



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 30.03.2021

CORAM:

THE HON'BLE Mr.JUSTICE D.KRISHNAKUMAR

Civil Miscellaneous Appeal No.2043 of 2012

R.S.Rajan ... Claimant/Appellant

..Vs..

1.State Government of Tamilnadu,
Rep. by the Governor of Tamilnadu,
Raj Bhawan, Chennai.

2.The Superintendent of Police (Rural),
District Superintendent Office,
Shevvapet, Salem Town,
Salem District.

3.K.Murugesan, PC No.452,
S/o Kuppusamy,
No.118/137, A.R.Lane,
Kumarasampatti, Salem-7.

... Respondents/Respondents

Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 05.01.2011 made in M.C.O.P.No.289 of 2006 on the file of IInd Additional subordinate Judge (Motor Accidents Claims Tribunal), Salem.

For Appellant : Ms.T.Gayathri for Mr.C.Kulanthaivel
For Respondent No.1 & 2 : Mr.Y.T.Aravind Gosh AGP(CS)
Respondent No.3 : No appearance

JUDGMENT

Brief facts of the claimant's case is as follows:

It is the case of the claimant that while he was working at the Edappady Police Station as Head Constable on 03.12.2004 at about 3.30 a.m, travelled along with other police men in the Jeep bearing no.TN-27-G-1258, when the Jeep was proceeding towards Konganapuram near Kattchuppalli Privu Road, the driver drove the jeep in a rash and negligent manner and hit against the Tamarind Tree, thereby caused the accident, resulting in, the claimant and others who were



traveling in the Jeep sustained multiple injuries. The claimant was under unconscious stage and he was taken to the Sri Gokulam Hospital for treatment and admitted in Sri Chellappa Hospital as an inpatient till 30.12.2004. The claimant has filed a claim petition before the tribunal, claiming compensation of Rs.25,00,000/- from the respondents for the injuries sustained by him.

2. Before the Tribunal, claim against the first respondent was dismissed as not pressed. The second respondent filed counter and additional counter affidavits stating that the accident was not due to the rash and negligence of the third respondent, the cause of accident is steering rod of the Jeep was broken that led to accident. The accident neither caused income loss nor affected the petitioner's promotional opportunity. The 100% disability claimed by the petitioner is excessive. The petitioner was getting salary and other allowances from the department and therefore, the petitioner is not entitled to compensation. According to the third respondent, the accident was not due to the rash and negligence of the third respondent, steering rod of the Jeep was broken and the Jeep was uncontrolled, hit against the tamarind tree. Therefore, the third respondent is not liable to pay compensation.

3. On the side of the petitioner, petitioner alone was examined as P.W.1 and Exhibits P1, P2 & Exhibits P10 to P25 & P33 were marked on the side of the claimant whereas on the side of the respondents, R.W.1 was examined and Exhibits R3 to R5 were marked. After analyzing both oral and documentary evidences, the Tribunal has awarded Rs.25,000/- as total compensation along with interest at the rate of 7.5% p.a from the date of petition till realization. The total compensation awarded by the tribunal under no fault liability clause.

4. Heard the learned counsel appearing for the claimant/appellant, the learned counsel appearing for the 2nd respondent and perused the materials available on record.

5. According to the appellant, the tribunal found that due to rash and negligent driving of the offending vehicle, the appellant sustained grievous injuries and the accident was occurred during the course of his employment as Head Constable. The claimant produced the disability certificate Exhibit P.30 issued by the Orthopedic doctor who was examined as P.W.2, deposed before the Court below, that the appellant sustained 50% permanent disability. Considering the claim of the appellant, the tribunal has awarded meager amount of Rs.25,000/- under no fault liability under section 163(A) of the M.V. Act. According to the appellant, the appellant sustained severe injuries due to the accident. Hence, P.W.2 assessed 50% permanent disability. Considering the nature of disability, the tribunal ought to have adopted



multiplier method for awarding compensation. Therefore, the learned counsel appearing for the appellant seeks enhancement of compensation by adopting multiplier method.

6. On the contrary, the learned Additional Government Pleader appearing for the 2nd respondent submitted that the appellant cannot claim under Section 163-A of M.V. Act, where multiplier method will have to be adopted in a case where the victim has to prove that he lost his earning capacity. Whereas in the present case, the appellant was working in the department continuously. Therefore, multiplier method under Sec.163-A of M.V. Act would not apply to the appellant.

7. The contention of the learned counsel appearing for the appellant, the tribunal has not awarded adequate compensation under conventional heads. In response to the said contention, the learned Additional Government Pleader appearing for the respondents submitted that the appellant is not entitled to compensation under Section 163-A of M.V. Act. Therefore, the contention of the appellant is liable to be rejected.

