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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.01.2021

Coram

The Honourable Mr.Justice D.KRISHNA KUMAR

C.M.A.No.1591 of 2003

Palaniappan

...Claimant/Appellant

..Vs..

1. C.Subramani
2. M/s. National Insurance Co., Ltd.,  
Branch Office-I,  
Thenthai Periyar Complex,  
Salem-1.

...Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree passed by the learned Additional District and Sessions Judge (FTC-1), (MACT), Salem in M.C.O.P.No.285 of 1998 dated 28.06.2002.

For Appellant : Mr.K.Kuppusamy

For Respondent-2 : Mrs.Sree Vidhya

#### J U D G M E N T

Aggrieved by the award passed by the Additional District & Sessions Judge (FTC-1) (M.A.C.T.), Salem in M.C.O.P. No.285/1998 dated 28.06.2002, the claimant has preferred the present appeal.

2. The brief facts of the case are as follows:

On 04.01.1998 at about 7.00 a.m., when the claimant was proceeding near Ramakrishna Park, Hasthampatty police limit, Salem in his TVS 50 Moped bearing Registration No. TN-27-B-7084, the first respondent's motor cycle bearing registration No.TN-27-B-2122 which was driven in a rash and negligent manner, hit the claimant and thereby caused grievous injuries to the claimant. He was admitted in hospital and taken treatment. Hence, the claimant has filed a claim petition, claiming a sum of Rs.5,00,000/- as compensation from the respondents towards permanent disability sustained by the claimant.



3. Before the Tribunal, P.W.1 to P.W.3 were examined and Exs.P1 to P6 were marked on the side of the claimant. R.W.1 to R.W.3 were examined and Exs.R1 to R7 were marked on the side of the respondents. The Tribunal after analysing the oral and documentary evidence came to the conclusion that the accident occurred only due to the rash and negligent driving of the driver of the respondent vehicle and awarded a sum of Rs.2,64,142/- as compensation along with interest at the rate of 9% p.a. from the date of petition till the date of payment. The award passed by the tribunal under various heads are as follows:

| Heads                    | Compensation<br>Awarded by the<br>tribunal (Rs.) |
|--------------------------|--------------------------------------------------|
| Permanent disability 90% | 90,000/-                                         |
| Medical bills            | 1,61,142/-                                       |
| Pain and sufferings      | 10,000/-                                         |
| Total                    | 2,61,142/-                                       |

4. Challenging the award passed by the Tribunal, the claimant has come forward with the present appeal for enhancement of compensation.

5. The learned counsel appearing for the claimant/appellant submitted that the compensation awarded by the Tribunal is very meagre as the claimant suffered 90% permanent disability and moreover, the claimant has lost his life and he cannot do any work without any assistance and further, he is unable to perform his day-to-day activities. The learned counsel further submitted that the claimant should be awarded a just and reasonable compensation as the negligence on the part of the driver of the respondent's vehicle is confirmed by the Tribunal. Therefore, considering all these aspects, the appellant seeks enhancement of compensation awarded by the tribunal.

6. On the other hand, the learned counsel appearing for the respondent/Insurance Company submitted that the Tribunal has awarded a just and reasonable compensation to the claimant. She further submitted that they are disputing the factum of percentage of disablement arrived at by the Tribunal and also the multiplier method adopted by the Tribunal and contended that no further enhancement is required.





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(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

11. Considering the evidence of P.W.2 and the decision of the Hon'ble Supreme Court in RAJ KUMAR case (supra), the disabilities sustained by the appellant is almost total insofar as the earning capacity.

12. In yet another decision in the case of K. JANARDHAN V. UNITED INDIA INSURANCE CO. LTD., [(2008) 8 SCC 518] the Hon'ble Supreme Court held as under:

"5. The learned counsel for the appellant has raised only one argument during the course of the hearing. He has submitted that the appellant claimant being a tanker driver, the loss of his right leg ipso facto meant a total disablement as understood in terms of Section 2 (1)(1) of the Workmen's Compensation Act and as such the appellant was entitled to have his compensation computed on that basis. In support of this plea, the learned counsel has placed reliance on Pratap Narain Singh Deo v. Srinivas Sabata [(1976) 1 SCC 289 : 1976 SCC (L&S) 52] .



