

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

C O R A M

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

C.M.A.No.3392 of 2019

S.Kanchana ...Appellant/Claimant

Vs

1.Sugi Inbanathan

2.Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
6th Floor,
Chennai-1

...Respondents/Respondents

(Since R1 remained exparte before the Tribunal,
his presence is dispensed with)

Prayer: Civil Miscellaneous Appeal filed under Section 173 of
Motor Vehicles Act, 1988 against the Judgment and Decree dated
27.11.2018 made in MCOP.No.3666 of 2016 on the file of the
Motor Accident Claims Tribunal, II Court of Small Causes,
Chennai.

For Petitioner : Mr.A.G.F.Terry Chella Raja

For Respondents: Mr.K.Poomalai for R2
R1- Exparte

J U D G M E N T

(Judgment of the Court was delivered by KRISHNAN RAMASAMY, J.)

The present appeal has been filed by the claimant
challenging the quantum of compensation awarded by the
Tribunal vide order dated 27.11.2018 in MCOP.No.3666 of 2016
on the file of the Motor Accident Claims Tribunal, II Court of
Small Causes, Chennai..

2. The claimant filed the claim statement before the
Tribunal for a sum of Rs.1,00,00,000/-. According to the
appellant/claimant the accident was occurred on 20.05.2016 at
19.00 hours when the claimant was walking at Velacherry main

road, near M.M motors, Gowrivakkam. A car bearing registration No. TN 22 B7 came from Velacherry towards Tambaram direction in a rash and negligent manner, endangering public safety and dashed against the claimant. As the result, the claimant sustained severe injury and she was immediately admitted in Parvathy Hospital, Chennai. F.I.R has also filed in Crime No.3 of 2016 for the offence under Section 279 and 337 of I.P.C. Therefore, the claimant preferred claim petition for a sum of Rs.1,00,00,000/-. The respondent/Insurance Company denied the matter refuting claim of the claimant.

3. On behalf of the claimant P.W.1, P.W.2 and P.W.3 were examined and Exs.P1 to P18 were marked. No one was examined on behalf of the respondents and also no exhibit has been marked.

4. On the perusal of the material available on record and after hearing both the side, the Tribunal awarded a sum of Rs.8,95,000/- as compensation for the injury.

5. Aggrieved by the said order the claimant has preferred the present appeal challenging the quantum of compensation awarded by the Tribunal.

6. The learned counsel for the appellant contended that the appellant sustained severe injuries due to the accident i.e right periorbital echymosis, diffuse swelling, scalp parieto occipital region, lacerated wound 8x3x2 cm, right cheek degloving injury and skin loss right cheek, mutiple abrasion in neck, zygomatic major and minor muscle avulsed from origin, right foot laceration 3rd and 4th toe webspace with subluxation, right knee skin loss 2x2 cm exposing patella, soft tissue injury, facial degloving injury, right 1st and 3rd fracture/mineral hemothorax C4, C5, C6, C7, D12 transverse process right/right scapula fracture, bilateral knee laceration/BPI right side and other multiple grievous injuries all over the body and therefore he contended that the compensation awarded by the Tribunal is too low.

7. He further contended that two Doctors issued disability certificate, P.W.2- Doctor issued disability certificate at 45% disability and P.W.3-Doctor, who examined the injury has issued the disability certificate at 35% disability. P.W.2 is the Ortho Doctor who issued disability certificate as 45% and P.W.3 issued disability certificate as 35% for facial disfigurement, skin grafting and degloving injuries. Therefore, the learned counsel for the appellant contended that total disability issued by P.W.2 and P.W.3 is 80%. However, the Tribunal taken functional disability as only 45%.

Tribunal has awarded a sum of Rs.3,000/- per percentage of disability and therefore toward permanent disability a sum of Rs.1,35,000/- awarded. No amount was awarded for the loss of income. A sum of Rs.60,000/- was awarded towards loss of earning capacity. The Court below should have considered the nature of injury and would have awarded appropriate amount towards the loss of income. However, the Tribunal failed to award any amount for loss of income due to the disability sustained by the appellant.

8. The learned counsel for the appellant further contended that the injured is a housemade and due to the fracture and the facial disfigurement she is not in a position to carry on his usual work and therefore he contended that functional disability of the appellant should be considered atleast as 50% by applying multiplier method. He further contended that a sum of Rs.50,000/- should have been taken as notional income of the claimant since she was a housemaid and the accident occurred in the year 2016. He further contended that the claim amount awarded under other heads are just and appropriate.

9. The learned counsel appearing for the second respondent/Insurance Company contended that the amount awarded by the Tribunal is just and fair and there is no need for interference by this Court since the disability certificate issued by the Doctor are on the higher side and they are not treated Doctors. Therefore, at any cost functional disability should not be considered as 80% as pleaded by the appellant. However, the appellant was working as housemaid at the time of accident. Admittedly, the accident occurred in the year 2016 and therefore considering contention of the appellant for fixing notional income as claimed by the appellant and also awarding compensation towards loss of income by applying multiplier method will be inappropriate.

