IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 21.08.2020
CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.Nos.558 to 560 of 2017

Kumar
S/o.Ramasamy ... Appellant/Petitioner
in C.M.A.No.558 of 2017

Suguna
W/o.Kumar ... Appellant/Petitioner
in C.M.A.No.559 of 2017

Minor Elakkia
Rep.by her father/guardian Kumar
... Appellant/Petitioner
in C.M.A.No.560 of 2017

Vs

1.G.Madhankumar
S/o.Gavindarasu

2.P.Muthusamy
S/o.Pachianna Gounder
(Notice to R1 and R2 may be dispensed with for the time being since no award passed against them)

3.United India Insurance Co.Ltd.,
Rep.by its Manager, SRS Towers,
595, Mettur Main Road,
Bhavani - 638 301.
... Respondents/Respondents in all C.M.As

Common Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.Nos.457, 459 and 461 of 2010 on the file of the Motor Accidents Claims Tribunal cum Subordinate Judge, Bhavani, dated 03.08.2012.

For Appellants : Mr.C.Kulanthaivel
(in all C.M.As)
For Respondents: Mr.D.Bhaskaran for R3
(in all C.M.As)
R1 & R2 - Dispensed with
(in all C.M.As)

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been preferred by the appellants/claimants as against the award passed by the Tribunal for a sum of Rs.65,000/- to the appellant in

C.M.A.No.558 of 2017, Rs.4,00,000/- to the appellant in C.M.A.No.559 of 2017 and Rs.45,000/- to the appellant in C.M.A.No.560 of 2017.

2. The case in brief is as follows :

On 08.09.2010 at about 01.15 p.m., the appellants/claimants were proceeding in their TVS Star City motorcycle bearing Registration No.TN-33/AK-5778 from Mettur to Bhavani Road. When the two wheeler was nearing Sangaragoundampalayam Mun Road, near Jegathish Workshop, the bus bearing Registration No.TN-33/AJ-2988, belonging to the second respondent and insured with the third respondent Insurance Company, came from behind in a rash and negligent manner at high speed and hit the two wheeler. Due to the said impact, the appellants sustained injuries all over the body. Stating that the accident had occurred only due to the rash and negligent driving of the driver of the bus, the claimants filed claim petitions, claiming sums of Rs.2,00,000/- (M.C.O.P.No.457 of 2010), Rs.10,00,000/- (M.C.O.P.No.459 of 2010) and Rs.2,00,000/- (M.C.O.P.No.461 of 2010), respectively. After considering the materials and evidence available on record, the Tribunal has awarded a total compensation of Rs.65,000/- to the appellant in CMA No.558 of 2017; Rs.4,00,000/- to the appellant in CMA No.559 of 2017 and Rs.45,000/- to the appellant in CMA No.560 of 2017, with interest at 7.5% per annum from the respective dates of petitions. Feeling aggrieved and being dissatisfied with the quantum so awarded, the appellants/claimants have preferred these appeals seeking enhancement of the same.

3.The learned counsel for the appellants has submitted that the Tribunal, without properly considering the oral and documentary evidence, has awarded only a sum of Rs.65,000/-, Rs.4,00,000/- and Rs.45,000/-, which are on the lower side and hence, the same have to be enhanced substantially.

4.Per contra, the learned counsel for the third respondent/ Insurance Company submitted that after properly analysing the materials and evidence, the Tribunal has awarded the compensation amounts, which are just, fair and reasonable and hence, the same does not require any interference in the hands of this Court.

5.Heard the learned counsel for the appellants and the learned counsel for the third respondent and perused the materials available on record carefully and meticulously.