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The cited case pertained to a carpenter who had suffered an amputation of his left arm from the elbow and this Court held that this amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under: (SCC p. 291, para 5)

"5. The expression "total disablement" has been defined in Section 2(1)(1) of the Act as follows:

"2. (1)(1) "total disablement" means such disablement, whether of a temporary or permanent nature, as incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement"

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all work which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

"The injured workman in this case is carpenter by profession... By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only."

This is obviously a reasonable and correct finding. Counsel for the appellant has not been able to assail it on any ground and it does not require to be corrected in this appeal. There is also no justification for the other argument which has been advanced with reference to Item 3 of Part II of Schedule 1, because it was not the appellant's case before the Commissioner that amputation of the arm was from 8" from tip of acromion to less than 4½" below the tip of olecranon. A new case cannot therefore be allowed to be set up on facts which have not been admitted or established."

6. Applying the ratio of the cited judgment to the facts of the present case we are of the opinion that the appellant herein has also suffered a 100% disability and incapacity in earning his keep as a tanker driver as his



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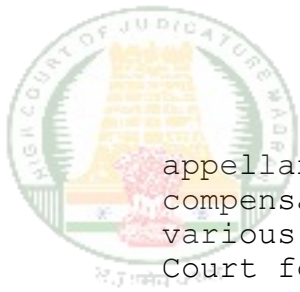
right leg had been amputated from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act, 1988 would show that the appellant would now be disqualified from even getting a driving licence.''

13. Reverting to the facts of the case on hand, the appellant who was a Mechanic suffered 90% permanent disability; both upper and lower limbs are non functional. Therefore, the appellant was incapacitated to work as Mechanic. In the light of decisions of the Hon'ble Supreme Court cited supra, NATIONAL INSURANCE CO. LTD. VS. PRANAY SETHI [(2017) 16 SCC 680] and PAPPU DEO YADAV VS. NARESH KUMAR & OTHERS [CDJ 2020 SC 727], it is appropriate for this Court to adopt multiplier method for fixing compensation towards loss of income. Considering the age of the appellant, i.e. 52 years, as per the II Schedule to the amended Motor Vehicles Act, 1988 and as per the dictum laid down by the Hon'ble Supreme Court in Sarala Varma case, 11 multiplier should be adopted. Accordingly, the compensation towards loss of income due to permanent disability is Rs.4649/- x 12 x 11 = Rs.6,13,800/-. Accordingly, the award passed by the tribunal towards loss of income is modified to the aforesaid extent. Insofar as other conventional heads are concerned, it requires enhancement of compensation.

14. In view of the aforesaid discussion, the award passed by the tribunal is modified as under:

| Heads                                      | Compensation awarded by the tribunal Rs. | Compensation enhanced/ Awarded by this Court Rs. |
|--------------------------------------------|------------------------------------------|--------------------------------------------------|
| Loss of income due to permanent disability | 90,000/-                                 | 6,13,800/-                                       |
| Pain & Sufferings                          | 10,000/-                                 | 50,000/-                                         |
| Medical bills                              | 1,61,142/-                               | 1,61,142/-                                       |
| Transportation                             | --                                       | 10,000/-                                         |
| Extra Nourishment                          | --                                       | 25,000/-                                         |
| Attendant charges                          |                                          | 30,000/-                                         |
| Total :                                    | 2,61,142/-                               | 8,89,942/- rounded of to 9,00,000/-              |

15. Accordingly, the appellant / claimant is entitled to a sum of Rs.9,00,000/- (Rupees nine lakhs only) as compensation along with interest at the rate of 7.5%. Since the



appellant restricted his claim to Rs.5 lakhs only as compensation, it is relevant for this Court to rely upon the various decisions of the Hon'ble Supreme Court as well as this Court for enhancement of compensation.

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16. The Hon'ble Supreme Court by considering the scope of Section 41 Rule 33 of the Civil Procedure Code has held that the Court has ample powers to enhance the compensation amount without preferring cross objection in the following cases:

- a) NAGAPPA VS. GURDAYAL SINGH & OTHERS (2003 ACJ 12]
- b) KAVITA VS. DEEPAK AND OTHERS [2012 (2) TN MAC 362 (SC)]
- c) RESHMA KUMARI & OTHERS VS. MADAN MOHAN AND ANOTHER [2013 (9) SCC 65]
- D) TAMIL NADU STATE TRANSPORT CORPORATION LTD. , REP. BY ITS MANAGING DIRECTOR, ERODE VS. KARUPATHAL AND 4 OTHERS [CMA.1845 OF 2017]
- E) RAMLA AND OTHERS VS. NATIONAL INSURANCE COMPANY LTD., & OTHERS [2019 (2) SCC 192]

