

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2020

CORAM:

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

C.M.A.No.3242 of 2019

G.Ramamoorthy Govindaraj .. Appellant/Petitioner

Vs.

1. D.Mani

2. ICICI Lombard General Insurance Company Ltd.,
Arihant Plaza, Nos.84 and 85, Wall Tax Road,
Chennai-600 003. .. Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order and decree dated 18.02.2019 made in M.C.O.P.No.4276 of 2015 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai.

For appellant : Mr.K.Suryanarayanan

For respondents : Ms.R.Sreevidhya for R-2
R-1 remained ex-parte before the Tribunal

JUDGMENT

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

The appeal is heard through video-conferencing today.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal, in and by award dated 18.02.2019 made in M.C.O.P.No.4276 of 2015 on the file of the Motor Accidents Claims Tribunal (II Court of Small Causes), Chennai, the present appeal has been filed by the injured-claimant-victim.

3. Since the present appeal is filed questioning only the quantum of compensation awarded by the Tribunal, we are not traversing into the other aspects of the award of the Tribunal.

4. The case of the appellant/claimant is that on 29.12.2014 at about 7.15 hours, he sustained grievous injuries in a road accident involving the mini lorry bearing Registration No.TN-23-B-8511 owned by the first respondent and insured with the second respondent-Insurance Company and it is the claim of the appellant/claimant that the accident had occurred only due to rash and negligent driving on the part of the driver of the said mini lorry. Hence, the appellant/claimant has made a claim of Rs.10 crores as compensation.

5. In order to prove the claim, the claimant examined himself as P.W.1, besides Dr.Ilancheran as P.W.2 and marked Exs.P-1 to P-14. On the side of the Insurance Company, one official from Regional Transport Office, Ambur was examined as R.W.1 and Exs.R-1 to R-5 were marked. The Tribunal, on the basis of the evidence on record, awarded compensation at Rs.13,70,000/- under the following heads:

Sl. No.	Head under which the amount is awarded by the Tribunal	Amount awarded (in Rs.)
1	Disability	2,50,000
2	Pain and sufferings	2,00,000
3	Medical expenses	3,50,000
4	Future medical expenses	3,00,000
5	Loss of marital relationship	1,00,000
6	Loss of amenities	1,00,000
7	Attender charges	50,000
8	Extra-nourishment	10,000
9	Transportation	10,000
	Total	13,70,000
		with 7.5% interest from the date of claim petition till the date of payment

6. The present appeal has been filed by the appellant-claimant mainly on the ground that he had sustained multiple injuries which had resulted in amputation of his left leg. He has produced Ex.P-11 being the disability certificate issued by the Doctor, in which the disability of the left lower limb was given as 90.97% and the disability to the whole body is given as 30%. Under such circumstances, the Tribunal ought to have

awarded amount under the head "loss of earning power" only by applying multiplier method, which the Tribunal failed to do so. But the Tribunal awarded only a consolidated amount of Rs.2,50,000/- under the head "disability". In this regard, the learned counsel for the appellant/claimant submitted that the claimant-victim was a Senior Engineer employed at Singapore and earning a sum of \$ 1,02,284/- per annum. He was aged about 49 years at the time of accident, and therefore, the Tribunal, by taking into account the salary earned by the claimant, and applying the multiplier 15, ought to have awarded the amount in proportion to the disability suffered by the claimant-victim.

7. Countering the above submissions, the learned counsel appearing for the second respondent-Insurance Company submitted that the victim was working as an Engineer and is continuing his avocation even after the accident. Under such circumstances, absolutely there is no loss of income to him. When there is no loss of income, the question of applying the multiplier method does not arise in this case. Hence, the learned counsel prayed for dismissal of the appeal.'

