



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment
24.02.2021

Date of Pronouncing Judgment
23.06.2021

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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1653 of 2015

R. Thangavel

..Appellant/Petitioner

Vs.

1. M. Jayalakshmi

2. M/s.United India Insurance Company Limited,
Branch Office, No.85, Salem Road,
Namakkal.

..Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation awarded in the judgment and decree dated 18.01.2011 made in M.C.O.P.No.377 of 2005 on the file of MACT/Fast Track Court at Namakkal.

For Appellant : Mr. Ma.P.Thangavel

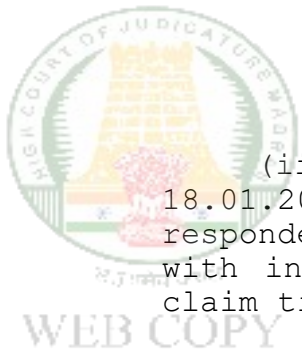
For Respondents : Ms. I. Malar, for R2
R1 - Ex-parte

J U D G M E N T

The award dated 18.01.2011 passed in M.C.O.P.No.377 of 2005, is under challenge in the present civil miscellaneous appeal. The claimant is the appellant and the appeal is filed seeking enhancement of compensation.

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

(i) The appellant sustained injuries on 27.01.2005 as a result of an accident caused by a Lorry bearing Registration No.TN 28 B 6336 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.377 of 2005 seeking a compensation of Rs.4,00,000/-.



(ii) The Motor Accident Claims Tribunal, by its Award dated 18.01.2011 in M.C.O.P.No.377 of 2005 directed the second respondent to pay the appellant a sum of Rs.2,90,600/- 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; 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. The learned counsel for the claimant would contend that due to the accident, the claimant who is a painter by profession had suffered multiple permanent disability over the head and fracture in the left hip bone and sciatic nerve on the left side and had underwent surgeries three times. Hence the compensation awarded by the Tribunal in respect of the permanent disability under the heading of loss of earning capacity is to be enhanced and future prospects has to be granted.

7. 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. The learned counsel for the Insurance Company would submit that the compensation awarded by the Tribunal is just and reasonable and made a submission in support of the award passed by the Tribunal. PW.2 Doctor/Mani has deposed based upon Ex.P7 discharge summary and Ex.P.8-Medical Prescription and also the scan reports which is marked as Exs.P9 and P10 and Ex.P12 had issued the permanent disability certificate and has fixed the disability at 55%.



9. The Tribunal on consideration of the evidence placed before it had fixed the disability at the rate of 20% and also gave a specific finding that in view of the injuries sustained by the claim petitioner/appellant who had suffered permanent disability which had resulted in loss of earning capacity.

10. Taking note of the fact that the sciatic nerve on the left hand side is not working and two bones on the hip are also broken. After perusing the evidence of P.W.2 coupled with documentary evidence of Exs.P7, P8, P9, P10 and P12, this Court finds that the injured who is a painting contractor and due to the accident sustained multiple injuries and compound fracture in the left leg, left hand figure and right side hip, he was operated on the left hand and for left hip bone fracture plates and screws were fixed and third injuries was performed in the head by putting the hole and the blood clot was removed and necessary supplementary evidence have also been made.

11. Hence, taking note of the fact that the claim petitioner was working as a painter as could be seen from Ex.P3 membership certificate issued by the Tamilnadu Painters Association, he cannot carry on his avocation as before the accident. Hence, I find that the Tribunal has rightly adopted the multiplier method in view of loss of earning capacity.

12. Taking note of the injuries and also the permanent disability as reflected in Ex.P12 coupled with the oral evidence of Doctor/P.W.2 Mani, I find that the loss of earning capacity would be fixed at 35%.

13. Following the Pappu Yadav's case, he is also entitled for future prospects at the rate of 40%. The accident had taken place in the year 2005. Hence, this Court finds that Rs.6,000/- as a notional income for the painting contractor and future prospects for the person and The adopted multiplier is 15 therefore, a loss of earning capacity is $6000 + 40\% = 8,400 \times 12 \times 15 \times 35 / 100 = 5,29,200/-$. In respect of other heads of compensation, Loss of earning during treatment is Rs.6,000/- for three months = Rs.12,000/-, Rs.20,000/- towards pain and sufferings, Rs.30,000/- towards loss of amenities, Rs.1,21,602, for Medical expenses, Rs.15,000/- for Transportation-, Rs.15,000/- for Attendant charges and Rs.10,000/- for Extra nourishment.

14. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,90,600/- to Rs.7,52,802/- the details of which read as follows:



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Head	Amount (Rs.)
Loss of earning capacity	5,29,200/-
Loss of earning during treatment for three months (6,000x3)	12,000/-
Pain and sufferings	20,000
Loss of amenities	30,000/-
Medical expenses	1,21,602/-
Transportation	15,000/-
Attendant charges	15,000/-
Extra nourishment	10,000/-
Total	7,52,802/-

15. Accordingly, the modified compensation of Rs.7,52,802/- is to be paid to the appellant along with the interest from the date of accident. The second respondent / United India Insurance Company Limited, is directed to deposit the modified award amount of Rs.7,52,802/- 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 18.01.2011, passed in M.C.O.P.No.377 of 2005, stands modified and C.M.A.No.1653 of 2015 stands allowed in part. No costs.

Sd/-

Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

AT

To

The Motor Accident Claims Tribunal, Fast Track Court, Namakkal.

Copy to:

The Section Officer, V.R.Section, High Court, Madras.

+1cc to Mr.Ma.P.Thangavel, Advocate SR. No. 29494

C.M.A.No.1653 of 2015

CA (CO)

PR (07/06/2022)