10. Heard the learned counsel for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

11. Admittedly, in the present case, the accident occurred in the year 2016. It is an admitted fact that, the appellant was working as a housemaid at the time of accident. The counsel appearing for the appellant produced the photograph which clearly shows that there is a facial disfigurement and skin grafting.

12. As far as income is concerned, fixing a sum of Rs.15,000/- to a housemaid for the accident occurred in the year 2016 will be on the higher side. However, we would like to fix a sum of Rs.13,000/- as notional income of the injured keeping in mind the judgment of Hon'ble Apex court reported in 2014 1 TNMAC 459 (SC) in the case of (Syed Sadiq vs. Divisional Manager, United India Insurance) wherein, the Hon'ble Apex Court fixed a sum of Rs.6,500/- for the accident occurred in the year 2008 for a Vegetable Vendor. In the present case, the accident occurred in the year 2016. The avocation of the injured is Housemaid. The avocation of the appellant as well as Vegetable Vendor can be treated equally by considering both the avocation at the same level by providing appropriate increase for the cost of living for the past eight years. We would like to fix a sum of Rs.13,000/- as notional income of the appellant for the purpose of awarding compensation.

13. The counsel appearing for the second respondent/Insurance Company raised objection for awarding compensation towards loss of income by applying multiplier method since Tribunal awarded a sum of Rs.1,35,000/- for the disability it would be sufficient for the appellant. However, we are not in a position to accept the contention of the respondent/Insurance Company due to the reason that the Act itself provides a method for the purpose of awarding compensation when the claim made under 163 A of the Motor Vehicles Act. If any claim has been made under 163 A of the Act, under no fault liability clause, the claimant should be awarded compensation based on the standard income as mentioned in the second schedule by applying the multiplier method. On perusal of the second schedule, it is clear that both the injured as well as in the fatal cases, the loss of income should be awarded by applying multiplier method. When such being the case, when a person come forward before the Court proving disability, by leading evidence, we do not find any impediment/obstacles for awarding compensation by the Tribunal by applying multiplier method. Hence, we are inclined to apply multiplier method, in the present cases since the Tribunal failed to apply the same.

14. In the present case, the age of the injured was 35 years completed at the time of accident. Therefore, the multiplier applicable is 14 as held by the Hon'ble Apex Court in the case of (Sarla Verma & others vs. Delhi Transport Corporation & another) reported in 2009 (2) TNMAC 1. Further, this Court decided to take notional income for the injured as Rs.13,000/- and by adding 40% towards future prospect., the loss of income would be a sum of Rs.9,17,280/- [Rs.18,200/- (Rs.13,000 + 5,200) x 12 x 14 x 30%]. The Tribunal has awarded a sum of Rs.2,35,000/- towards permanent disability and a sum of Rs.60,000/- towards loss of earning capacity. Since we have decided to award compensation by applying

multiplier method for both loss of earning and disability, the amount awarded by the Tribunal towards permanent disability and loss of earning capacity is hereby set aside. The amount awarded by the Tribunal under all other heads are just and fair and the same stands confirmed. Therefore, this Court re-determined the compensation awarded by the Tribunal in the manner stated below:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income	-	Rs.9,17,200	Granted
2.	Permanent disability	2,35,000	-	Set aside
3.	Medical Expenses	4,00,000	4,00,000	Confirmed
4.	Pain and Suffering	1,00,000	1,00,000	Confirmed
3.	Extra Nourishment	25,000	25,000	Confirmed
4.	Transportation	15,000	15,000	Confirmed
5.	Loss of earning capacity	60,000	-	Set aside
6.	Attender Chargers	60,000	60,000	Confirmed
	Total	8,95,000/-	15,17,200/-	Enhanced by Rs.6,22,200 /-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,95,000/- is hereby enhanced to Rs.15,17,280/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The second respondent is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment.

16. Further, we direct the Tribunal to transfer the entire amount as increased by this Court to the claimant's

Bank account by way of RTGS within three weeks from the date of deposit without awaiting for any application from the claimant. Incase, if the Bank account details are not available, the appellant is directed to furnish the details to the Court below duly within a week from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the enhanced award amount along with interest and costs, less the amount if any, already withdrawn. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

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To

1. II Judge, Court of Small Causes,
The Motor Accident Claims Tribunal,
Chennai.
2. The Section Officer,
VR Section,
Madras High Court.

+1cc to M/s.M.Malar, Advocate SR.No.4854

+1cc to Mr.M.S.Gopalan Associates, Advocate SR.No.5046

C.M.A.No.3392 of 2019

SV(CO)
GMY(28/10/2020)

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