8. By way of reply, the learned counsel appearing for the appellant/claimant, by relying upon the following judgments, i.e. (i) Civil Appeal Nos.2811-2812 of 2020 arising out of S.L.P.(C).No.8495-8496 of 2018, dated 27.07.2020 (Supreme Court) (Erudhaya Priya Vs. State Express Transport Corporation Limited), (ii) C.M.A.Nos.1853 and 1956 of 2019 and Cross Obj.18 of 2019, dated 04.06.2020, The United India Insurance Co. Ltd. Vs. N.Anusuya and another (Madras High Court) and (iii) 2018 SCC Online Madras 6548 = 2019 ACJ 1772 = 2018 (2) TN MAC 660 (DB) (of Madras High Court) (I.Pavithra Vs. R.Alan Joy), submitted that since the claimant-victim is in continuous employment, it does not mean that the Tribunal cannot assess the loss of income by applying the multiplier method. The Tribunal ought to have seen the issue on the perception as to how a person who was the injured, cannot secure employment in open market and this should be a ground for assessment of loss of earning capacity. Thus, the learned counsel appearing for the claimant (appellant) submitted that by applying the multiplier method and by taking into account the salary received by the victim-claimant, the amount has to be awarded under the head "loss of earning power".

9. Keeping in mind the submissions made on either side, we have carefully perused the entire materials available on record.

10. It is admitted by the appellant-claimant that even after the accident, he is continuing his employment. As contended by the learned counsel for the appellant-claimant, since he is continuing his employment, it does not mean that he is not entitled to the amount under the head "loss of earning

capacity". The criteria that has to be taken into consideration is as to whether how a person injured, cannot secure the employment in open market. Furthermore, we should also bear in mind that the nature of the disability suffered by the victim, definitely would have some bearing in his performance in carrying out his work. Therefore, we are of the opinion that this is a fit case to enhance the compensation amount by applying multiplier method. At the same time, we are of the opinion, as contended by the learned counsel appearing for the appellant/claimant, that the actual income presently the victim is earning, cannot be taken into consideration to assess the loss of income, since he is still continuing his avocation. Hence, we are of the opinion that by fixing a sum of Rs.20,000/- as the monthly income of the victim, the loss of income could be calculated to arrive at a just and proper compensation under the head "loss of earning power". The nature of injury sustained by the victim is amputation of left leg below the knee. As per S.No.20 of Part-II of Schedule I of the Employees' Compensation Act, 1923, for amputation below the knee, the disability is fixed as 50%. However, in the factual aspects of the present case, the disability could be taken as 40%. If a sum of Rs.20,000/- is taken as the monthly salary, and the multiplier 13 is applied taking into account his age as 49 at the time of accident, the total loss of income works out to Rs.12,48,000/- ($\text{Rs.20,000} \times 12 \times 13 \times 40\%$). Further, the evidence on record shows that the claimant is still finding it difficult to walk and do his day-to-day activities. Hence, taking into account his avocation being Senior Engineer, the following amounts are awarded under the heads mentioned therein:

(i) The amount of Rs.2 lakhs awarded by the Tribunal under the head "pain and suffering" appears to be on the lower side. Hence, considering the long duration of treatment undergone by the victim, he is entitled to more amount under the head "pain and suffering". Hence, the sum of Rs.2 lakhs awarded by the Tribunal is hereby enhanced to Rs.3 lakhs. Resultantly, the amount awarded by the Tribunal under the head "future medical expenses" is hereby enhanced from Rs.3 lakhs to Rs.4 lakhs. Further, the amount awarded by the Tribunal at Rs.3,50,000/- towards medical expenses, which are based on medical bills, is hereby confirmed.

(ii) Further, the loss of marital relationship awarded by the Tribunal being low, to the claimant-victim, at Rs.1,00,000/- is hereby enhanced to Rs.2,00,000/-.

(iii) The amounts awarded by the Tribunal towards loss of amenities at Rs.1,00,000/- is hereby enhanced to Rs.2,00,000/-. The amount awarded by the Tribunal towards extra-nourishment at Rs.10,000/- is hereby enhanced to Rs.60,000/- since the claimant was in hospital for quite a length of time. Further, the amount awarded by the Tribunal at Rs.10,000/- towards transportation, being nominal amount based on the given facts and circumstances

of the case, is hereby confirmed.

(iv) Taking into consideration the hospitalisation of the claimant-injured-victim, for quite a long time, the amount awarded by the Tribunal towards attender charges at Rs.50,000/-, is hereby enhanced to Rs.1,02,000/-.