8. The next contention of the appellant is that the appellant has produced medical bills by claiming a sum of Rs.1,70,186/- and the bills were also marked as Ex.P21 series before the tribunal. However, the tribunal failed to consider the medical bills and rejected it. In support of his contention, the learned counsel appearing for the appellant also placed reliance on the judgment of TELANGANA HIGH COURT reported in 2019 (2) ANDHRA WEEKLY 419 [RELIANCE GENERAL INSURANCE, HYDERABAD VS. K.RAVI, HYDERABAD] wherein TELANGANA HIGH COURT placing reliance on the decision of the Hon'ble Supreme Court in PUTTAMMA VS. K.L.NARAYANA REDDY [2014 ACJ 526] held that the medical expenses incurred by the claimant need not be restricted to Rs.15,000/- as per Clause 4(ii) of the Second Schedule. In view of the aforesaid judgment, the appellant is entitled to claim the actual amount incurred towards medical expenses.

9. The provision under Sec.163-A of M.V. Act reads as follows:

163A. Special provisions as to payment of compensation on structured formula basis.-

(1) Notwithstanding anything contained in this Act or in any other law for the time being in force or instrument having the force of law, the owner of the motor vehicle or the authorised insurer shall be liable to pay in the case of death or permanent disablement due to accident arising out of the use of motor vehicle, compensation, as indicated in the Second Schedule, to the legal heirs or the victim, as the case may be. Explanation.-For the purposes of this sub-section, "permanent disability" shall have the same meaning and



WEB COPY

extent as in the Workmen's Compensation Act, 1923 (8 of 1923).

(2) In any claim for compensation under sub-section (1), the claimant shall not be required to plead or establish that the death or permanent disablement in respect of which the claim has been made was due to any wrongful act or neglect or default of the owner of the vehicle or vehicles concerned or of any other person.

(3) The Central Government may, keeping in view the cost of living by notification in the Official Gazette, from time to time amend the Second Schedule.

II Schedule Clause 4 & 5 of 163-A of M.V. Act :

4. General Damages in case of injuries and disabilities :

(i) Pain and sufferings

(a) Grievous injuries

.. Rs.5,000/-

(b) Non-grievous injuries

.. Rs.1,000/-

(ii) Medical Expenses-actual expenses
}

incurred supported by bills/vouchers

} Rs.15,000/-

but not exceeding as one time payment }

5. Disability in non-fatal accidents :

The following compensation shall be payable in case of disability to the victim arising out of non-fatal accidents:

Loss of income, if any, for actual period of disablement not exceeding fifty-two weeks.

Plus either of the following :-

(a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation, or

(b) In case of permanent partial disablement such percentage of compensation which would have been payable in the case of permanent total disablement as specified under item (a) above.

Injuries deemed to result in Permanent Total Disablement / Permanent Partial Disablement and percentage of loss of earning capacity shall be as per Schedule I under Workmen's Compensation Act, 1923.'



10. Considering the claim under Sec.163-A of M.V. Act, the appellant is entitled for compensation by adopting multiplier method. However, the claimant was working in the department continuously and there was no materials placed before this Court that the appellant has lost his earning capacity due to the accident. Therefore, the contention of the respondent to reject the claim of the appellant to adopt multiplier method is sustained. Insofar as other conventional heads are concerned, as per II Schedule Clause 4 of 163-A of M.V. Act, the appellant is entitled for compensation towards pain and sufferings. Insofar as the compensation towards medical expenses are concerned, the medical bills were produced and marked as Ex.P7 series claiming compensation of Rs.1,50,398/- incurred towards medical expenses.

11. In view of the aforesaid discussion and the decision cited supra, apart from Rs.25,000/- awarded by the tribunal, the appellant is entitled for Rs.5000/- towards pain and sufferings, Rs.1,70,186/- towards medical bills along with interest at the rate of 7.5% p.a. from the date of claim petition till realization. The second respondent shall deposit the entire compensation amount viz., Rs.25,000/- + Rs.5,000/- + Rs.1,70,186/- = Rs.2,00,186/- (Rupees two lakhs one hundred and eight six only) within a period of 12 weeks from the date of receipt of the judgment, to the credit of M.C.O.P.No.289 of 2006 on the file of IIInd Additional Subordinate Judge (Motor Accidents Claims Tribunal), Salem. On such deposit being made by the 2nd respondent, the claimant/appellant is permitted to withdraw the amount by filing appropriate application. The award passed by the tribunal is modified to the aforesaid extent. Except the above modification, the award passed by the tribunal is confirmed.

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

Sd/-

Deputy Registrar(Accounts)

//True Copy//

Sub Assistant Registrar

vaan
To

1.The II Additional Subordinate Judge
(Motor Accidents Claims Tribunal), Salem.

2. The Superintendent of Police (Rural), District
Superintendent Office, Shevvapet, Salem Town, Salem District.

3. Copy to:The Section Officer,VR Section,High Court,Madras
+1 cc to Mr.Royan Law Associates, Advocate Sr.NO. 2126
+1 cc to Spl Government Pleader Sr.NO. 21280

CMA.No.2043 of 2012

A.SK(23.11.2021)