IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2021

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

CMA No.2382 of 2015

K. Maran ... Appellant/Petitioner

versus

1. V.L. Senniappan
2. The New India Assurance Company Ltd.,
No.12, New Hospital Road,
Gobi.

3. E. Selvam ... Respondents/Respondents

Respondents 1 & 3, remained exparte before the Tribunal, hence notice may be dispensed with for the respondents 1 & 3 in this Appeal.

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to enhance the compensation awarded in the judgment and decree dated 14.07.2011 made in M.C.O.P. No.466 of 2009 on the file of MACT/Fast Track Court No.IV, Addition District Judge, Bhavani, Erode District with interest and cost.

For Appellant : Mr.Ma.Pa.Thangavel

For Respondents : Ms.S.R.Sumathy for R2

JUDGMENT
(Heard Video Conference)

This appeal has been filed by the claimant seeking enhancement of compensation under the impugned award dated 14.07.2011 passed by the Motor Accidents Claims Tribunal, Fast Track Court - IV, Bhavani, Erode district in MCOP No.466 of 2009.

2. The appellant / claimant unsatisfied with the quantum of compensation awarded by the Tribunal under the impugned award has preferred this appeal seeking for enhancement.

3. The Tribunal under the impugned award directed the respondents to pay the appellant / claimant a compensation of Rs.1,82,000/- together with interest and costs as detailed below :-

Heads	Amount awarded by the Tribunal (Rs.)
80% permanent disability	160000
Pain and suffering	10000
Extra nourishment	10000
Transportation	2000
Total	182000

4. The appellant / claimant sustained grievous injuries as a result of an accident caused by a vehicle insured with the second respondent on 14.06.2009. The respondents have not disputed the cause of the accident as no appeal has been filed as against the findings of the Tribunal. They have also not disputed the nature of the injuries sustained by the appellant / claimant as a result of the accident. The appellant / claimant's right leg was amputated above his knee as a result of an accident, which happened on 14.06.2009. At the time of the accident, the appellant / claimant was aged 55 years which is also not disputed by the respondents. In the claim petition, the appellant / claimant has pleaded that he was a Coolie (Labourer) earning Rs.10,000/-p.m., at the time of the accident. The Tribunal under the impugned award has not assessed the monthly income of the appellant / claimant.

5. Heard Mr.Ma.Pa.Thangavel, learned counsel for the appellant / claimant and Ms.S.R.Sumathy, learned counsel for the respondent. R1 and R3 remained ex-parte before the Tribunal, hence notice to R1 and R3 are dispensed with.

6. This Court has perused and examined the impugned award before the Tribunal.

7. The learned counsel for the appellant/ claimant would submit that the quantum of compensation awarded by the Tribunal under various heads is inadequate and is not a just compensation. According to him, the Tribunal ought to have considered the appellant / claimant's amputation and ought to have adopted the multiplier method for assessing the loss of earning capacity of the appellant / claimant, but instead has erroneously granted the disability compensation on percentage basis. According to him, the disability compensation awarded by the Tribunal at Rs.1,60,000/- is also too low.

8. The learned counsel for the appellant /claimant also submitted that the Tribunal ought to have awarded loss of future prospects to the appellant / claimant, since the appellant / claimant has lost one of his legs in the accident which is also not disputed by the respondents.

9. In support of his submission, the learned counsel for the appellant / claimant relied upon the following authorities :

a) A decision of the Hon'ble Supreme Court in the case of Karthik Subramanian Versus B.Sarath Babu & Another reported in CDJ 2021 SC 196.

b) A decision of the Hon'ble Supreme Court in the case of Erudhaya Priya verus State Express Transport Corporation Ltd., reported in 2020 SCC Online SC 601.

10. After relying upon the aforesaid decisions, the learned counsel for the appellant / claimant would submit that the Tribunal ought to have awarded loss of future prospects to the appellant / claimant but has erroneously failed to grant the same under the impugned award. He would also rely upon the judgment of the Hon'ble Supreme Court in the case of Nutan Rani and another versus Gurmail Singh and others reported in (2018) 17 SCC 109 and would submit that even though the accident had happened much prior to the judgment of the Hon'ble Supreme Court in the case of National Insurance Company Limited vs. Pranay Sethi & others reported in 2017 16 SCC 680, the ratio laid down in Pranay Sethi's judgment is applicable for this case also as held by the Hon'ble Supreme Court in the case of Nutan Rani's case, referred to supra. Therefore, under these circumstances, the learned counsel for the appellant / claimant seeks for enhancement of compensation to the appellant / claimant.

11. Per contra, the learned counsel for the second respondent / Insurance Company would vehemently oppose the grant of any enhancement of compensation to the appellant / claimant. According to her, the appellant / claimant was aged 55 years and before the Tribunal he has not proved by way of any documentary evidence that he was a Coolie at the time of the accident and was earning Rs.10,000/-p.m. According to her, the Tribunal has correctly assessed the compensation payable to the appellant /claimant. Further, she would submit that the question of payment of compensation towards loss of future prospects will also not arise, since the appellant / claimant was aged 55 years at the time of the accident and was only a Labourer.