11. Thus, the break-up details of the award are as follows:

Sl. No.	Head under which the amounts are awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Disability	2,50,000	12,48,000
2	Pain and sufferings	2,00,000	3,00,000
3	Medical expenses	3,50,000	3,50,000
4	Future medical expenses	3,00,000	4,00,000
5	Loss of marital relationship	1,00,000	2,00,000
6	Loss of amenities	1,00,000	2,00,000
7	Attender charges	50,000	1,02,000
8	Extra-nourishment	10,000	60,000
9	Transportation	10,000	10,000
	Total	13,70,000	28,70,000

12. Thus, the amount of compensation awarded by the Tribunal at Rs.13,70,000/- is hereby enhanced to Rs.28,70,000/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of payment. The second respondent/Insurance Company shall deposit the above enhanced amount after deducting the amounts if any already deposited, within a period of six weeks from the date of receipt of a copy of this order. The appellant/claimant shall pay necessary Court fee, if any on the enhanced compensation.

13. With the above enhancement of the compensation amount, the appeal is partly allowed. No costs.

Sd/-
Assistant Registrar (CS-V)

//True copy//

Sub Assistant Registrar

CS

To

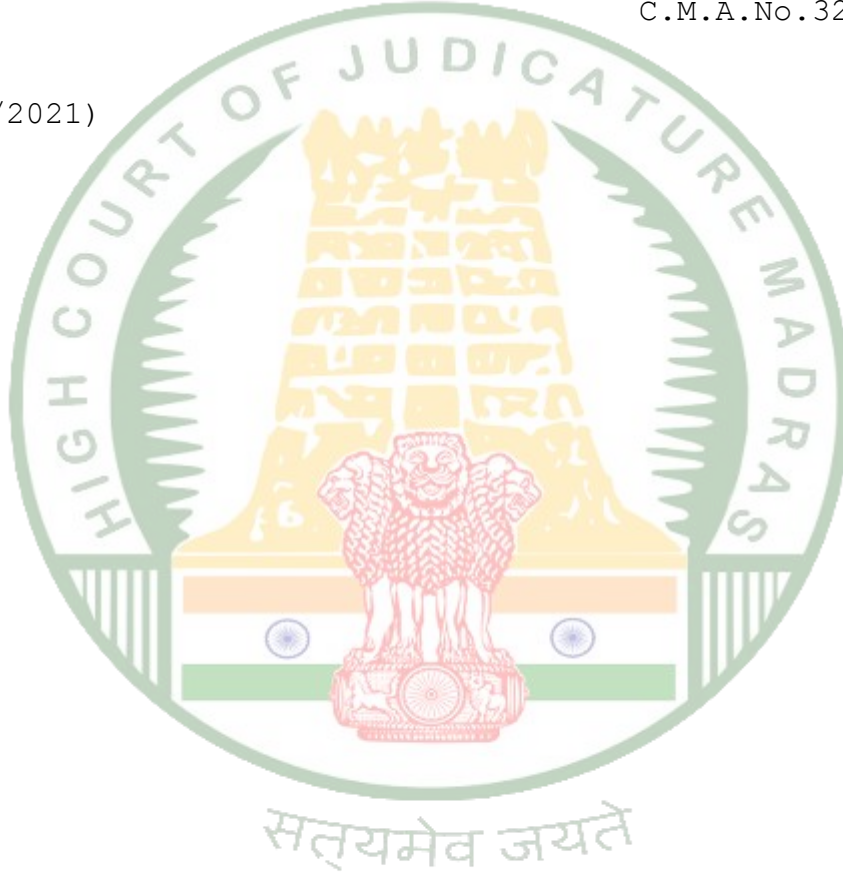
1. Presiding Officer,
Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.

2. The Section Officer,
V.R.Section, .
High Court, Madras. +2 Copies

+1cc to Mr.K.Suryanarayanan, Advocate SR.No.25677

C.M.A.No.3242 of 2019

GP (CO)
GMY (29/04/2021)



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