



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING JUDGMENT 16.02.2021	DATE OF PRONOUNCING JUDGMENT 21.04.2021
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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.658 OF 2015

Manivasakam

... Appellant

.Vs.

1. N.Sarasu

2. The Manager,
New India Assurance Co. Ltd.,
1st floor, No.92,
G.N.Chetty Road,
T.Nagar, Chennai - 17.

... Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order made in M.C.O.P.No.118 of 2007 on the file of the Motor Accident Claims Tribunal Cum Subordinate Judge, Namakkal dated 31.10.2011.

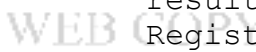
For Appellant : Mr.C.Kulanthaivel

For Respondents : Mr.G.Udaya Sankar
For R2

R1 - Ex parte

J U D G M E N T

The award dated 31.10.2011, passed in M.C.O.P.No.118 of 2007 is under challenge. The claimant filed the present appeal seeking enhancement of compensation.



(i) The appellant sustained injuries on 23.12.2006 as a result of an accident caused by a Tipper Lorry bearing Registration No.TN-28-M-8609 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.118 of 2007 seeking a compensation of Rs.10,00,000/-.

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

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 / New India Assurance Company Limited are not in dispute and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

<https://hcservices.ecourts.gov.in/hcservices/>



7. The contention raised by the claim petitioner that due to the amputation of left leg at below the knee level, the claim petitioner being a Tailor has lost his earning capacity and he relied 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.

7 & 8.

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.

10 to 18.

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



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end, one must ask whether the sum awarded is a fair and reasonable sum.

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].

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12. With the above legal position in mind, I find that due to the amputation, the earning capacity of the claim petitioner as a Tailor has been diminished. The learned counsel for the second respondent/Insurance Company would contend that now there are motorised sewing machines in the market and hence the application of the leg can no longer be treated as a part of tailoring job.

13. Taking note to the submissions made by the learned counsel for the second respondent/Insurance Company and advancement in Science, considering the age of the claim petitioner and also the alleged avocation as a Tailor, the disability is fixed in respect of whole body for having affected the earning capacity is fixed at 50% and the disability is re-assessed as under:

$$\begin{aligned} 5000+40\%(\text{Future Prospects}) &= 7,000 \times 12 \times 16 \times 50/100 \\ &= 6,72,000/- \end{aligned}$$

14. Thus, the compensation awarded by the Tribunal is enhanced from Rs.2,32,000/- to Rs.8,09,000/- the details of which read as follows:

Sl. No.	Heads	Tribunal Award	High Court	MODIFIED/ CONFIRMED
1	Permanent Disability	Rs.1,20,000/-	Rs.6,72,000/-	Modified
2	Pain and Sufferings	Rs.25,000/-	Rs.20,000/-	Modified
3	Medical Expenditure	Rs.57,000/-	Rs.57,000/-	Confirmed
4	Loss of Amenities	Rs.25,000/-	Rs.10,000/-	Modified
5	Transportation and Extra Nourishment	Rs.5,000/-	Rs.25,000/-	Modified
6	Loss of Amenities	NIL	Rs.10,000/-	Awarded
7	Attendant Charges	NIL	Rs.15,000/-	Awarded
	Total	Rs.2,32,000/-	Rs.8,09,000/-	



15. Accordingly, the modified compensation of Rs.8,09,000/- is to be paid to the appellant along with the interest from the date of accident. The second respondent/New India Assurance Company Ltd., is directed to deposit the modified award amount of Rs.8,09,000/- 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 31.10.2011, passed in M.C.O.P.No.118/2007, stands modified and C.M.A.No.658/2015 stands allowed in part.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

AT

To

The Motor Accident Claims Tribunal
Cum Subordinate Judge,
Namakkal.

+1cc to Mr.G.Udaya Sankar, Advocate, S.R.No.24510

C.M.A.NO.658 OF 2015

VSN-II (CO)
PBS/27/06/2022