17. Likewise, in the case of GOVIND YADAV V. THE NEW INDIA INSURANCE CO. LTD., reported in 2012 ACJ 28 SC, the dictum of law laid down by the Hon'ble Apex Court held that compensation can be granted under non pecuniary heads for permanent disability. The same principle has been followed by the Hon'ble Supreme Court in KAVITA VS. DEEPAK AND OTHERS reported in 2012 (2) TN MAC 362 (SC), The relevant paragraphs of the said decision are extracted below:

"18. In light of the principles laid down in the aforementioned cases, it is suffice to say that in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily, efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earning and inability to lead a normal life and enjoy amenities, which would have been enjoyed but for the disability caused due to the accident. The amount awarded under the head of loss of earning capacity are distinct and does not overlap with the amount awarded for pain, suffering and loss of enjoyment of life or the amount awarded for medical expenses. "



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Rule 33 of Code of Civil Procedure and also in view of the rulings of the Supreme Court in *Dhangir v . Madan Mohan* , AIR 1988 SC 54 to grant the proper relief . Of course , the Apex Court has pointed out in clear and categorical terms and the power conferred under Order 41 , Rule 33 on the Appellate Court is discretionary , and then it must be used in proper case using the judicial discretion to render justice . The Apex Court in *United India Insurance Co. , Ltd. , v . Narendra Pandu - rang Kadam and others* , 1995 ( 1 ) SCC 320 has clearly laid down that the rate of interest must be awarded from the date of the petition and not from the date of the Judgment."

11 .Gurudayal excerpt Over and above that decision of the Hon'ble Three Judges Bench of the Hon'ble Apex Court, in *Nagappa v. Singh and others*, 2003 AC) 12: 2004 (2) TN MAC 398 (SC), could be cited here. An from it would run thus: "Firstly, under the provisions of Motor Vehicles Act, 1988 (hereinafter referred to as the MV Act), there is no restriction that compensation could be awarded only up to the amount claimed by the claimant. In an appropriate case where from the evidence brought on record if Tribunal / Court considers that claimant is entitled to get more compensation than claimed, the Tribunal may pass such award. Only embargo is - it should be 'just' compensation, that is to say, it nor should neither be arbitrary, fanciful unjustifiable from the evidence.

18. Though this Court in exercise of powers conferred under Order 41 Rule 33 of the Civil Procedure Code has suo motu enhanced the compensation and time and again this Court has observed that even for meager amount and in particular, in the case on hand, a sum of Rs.3,750 / per month, being taken consideration for the purpose of computing the loss of contribution to the family, appeal has been filed and that Transport Corporations are spending huge



amount for Court fee and also delaying disbursement of compensation awarded by the Tribunal. "

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18. In a decision of the Hon'ble Supreme Court in the case of Ramla and others Vs. National Insurance Company Ltd. , & others reported in 2019 (2) SCC 192, wherein it has held that the Courts are duty - bound to award just compensation. The relevant portion of the decision reads as follows:

"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. (a) Nagappa Vs. Gurudayal Singh -2003 (2) SCC 274; b) Magma General Insurance Co. Ltd. , V. Nanu Ram - 2018 (18) SCC 130 and c) Ibrahim V. Raju - 2011 (10) SCC 634). "

19. Accordingly, the compensation awarded by the tribunal is enhanced from Rs.2,61,142/- to Rs.9,00,000/-. The respondent/Insurance Company is directed to deposit the enhanced award amount along with interest at the rate of 7.5% p.a. to the credit of M.C.O.P.No.285 of 1998 on the file of the Additional District and Sessions Judge (FTC-1), (MACT), Salem within a period of eight weeks from the date of receipt of copy of the judgment, less the amount if any already deposited before the tribunal. On such deposit being made by the respondent/Insurance Company, the claimant/appellant is permitted to withdraw the amount by filing appropriate application. The Claimant is directed to pay the additional court fees if any, for the enhanced compensation amount.



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20. In fine, the Civil Miscellaneous Appeal is allowed to the aforesaid extent. No costs.

Sd/-  
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,  
F.T.C.-1/M.A.C.T., Salem.
2. The Section Officer,  
V.R.Section,  
Madras High Court, Chennai-104.

+1cc to M/s.Sree Vidhya, Advocate, S.R.No.3317

C.M.A.No.1591 of 2003

SS[col]  
NSK 12/11/2021