IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 29.01.2021	Date of Pronouncing Judgment 23.04.2021

CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1329 of 2015

V. Sakthivel .. Appellant/Petitioner

Vs.

1. A. Easwari

2. M/S. United India Insurance Company Ltd.,
   Door No – II, (1st floor), 104 – A,
   Peramanur Main Road,
   Salem District. .. Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded in judgment and decree dated 18.10.2012 made in M.C.O.P.No.888 of 2011 on the file of MACT / Additional District Court at Namakkal, with interest and cost by allowing this civil miscellaneous appeal.

For Appellant : Mr. Ma. P. Thangavel

For Respondents : Mrs. I. Malar, for R2
R1 – Ex parte

J U D G M E N T

The award dated 18.10.2012, passed in M.C.O.P.No.888 of 2011 is under challenge. The claimant filed the present appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of the appeal are as follows:-

(i) The appellant sustained injuries on 12.11.2011 as a result of an accident caused by a Ashok Leyland Lorry bearing Registration No.TDM 8386 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in

M.C.O.P.No.888 of 2011 seeking a compensation of Rs.10,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its Award dated 12.11.2011 in M.C.O.P.No.888 of 2011 directed the second respondent to pay the appellant a sum of Rs.4,50,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

5. The factum of the accident and the manner of the accident and negligence on the part of the driver of the first respondent which was insured with the second respondent / United India Insurance Company Limited are not in dispute and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

6. On the point of quantum of compensation, the tribunal has assessed the compensation taking into the fact that the injured is an Agricultural Labour, aged about 32 years. P.W.1/ injured had taken treatment under P.W.2 Doctor / Sivakumar, who had issued Ex.P.11 permanent disability certificate and assessed the disability at 80% but the tribunal has re-assessed at 75%. On a combined reading of Ex.P.2 wound certificate and Ex.P.6 discharge summary, it is seen that the accident took place on 12.11.2011, the claimant's left thigh area was crushed in the accident and there was an amputation up to thigh and skin grafting for his stomach also done and he has to depend on others to walk and to perform his job.

7. Taking into consideration, the disability assessed by the tribunal and also the injury sustained, I find that 80% disability fixed by the Doctor appears to be reasonable. Accordingly, the percentage of disability is fixed at 80%. He is an agricultural coolie, it could be seen from Ex.P1 FIR and evidence of P.W.1. His disability and earning capacity has been reduced considerably and in fact being an agricultural coolie, he could not be able to do his job as he would do before the accident and hence I am of the considered view that multiplier method has to be adopted. Based on the judgment of the Hon'ble Supreme Court, reported in 2020-SCC Online SC 601 [Erudhya Priya Vs. State Transport Corporation Ltd.,], wherein the Apex Court has held that in respect of permanent disability, when the claim petitioner makes out a case that due to the permanent disability, he suffered functional disability and which will

affect his future income is also entitled for future prospects on the line as granted in the case of fatal in Pranay Sethi's case.

8. In the decision reported in 2020-SCC Online SC 752 [Pappu Deo Yadav Vs. Naresh Kumar & others], the Hon'ble Supreme Court has held as follows:-

> "6. The principle consistently followed by this Court in assessing motor vehicle compensation claims, is to place the victim in as near a position as she or he was in before the accident, with other compensatory directions for loss of amenities and other payments. These general principles have been stated and reiterated in several decisions.
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> 7 & 8. .....
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> 9. In the judgment of the Constitution Bench in Pranay Sethi [National Insurance Company Limited Vs. Pranay Sethi and others], (2017) 16 SCC 680), this Court has held that the benefit of future prospects should not be confined only to those who have a permanent job and would extend to self-employed individuals. In the case of a self-employed person, an addition of 40% of the established income should be made where the age of the victim at the time of the accident was below 40 years. Hence, in the present case, the appellant would be entitled to an enhancement of Rs.2400 towards loss of future prospects.
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> 10 to 18. .....
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> 19. .... In some cases for personal injury, the claim could be in respect of lifetime's earnings lost because, though he will live, he cannot earn his living. In others, the claim may be made for partial loss of earnings. Each case has to be considered in the light of its own facts and at the end, one must ask whether the sum awarded is a fair and reasonable sum.
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> 20. .... What is to be seen, as emphasized by decision after decision, is the impact of the injury upon the income generating capacity of the victim. The loss of a limb (a leg or arm) and its severity on that account is to be judged in relation to the profession, vocation or business of the victim; there cannot be a blind arithmetic formula for ready application. On an overview of the principles outlined in the previous decisions, it is apparent