6.In respect of CMA.No.558 of 2017, the appellant/ claimant himself examined as P.W.1. According to him, he was aged about 31 years and he was earning a sum of Rs.10,000/- per month as a driver. The doctor, who treated the claimant, was examined as P.W.4 and as per his deposition, the appellant/claimant sustained 44% permanent disability. Ex.P16 is the disability certificate issued by him. The Tribunal reduced the disability fixed by the Doctor from 44% to 40% holding that the disability assessed by the doctor is slightly on the higher side and awarded a sum of Rs.40,000/- towards disability at the rate of Rs.1,000/- per percentage of disability. The accident occurred in the year 2010. Taking note of the year of accident, it would be appropriate to award a sum of Rs.2,000/- per percentage of disability. Further, considering the nature of the injuries sustained by the claimant, the disability fixed by the Doctor at 44% has to be taken. If the percentage of disability is taken as 44% as fixed by the Doctor and a sum of Rs.2,000/- is awarded per percentage of disability, the amount towards disability works out to Rs.88,000/- and accordingly, it is awarded. The Tribunal has awarded Rs.6,000/- towards medical expenses as per Ex.P7 medical bills and Ex.P17 X-ray bill, which are the actual expenses incurred for the treatment taken by him and hence, the same does not require any interference. However, it is seen that the Tribunal has not awarded any amount towards loss of amenities and attender charges. Considering the nature of the injuries and the disability sustained by the appellant/claimant, the claimant certainly would not have attended his work for a substantial period, and he would have definitely acquired the assistance of an attender. Taking note of the same, sums of Rs.5,000/- each are awarded towards loss of amenities and attender charges, respectively, and the amount awarded by the Tribunal towards loss of earning is enhanced to Rs.13,000/-. The amount awarded towards damage to clothes, is confirmed. Further, taking note of the facts and circumstances of the case, this Court feels it just and appropriate to enhance the amounts awarded by the Tribunal under the heads viz., pain and suffering, extra nourishment and transportation to Rs.20,000/-, Rs.6,000/-, and Rs.6,000/- respectively. Thus, the details of the modified compensation are as follows:-

HEADS	AMOUNT (Rs.)
Permanent disability	88,000/-
Medical expenses	6,000/-
Pain and suffering	20,000/-
Extra Nourishment	6,000/-
Transportation	6,000/-
Loss of earning	13,000/-
Loss of amenities	5,000/-
Attender charges	5,000/-
Damage to clothes	1,000/-
TOTAL....	1,50,000/-

Therefore, the compensation awarded by the Tribunal stands enhanced to Rs.1,50,000/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellant/claimant is not entitled for interest for the period of delay in filing the appeal, in respect of the enhanced amount of compensation.

7(i) In respect of CMA.No.559 of 2017, the appellant/ claimant herself examined as P.W.2. According to her, she was aged about 21 years at the time of accident and that she was earning a sum of Rs.10,000/- per month as an agriculturist and by doing tailoring work. The Doctor, who treated the claimant, was examined as P.W.4 and as per his deposition, the appellant/claimant sustained 60% permanent disability. Ex.P19 is the disability certificate issued by him. To prove the avocation and income of the injured, the claimant has not filed any documents. In the absence of any material evidence, the Tribunal fixed a sum of Rs.3,000/- per month and awarded a sum of Rs.1,53,000/- towards loss of earning power. The Tribunal has not narrated as to how the said amount has been arrived at. Any how, this Court is of the view that the said amount awarded towards loss of earning power is low, compared to the injuries sustained by the claimant. According to the learned counsel for the appellant / claimant, due to the accident, the claimant is not able to continue her avocation and in view of the total amputation of left leg, she lost her entire earning power to the extent of 100%. Hence, her notional monthly income according to the year of accident, viz. 2010 has to be fixed with future prospects and also multiplier method has to be adopted to arrive at the loss of earning power. Further, taking note of the fact that due to amputation of left leg, she is able to walk only with artificial limb, this Court is of the view that fixing a sum of Rs.6,000/- towards notional income, would be proper. As per the principles enunciated in the judgment of the Hon'ble Supreme Court, reported in 2017 (2) TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi & others), the appellant is entitled to 40% enhancement towards future prospects and further adopting the multiplier of 18, would be appropriate. If that is done, the loss of future earning power towards 60% disability works out to Rs.10,88,640/- ([Rs.6000+2400] x 12 x 18 x 60%). Thus, the amount awarded by the Tribunal towards 'Loss of Earning Power' at Rs.1,53,000/- stands modified to Rs.10,88,640/-. In view of awarding Rs.10,88,640/- towards loss of earning power by multiplier method, the compensation amounts awarded by the Tribunal at Rs.1,20,000/- towards disability and Rs.9,000/- towards loss of earning, stand deleted. The Tribunal has awarded Rs.91,000/- towards medical expenses as per Ex.P9 medical bills and Ex.P20 X-ray bill, which are the actual expenses incurred for the treatment taken by the appellant/claimant due to the accident and hence, the same is confirmed. However, the Tribunal has not awarded any amount towards future medical expenses. Since artificial limb has been fixed on the claimant, the same needs to be replaced once in five years and therefore, definitely the claimant would incur medical expenses in future. In such view of the matter, it would be appropriate to award a sum of Rs.1,00,000/- under the head "future medical expenses". That apart, taking note of the facts and circumstances of the case, this Court feels it just and appropriate to enhance the compensation awarded by the Tribunal under the heads viz., pain and suffering and extra nourishment to Rs.30,000/- and Rs.5,000/- respectively. The amounts awarded by the Tribunal towards transportation and damage to clothes are just and reasonable and hence the same are confirmed.

