IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 15.12.2020

Judgment Delivered on : 12.02.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3145 of 2012

K.Anbalagan ... Appellant

Vs.

1. M/s. SICGIL India Ltd.,
7th Mile, Mysore Road,
Nayandahalli P.O.,
Bangalore – 560 039.

2. The Oriental Insurance Co. Ltd.,
Legal Cell, II Floor,
No.115, Broadway Road,
Chennai – 600 108. ...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 29.09.2011 in MCOP.No.898 of 2009 on the file of the Additional District Sessions Judge, IV Fast Track Court, Chennai.

For Appellant : Mr.A.Shanmugaraj

For Respondents : Mr.Elveera Ravindran for R2.

JUDGMENT

(This case has been heard through video conference)

The Civil Miscellaneous Appeal has been filed challenging the fair and decretal order dated dated 29.09.2011 in MCOP.No.898 of 2009 on the file of the Additional District Sessions Judge, IV Fast Track Court, Chennai.

2. The case in brief is as follows:

On 03.06.2008, the Petitioner/Appellant herein was riding the motorcycle bearing Reg.No.PY-01-AP1352 at Anna Salai, Chennai and proceeding from East to West direction. At that time, a Lorry bearing Reg.No.KA-41-142 proceeding from West to East direction, driven in a rash and negligent manner, hit the petitioner's/appellant's vehicle, as a result of which, he sustained grievous injuries.

3. The learned counsel for the appellant relied on the following rulings in support of his contention regarding the enhancement of compensation as just compensation. The learned counsel for the Appellant submitted that due to the injuries sustained in the accident, the injured had suffered loss of earning capacity. The earning capacity of the injured was not mentioned by the Doctor. Learned counsel relied on the rulings in I (2006) ACC 416 (United India Insurance Co. Ltd. vs Veluchamy And Another). He further submitted that 75% of disability has to be considered as partial permanent disability (he relied on the rulings in 2019 ACJ 2401 Parminder Singh Vs. New India Assurance Co. Ltd.,) and 1996 ACJ 143 (MAD) (Managing Director, Thiruvalluvar Transport Corporation Vs. Thangavelu ad another). He further mentioned the word "Just Compensation" ((2011) 10 SCC 756) (Laxman Alias Laxman Mourya Vs. Divisional Manager, Oriental Insurance Company Limited and Another). The learned counsel for the appellant/claimant submitted that the Tribunal failed to appreciate the facts that the claimant had suffered grievous injuries resulting in permanent disability of his limbs as both his legs had suffered multiple fractures and disfigurement. The Doctor P.W.2 Saichandran had also let in evidence stating that the claimant had suffered 75% partial permanent disability. The Tribunal had not awarded just compensation for the same. Only Rs.50,000/- was awarded as loss of income for the partial permanent disability whereas, if Rs.3000/- is fixed as compensation for 1% of disability, the claimant/appellant might have received Rs.2,25,000/-. But, the Tribunal failed to do so. Regarding the same, the learned counsel relied on 2013 (2) TNMAC 583 MAD (National Insurance Company Vs. G.Ramesh) to fix the compensation as Rs.3000/- for 1%.

(i) Managing Director, Thiruvalluvar Transport Corporation Vs. Thangavelu and another reported in 1996 ACJ 143 (MAD) regarding the ruling laid down by this Court that loss of earning had to be assessed separately.

(ii) Rajendra Vs. Pradeep Patwari and others reported in 2009 ACJ 2864 (SC) and Sunil Kumar Vs. Ram Singh Gaud and others reported in 2008 ACJ 9 (SC) regarding the rulings laid down by the Hon'ble Supreme Court as to how to calculate partial permanent disability.

(iii) Syed Sadiq and others Vs. Divisional Manager, United India Insurance Co. Ltd., reported in 2014 ACJ 627 (SC) regarding the ruling laid down by the Hon'ble Supreme Court that 50% of the income is to be added towards the future prospects.

(iv) Paraminder Singh Vs. New India Assurance Co. Ltd., reported in 2019 IV ACJ 2401 (SC) regarding the ruling laid down by the Hon'ble Supreme Court that loss of earning capacity has to be taken as 100%.

