarded per month as attendant charges, the

attendant charges payable will work out to Rs.60,000/- per year. The claimant is bed ridden for the past seven years and there is a necessity to award attendant charges for future also taking note of the medical condition of the claimant. Therefore, we are of the view that atleast a sum of Rs.5,00,000/- (Rupees five lakhs only) can be awarded towards attendant charges, which includes future attendant charges, to meet the ends of justice.

20. Further, we find that the sum of Rs.12,000/- awarded by the Tribunal towards the "loss of income" is on the lower side and it is hereby enhanced to Rs.60,000/- by awarding Rs.10,000/- per month for a period of six months of his treatment.

21. For pain and suffering, considering the enormity of the injuries sustained by the appellant-victim at his young age and his present medical condition, the amount of Rs.10,000/- awarded by the Tribunal towards "pain and suffering" is hereby enhanced to Rs.1,20,000/-.

22. The amount awarded by the Tribunal under the head "transport to hospital" at Rs.5,000/- is hereby enhanced to Rs.50,000/- taking note of the fact that for the injuries sustained by the claimant requires multiple visits to the hospital for treatment periodically.

23. Similarly, the sum of Rs.5,000/- awarded by the Tribunal towards Extra Nourishment is grossly disproportionate taking note of the magnitude of the injuries sustained by the claimant and his present condition. Therefore, we award Rs.50,000/- towards Extra Nourishment.

24. The Tribunal did not award any amount towards future medical expenses as also the loss of amenities. Having regard to the present vegetative condition of the claimant, it is inevitable that he may require future medical treatment for which, we award a sum of Rs.50,000/-. We also award a sum of Rs.45,000/- towards Loss of amenities, which the Tribunal failed to award.

25. The amount of Rs.17,300/- awarded by the Tribunal towards medical bills is based on the medical bills produced by the victim and therefore, it is hereby confirmed.

26. In all, the claimant is entitled to a total sum of Rs.43,00,940/-. The break-up details of the amount awarded by us in this appeal is tabulated hereunder:

Sl.No.	Heads under which the amounts are awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Medical Bills	17,300	17,300
2	Disability and earning capacity	3,06,000	33,98,640
3	Attender charges	2,000	5,00,000
4	Loss of income	12,000	60,000
5	Pain and suffering	10,000	1,20,000
6	Transport to hospital	5,000	60,000
7	Extra-nourishment	5,000	50,000
8	Future medical expenses	-	50,000
9	Loss of amenities	-	45,000
	Total	3,57,300 rounded off to Rs.3,58,000/-	43,00,940

27. Thus, the total compensation awarded by the Tribunal in M.C.O.P.No.6292 of 2013 (pertaining to C.M.A.No.896 of 2018) is hereby enhanced from Rs.3,58,000/- to Rs.43,00,940/- (Rupees forty three lakhs and nine hundred and forty only). The rate of interest at 9% awarded by the Tribunal is hereby confirmed. Accordingly, the compensation which we have determined in this appeal at Rs.43,00,940/- shall carry interest @ 9% per annum from the date of claim petition till the date of payment. The second respondent-Insurance Company is directed to deposit the said compensation of Rs.42,83,000/- within a period of six weeks from the date of receipt of a copy of this judgment, together interest and costs as awarded by the Tribunal. On such deposit being made, the appellant-N.Logesh is permitted to withdraw the Award amount now computed, along with interest and costs, less the amount, if any already withdrawn, by filing necessary application before the Tribunal. The appellant-claimant shall pay necessary Court fee, if any on the enhanced compensation.

28. In the result, we modify the Judgment dated 27.11.2017 passed by the Motor Accidents Claims Tribunal, II Court of Small Causes, Chennai in M.C.O.P.No.6287 of 2013 and M.C.O.P.No.6292 of 2013 as indicated above. Accordingly, both the appeals are partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cs/rsh

To

The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

Copy to

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

+1cc to M/s.M.Malar, Advocate Sr.35690
+1c to M/s.G.Ravichandran, Advocate Sr.35910

C.M.A.Nos.895 and 896 of 2018

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