(ii).The details of the modified compensation are as follows:-

HEADS	AMOUNT (Rs.)
Loss of earning power	10,88,640/-
Pain and suffering	30,000/-
Medical expenses	91,000/-
Extra Nourishment	5,000/-
Transportation	2,000/-
Damage to clothes	2,000/-
Future medical expenses	1,00,000/-
TOTAL....	13,18,640/-

Thus, the compensation awarded by the Tribunal stands enhanced to Rs.13,18,640/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellant/claimant is not entitled for interest for the period of delay in filing the appeal, in respect of the enhanced amount of compensation.

8(i).In respect of CMA.No.560 of 2017, the Tribunal has awarded a total compensation of Rs.45,000/- with interest at the rate of 7.5% per annum from the date of petition. The Doctor who examined the appellant/ claimant, fixed the percentage of disability at 24, taking note of the nature of injuries sustained by her, for which the Tribunal has awarded a sum of Rs.24,000/- at the rate of Rs.1,000/- per percentage of disability. It is the evidence of P.W.3/appellant /claimant that she was aged about 2 years at the time of accident and was excellent in academics. As per Ex.P13 wound certificate, she had sustained mild swelling over right shoulder and laceration injury in right forehead and she took treatment as inpatient for 9 days. P.W.4/doctor has deposed that she had mild swelling deformity over the middle of right clavicle bone with bony thickening; right clavicle bone's length has been shortened by

1cm; right shoulder muscles are wasted by 1cm; and movements of right shoulder joint have been limited to 10 degree. Ex.P22 is the disability certificate (24%). Therefore, taking note of the age of the claimant and deformities on her body resulting in disability, the award of Rs.24,000/- towards disability, in the opinion of this Court, is very low.

(ii)The Supreme Court in R.D. Hattangadi vs. M/s. Pest Control (India) Pvt. Ltd. and Others[(1995) 1 SCC 551], held that while assessing the non-pecuniary damages, the damages for mental and physical shock, pain and suffering already suffered and that are likely to be suffered, any future damages for the loss of amenities in life like difficulty in running, participation in active sports, etc., damages on account of inconvenience, hardship, discomfort, disappointment, frustration, etc., have to be addressed especially in the case of a child victim. For a child, the best part of his life is yet to come. While considering the claim by a victim child, it would be unfair and improper to follow the structured formula as per the Second Schedule to the Motor Vehicles Act for reasons more than one. The main stress in the formula is on pecuniary damages. For children, there is no income. The only indication in the Second Schedule for non-earning persons is to take the notional income as Rs.15,000/- per year. A child cannot be equated to such a non-earning person. Therefore, the compensation is to be worked out under the non-pecuniary heads, in addition to the actual amounts incurred for treatment done and/or to be done, transportation, assistance of attendant, etc. The main elements of damage in the case of child victims are the pain, shock, frustration, deprivation of ordinary pleasures and enjoyment associated with healthy and mobile limbs. The compensation awarded should enable the child to acquire something or to develop a lifestyle which will offset to some extent the inconvenience or discomfort arising out of the disability. Hence, appropriate compensation for disability should take care of all the non-pecuniary damages. In other words, apart from this head, there shall only be the claim for the actual expenditure for treatment, attendant, transportation, etc.

(iii)In Master Mallikarjun v. Divisional Manager, National Insurance Co.Ltd and another, [(2013) 2 TNMAC 338 (SC)], the Supreme Court determining the compensation at Rs.3,00,000/- for 18% permanent disability to the victim child by adopting notional lump sum compensation method. While doing so, it was held as under:

> "Though it is difficult to have an accurate assessment of the compensation in the case of children suffering disability on account of a motor vehicle accident, having regard to the relevant factors, precedents and the approach of various High Courts, we are of the view that the

appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10% and upto 30% to the whole body, Rs.3 lakhs; upto 60%, Rs.4 lakhs; upto 90%, Rs.5 lakhs and above 90%, it should be Rs.6 lakhs. For permanent disability upto 10%, it should be Re.1 lakh, unless there are exceptional circumstances to take different yardstick.....”