(v) Ibrahim Vs. Raju and others reported in 2011 10 SCC 634 regarding the ruling laid down by the Hon'ble Supreme Court that the Tribunal can award any amount beyond the award claimed by the victim of accident subject to the condition that appropriate Courtfee has to be deposited in the Court.

3 (a). The learned counsel for the respondent/Insurance Company had submitted that the permanent disability itself does not incapacitate the earning capacity. He had relied on the reported Rulings of the Hon'ble Supreme Court reported in 2011 1 SCC 343 (Raj Kumar vs Ajay Kumar & Anr) and 2005 ACJ 14 83.

4. The learned Tribunal had in fact discussed about the fact that the lower limbs of the claimant at the time of accident were crushed under the wheels of the lorry belonging to the respondent and he had suffered multiple fractures also. Photographs showing the disfigurement on the lower limbs was also accepted by the Tribunal. In such condition, the award of compensation Rs.50,000/- for the victim of accident towards loss of income due to partial permanent disability is found to be very meagre which is against the ruling laid down by the Hon'ble Supreme Court regarding just compensation. The petitioner had marked his salary certificate as Ex.P.18 in which it is found that Rs.4000/- was his monthly income as he was a Trainee in the Friends Engineering Ltd., (TVS Group). As per the guidelines issued by the Hon'ble Supreme Court in cases where the Tribunal is unable to fix salary as there is no proof of income, the Motor Accident Claims Tribunal can invoke the Judicial discretion in applying the wages given to the agricultural labourers under the MNREGS, wherein Rs.200/- per day is given. If that is calculated for 30 days, the monthly income will come to Rs.6,000/-. Therefore, instead of adopting Rs.4000/- as stipend as the income of the injured, Rs.6000/- is taken as income of the injured and adopting multiplier 18, loss of income due to partial permanent disability, is 6000x75/100x12= 54000x18(multiplier) = 9,72,000/- will be the just compensation for the loss of income suffered by the victim under the head partial permanent disability. This Court enhanced a sum of Rs.18,000/- (6000x3) towards the loss of income during the period of treatment.

5. The submission of the learned counsel for the Insurance Company that even though the petitioner/claimant had suffered disfigurement and multiple fracture he has not suffered functional disability and therefore the multiplier method need not be adopted is found unacceptable. The victim is a technically qualified person on the date of the accident and as per the evidence he was working as a Trainee in Friends Engineering Ltd., (TVS Group) as CNT Machine Operator. Therefore, he has to stand to operate the machine continuously. Having suffered disfigurement and multiple fracture, he cannot be expected to stand for long hours as a normal healthy individual. Therefore, it is a functional disability only. Therefore submissions of the learned counsel

for the Insurance Company is rejected.

6. Considering the disfigurment of the appellant, this Court awards a sum of Rs.50,000/- towards Loss of amenities and Rs.1,00,000/- towards Loss of Marriage prospects. Therefore the amount allotted under the heading, "pain and suffering", by the Tribunal for Rs.70,000/- is reduced to Rs.50,000/-.

7. Considering the period of treatment and nature of injuries sustained by the appellant, the amounts awarded towards "Transportation Charges" , "Extra Nourishment" and "Attender Charges" are enhanced to Rs.5000/-, 25,000/- and 15,000/- respectively.

8. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of income due to permanent disability	50,000	9,72,000
2	Loss of Income during the period of treatment	15,000	18,000
	Tranport Charges		5,000
	Extra Nourishment		25,000
3	For Pain and Sufferings	70,000	50,000
4	For Attender Charges	-	15,000
5	Loss of Amenities	-	50,000
6	Marriage Prospects	-	1,00,000
	Total	1,35,000	12,35,000

Accordingly, this Civil Miscellaneous Appeal is allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.898 of 2009, on the file of theAdditional District Sessions Judge, IV Fast Track Court, Chennai, with accrued interest at the rate of 7.5% per annum from the date the appeal was numbered(the claimant/appellant is not entitled to claim the interest for the period in which the memorandum of Appeal were returned for compliance of defects) till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw a sum of Rs.12,35,000/- with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

Sd/-
Assistant Registrar(Cs-VIII)

//True copy//

Sub Assistant Registrar

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To

1. The Motor Accidents Claims Tribunal /
   Additional District Judge - IV,
   Fast Track Court, Chennai.

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

C.M.A.No.3145 of 2012

SSV(CO)
GMY(24/09/2021)