Discussion :

12. Admittedly, the appellant/ claimant has lost one of his legs in the accident. Admittedly, he was hospitalised between 14.06.2009 to 18.08.2009, for a period of 65 days, as seen from the trip sheets(7 nos), which has been marked as Ex.P12 before the Tribunal. The period of his hospitalisation has also not been disputed by the respondents as seen from the evidence available on record. When the appellant / claimant's leg has been amputated as a result of an accident and his long

period of his hospitalisation has also not been disputed by the respondents before the Tribunal, this Court is of the considered view that multiplier method ought to have been adopted by the Tribunal for the purpose of assessing the loss of earning capacity of the appellant /claimant but erroneously under the impugned award, the Tribunal has awarded disability compensation to the appellant / claimant on percentage basis, calculated at Rs.2,000/- per percentage of disability for the 80% disability suffered by the appellant / claimant. This Court is of the considered view that the said assessment is an erroneous assessment.

13. Under Schedule Part II of the Employees Compensation Act, 1923, the percentage of loss of earning capacity in amputation cases - upper limbs (either arm) and as per Sl. No.17 contained therein, which pertains to amputation below hip and stump not exceeding 12.70 cms in length measured from tip of great trenchanter, has been fixed statutorily at 80%. The Doctor in the instant case has also assessed the disability of the appellant / claimant at 80%. However, the Tribunal has instead of adopting the multiplier method has awarded the disability compensation for 80% disability on percentage basis. After giving due consideration to the fact that the appellant / claimant's leg has been amputated and his long period of his hospitalisation, this Court is of the considered view that the percentage of permanent disability of the appellant / claimant will have to be fixed at 80%, in terms of the Employees Compensation Act, 1923(Part II). The Tribunal under the impugned award has not assessed the monthly income of the appellant / claimant. This Court is of the considered view that since the year of the accident is 2009 and when the appellant /claimant has not produced any documentary evidence before the Tribunal to prove his monthly income, the notional monthly income of the appellant / claimant is fixed by this Court at Rs.6,500/- by following the decision of the Hon'ble Supreme Court in the case of Syed Sadiq and others V. Divisional Manager, United India Insurance Company Limited reported in 2014 ACJ 6, where the Hon'ble Supreme Court fixed the notional monthly income of the accident victim, who was a vegetable vendor at Rs.6500/- for an accident that took place in the year 2008. This Court is applying the same yardstick for the case of this appellant / claimant also, who was a Coolie(labourer) at the time of the accident, which happened in the year 2009. Since, this Court is adopting the multiplier method instead of disability compensation on percentage basis, the loss of earning capacity of the appellant /claimant is determined by this Court at Rs.7,55,040/-, instead of Rs.1,60,000/- assessed by the Tribunal towards disability compensation, calculated at Rs.2,000/- per percentage of disability for the 80% assessed by the Doctor. This Court is also granting compensation towards loss of future prospects to the appellant /claimant by following the decisions of the Hon'ble Supreme Court :-

1) Karthik Subramanian Versus B.Sarath Babu & Another reported in CDJ 2021 SC 196.

2) Erudhaya Priya verus State Express Transport Corporation Ltd., reported in 2020 SCC Online SC 601.

14. In the case of Karthik Subramanian Versus B.Sarath Babu & Another reported in CDJ 2021 SC 196. the Hon'ble Supreme Court has held as follows :-

> Learned counsel for the appellant had relied upon the recent judgment of this Court in Erudhaya Priya v. State Express Transport Corporation Ltd. - 2020 SCC OnLine SC 601. The judgment took into consideration the earlier judgments including in Pranay Sethi (supra) and Sandeep Khanduja v. Atul Dande – (2017) 3 SCC 351. The latter judgment had opined that multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident. The present case being one of permanent disability of 40 per cent, it has been urged that the same principle should be applied in the present case while in fact nothing has been granted on account of future prospects.
>
> 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.
>
> Thus, the same principle would have to apply and learned counsel for insurance Company cannot seriously contend to the contrary.
>
> We thus, adopt the same principle of loss of the earning power taking into consideration that the appellant has been able to establish through the documents of employment and the bank statement that he was getting a salary of Rs.37,500/-, albeit for a short period. Fifty per cent of that amount would have to be taken into account which is Rs.18,750/- per month and multiplied by 12 for the whole year. The multiplier would be 16 in the present case taking into consideration that the age of the appellant is 34 years. The disability is 40 per cent. The loss of the earning power would be thus, as under:

Heads	Amount
Loss of earning power 18750*12*16*40/100	Rs.14,40,000/-
Towards future prospects (50% Addition)	Rs.7,20,000/-
Total	Rs.21,60,000/-

Relevant paragraphs in the case of Erudhaya Priya verus State Express Transport Corporation Ltd., reported in 2020 SCC Online SC 601 which also supports the case of the appellant is also extracted hereunder :-