In the light of the aforesaid legal proposition and taking note of the facts and circumstances of the case, it would be appropriate to enhance the compensation under the head “permanent disability” to Rs.1,50,000/- and accordingly it is modified. In view of the same, the amount awarded by the Tribunal towards loss of earnings at Rs.6,000/- stands deleted.

(iv) Having regard to the nature of injuries sustained by the appellant/claimant and also taking note of the fact that the parents of the child would have suffered loss of earnings during the treatment period, it would be appropriate to award a consolidated sum of Rs.25,000/- towards “Discomfort, inconvenience and loss of earnings to the parents during the treatment period” and to enhance the amount awarded by the Tribunal towards extra nourishment Rs.5,000/-. Due to the injuries suffered, certainly the claimant would have incurred expenses after some time for which a sum of Rs.15,000/- is now awarded under the head “future medical expenses”. Further, taking note of the facts and circumstances, enhancing the amount awarded by the Tribunal towards transportation from Rs.1,000/- to Rs.5,000/- would meet the ends of justice. The amounts awarded by the Tribunal towards medical bills, pain and suffering and damage to clothes, at Rs.2,000/-, Rs.10,000/- and Rs.1,000/- are confirmed.

(v) The details of the modified compensation are as follows:

HEADS	AMOUNT (Rs.)
Disability	1,50,000/-
Pain and suffering	10,000/-
Medical bills	2,000/-
Extra Nourishment	5,000/-
Transportation	5,000/-
Damages to clothes	1,000/-
Discomfort, inconvenience and loss of earnings to the parents during the treatment period	25,000/-
Future medical expenses	15,000/-
TOTAL....	2,13,000/-

Thus, the compensation awarded by the Tribunal stands enhanced to Rs.2,13,000/- with interest at the rate of 7.5% per annum from the date of petition. It is made clear that the appellant/claimant is not entitled for interest for the period of delay in filing the appeal, in respect of the enhanced amount of compensation.

9.At this juncture, it has to be pointed out that at the time of filing the appeals, the appellants/claimants in CMA.Nos.559 and 560 of 2017, claimed compensation of Rs.10,00,000/- and Rs.2,00,000/- respectively, which were restricted to Rs.2,00,000/- and Rs.1,00,000/- for the purpose of payment of Court fee. Now, this Court enhanced the compensation awarded by the Tribunal in excess to that one which has been claimed by the appellants/claimants. Such sort of exercise is permissible, to award just and reasonable compensation, as per the recent judgment of the Supreme Court in Ramla & Ors. v. National Insurance Company Limited & Ors. [(2019) 2 SCC 192], where in para 5, it was held as under:

> "Though the claimants had claimed a total compensation of Rs.25,00,000/- in their claim petition filed before the Tribunal, we feel that the compensation which the claimants are entitled to is higher than the same as mentioned supra. There is no restriction that the Court cannot award compensation exceeding the claimed amount, since the function of the Tribunal or court under Section 168 of the Motor Vehicles Act, 1988 is to award "just compensation". The Motor Vehicles Act is a beneficial and welfare legislation. A "just compensation" is one which is reasonable on the basis of evidence produced on record. It cannot be said to have become time barred. Further, there is no need for a new cause of action to claim an enhanced amount. The courts are duty bound to award just compensation."

Therefore, the limiting of claim of the appellants to Rs.2,00,000/- and Rs.1,00,000/- respectively, cannot come into way in awarding higher compensation.

10.The Civil Miscellaneous Appeals are disposed of with the above modifications. No costs. The third respondent/Insurance Company is directed to deposit the entire compensation amounts, with interest and costs, now determined by this Court as above, after deducting the amounts, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposits being made, the Tribunal shall transfer the same to the respective savings bank account of the appellants/ claimants, in CMA Nos.558 and 559 of 2017 through RTGS within a period of one week thereafter. The Tribunal shall deposit the share of the minor appellant/claimant in CMA No.560 of 2017, in a fixed deposit in any one of the Nationalised

Banks, till she attains the age of majority. The interest accrued in the bank deposit, shall be withdrawn by the father/guardian of the minor, once in three months directly from the bank, which shall be used for the benefit and welfare of the minor. It is needless to state that the appellants /claimants have to pay the necessary court fee for receiving the awarded amounts.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
Subordinate Judge,
Bhavani.

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

+3cc to Mr.C.Kulanthaivel, Advocate, S.R.No. 27457, 27450, 27449

C.M.A.Nos.558 to 560 of 2017

VBA(CO)
GN(08/06/2021)