that the income generating capacity of the appellant was undoubtedly severely affected. May be, it is not to the extent of 89%, given that he still has the use of one arm, is young and as yet, hopefully training (and rehabilitating) himself adequately for some other calling. Nevertheless, the assessment of disability cannot be 45%; it is assessed at 65% in the circumstances of this case."

9. In the decision reported in CDJ 2021 SC 196 [Karthik Subramaniam Vs. B.Sarath Babu], a Division Bench of the Hon'ble Supreme Court has held as follows:-

"In our view, this issue is no more res integra in view of Sandeep Khanduja's case (supra) and Erudhaya Priya's case (supra) opining that multiplier method has to be applied for future prospects and advancement in life and career."

10. Hence, based upon the above principles as to the occupation and determination of assessment of loss of income due to the permanent disability suffered by the injured in the road transport accident, when the claimant has suffered permanent disability and such a nature which will affect his earning capacity and hence, for functional disability, multiplier method has to be adopted, as held in the decision of the Hon'ble Apex Court reported in 2010 (2) TN MAC 581 SC, [Rajkumar Vs. Ajaykumar & another].

11. In the decision reported in 2017 (2) TN MAC 609 (SC), [National Insurance Company Limited Vs. Pranay Sethi and others], the Hon'ble Supreme Court has awarded enhancement of salary by adding future prospects in respect of fatal cases. In Erudhya Priya's case [cited supra], the Hon'ble Supreme Court has directed to assess the compensation only in the case of functional disability by adding multiplier method but also directed to add future prospects in appropriate cases and the law has been settled in Karthik Subramaniam's case [cited supra].

12. With the above legal position in mind, the pecuniary loss sustained by P.W.1 / injured in the accident is reassessed as follow:

Since the claimant is an Agricultural Labour, this Court deem it fit to fix his monthly income at Rs.5,000/-. 5000+40% = 7000/-

7000x80/100x12x16 = 10,75,200/-

13. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,50,000/- to Rs.11,95,200/- the details of which read as follows:

Sl. No.	Heads	Tribunal Award	High Court	MODIFIED/ CONFIRMED
1	For Injuries	Rs.5,000/-	Rs.5,000/-	Confirmed
2	Loss of Income	Rs.45,000/-	Rs.20,000/- (for 4 months 5,000x4)	Modified
3	Transportation	Rs.5,000/-	Rs.5,000/-	Confirmed
4	Extra Nourishment	Rs.35,000/-	Rs.10,000/-	Modified
5	Medical Bill	Rs.35,000/-	Rs.35,000/-	Confirmed
6	Pain and Sufferings	Rs.40,000/-	Rs.15,000/-	Modified
7	Disability	Rs.75,000/-	Nil	Modified
8	Loss of Earning Capacity	Rs.2,10,000/-	Rs.10,75,200/-	Modified
9	Loss of Amenities	Nil	Rs.15,000/-	Awarded
10	Attendant Charges	Nil	Rs.15,000/-	Awarded
	Total	Rs.4,50,000/-	Rs.11,95,200/-	

14. Accordingly, the modified compensation of Rs.11,95,200/- is to be paid to the appellant along with the interest from the date of claim petition. The second respondent / United India Insurance Company Ltd., is directed to deposit the modified award amount of Rs.11,95,200/- along with the interest, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated 18.10.2012, passed in M.C.O.P.No.888/2011, stands modified and C.M.A.No.1329/2015 stands allowed in part. No costs.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

AT

To

The Motor Accident Claims Tribunal,
Additional District Court,
Namakkal.

Copy to:
The Section Officer,
V.R. Section,
High Court, Madras.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.25385

C.M.A.No.1329 of 2015

JPL(CO)
SU(29/04/2022)