> 12. In the factual contours of the present case, if we examine the disability certificate, it shows the admission/hospitalization on 8 occasions for various number of days over 1½ years from August 2011 to January 2013. The nature of injuries hadbeen set out as under:
>
> "Nature of injury:
> (i) compound fracture shaft left humerus
> (ii) fracture both bones left forearm
> (iii) compound fracture both bones right forearm
> (iv) fracture 3 , 4 & 5th metacarpals right hand
> (v) subtrochanteric fracture right femur
> (vi) fracture shaft left femur
> (vii) fracture both bones left leg"
>
> 13. We have also perused the photographs annexed to the petition showing the current physical state of the appellant, though it is stated by learned counsel for the respondent State Corporation that the same was not on record in the trial court. Be that as it may, this is the position even after treatment and the nature of injuries itself show their extent. Further, it has been opined in para 12 of Sandeep Khanuja case (supra) that while applying the multiplier method, future prospects on advancement in life and career are also to be taken into consideration.
>
> 14. We are, thus, unequivocally of the view that there is merit in the contention of the appellant and the aforesaid principles with regard to future prospects must also be applied in the case of the appellant taking the permanent disability as 31.1%. The quantification of the same on the basis of the judgment in National Insurance Co. Ltd. case (supra), more specifically para 59.3, considering the age of the appellant, would be 50% of the actual salary in the present case.
>
> (c) The third and the last aspect is the interest rate claimed as 12%

15. In view of the fact that the appellant / claimant has sustained amputation of one of his legs which is not disputed by the respondents, the ratio laid down by the Hon'ble Supreme Court in the decisions referred to supra squarely applies to the facts of the instant case also. Accordingly, loss of future prospects is granted to the appellant /claimant at 10%, since the appellant / claimant was aged 55 years at the time of the accident. The Hon'ble Supreme Court in the case of Nutan Rani and another versus Gurmail Singh and others reported in (2018) 17 SCC 109 has made it clear that the Courts are empowered to apply the ratio laid down by the Hon'ble Supreme Court in the case of Pranay Sethi's case referred to supra, even though the accident had happened much prior to Pranay Sethi's judgment. Therefore, this Court is applying the Pranay Sethi's judgment of the Hon'ble Supreme Court for fixing the percentage payable towards loss of future prospects to the appellant / claimant. Accordingly, this Court fixes the compensation towards loss of future prospects to the appellant / claimant at 10%.

16. Since, the nature of injuries sustained by the appellant / claimant as referred to supra have not been disputed by the respondents before the Tribunal, as seen from the evidence available on record, the vehement opposition made by the learned counsel for the second respondent / Insurance Company before this Court for the grant of loss of future prospects is rejected by this Court.

17. With regard to the other heads of compensation awarded by the Tribunal are concerned viz., pain and suffering at Rs.10,000/-, extra nourishment at Rs.10,000/-; Transport expenses at Rs.2,000/- are concerned, the same needs to be necessarily enhanced considering the nature of injuries sustained by the appellant / claimant and his long period of his hospitalisation. This Court therefore, enhances the compensation towards pain and suffering from Rs.10,000/- to Rs.30,000/- towards extra nourishment from Rs.10,000/- to Rs.15,000/-; transportation from Rs.2,000/- to Rs.10,000/-.

18. The Tribunal has failed to award any compensation towards attender charges to the appellant /claimant which he is legally entitled to as per the settled practice. The Tribunal has also failed to award any compensation towards loss of amenities which also the appellant /claimant is legally entitled to. This Court fixes the compensation towards attender charges (65 days in hospital) to the appellant / claimant at Rs.30,000/- and similarly, this Court fixes the loss of amenities at Rs.15,000/- after giving due consideration to the nature of injuries sustained by the appellant / claimant.

19. For the foregoing reasons, the award of the Tribunal is hereby modified in the following manner :

Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)
80% permanent disability * 80% x Rs.2,000/- per percentage of disability #Rs.6,500/- + 650 = Rs.7150/- x 12 x 11 x 80%	160000 *	7,55,040 #
Pain and suffering	10000	30000
Extra nourishment	10000	15000
Transportation	2000	10000
Attender charges	-	30000
Loss of amenities	-	15000
Total	182000	855040

20. In the result, the appeal filed by the appellant / claimant, stands partly allowed by enhancing the compensation from Rs.1,82,000/- to Rs.8,55,040/- as indicated above. No costs.

21. The second respondent / Insurance Company is directed to deposit the entire award amount as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P. No.466 of 2009 on the file of MACT/Fast Track Court No.IV, Bhavani, Erode District, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant / claimant, through RTGS, within a period of two weeks thereafter. The requisite Court fee, if any has to be paid by the appellant/claimant before receiving the copy of this Judgment.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

vsi2

To

The Additional District Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.IV, Bhavani,
Erode District.

Copy To

The Section Officer,
V.R. Section
High Court of Madras, Chennai - 104.

+1cc to Mr.Ma.Pa.Thangavel, Advocate SR.No.39073

CMA No.2382 of 2015

AJS(CO)
GMY(31/01/2022)