



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.02.2021
PRONOUNCED ON : 23.04.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1885 of 2016

Selvaraj ...Appellant / Petitioner

Vs.

1.Balasubramani

2.National Insurance Company Limited,
No.1631-1/B, 1st Floor,
Salem Bhavani Main Road,
Sankagiri - 637 301.

...Respondents / Respondents

(The first respondent remained ex-parte before the Tribunal, hence notice dispensed with for the first respondent in this Appeal)

PRAYER : This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in the judgment and decree made in MCOP.No.260 of 2011, on the file of the Motor Accidents Claims Tribunal/Additional District Court at Namakkal, dated 12.08.2013.

For Appellant : Mr.C.Thangaraju
For R1 : Ex-parte
For R2 : Mr.S.Vadivel

JUDGMENT

(This case has been heard through video conference)

The claim petitioner is the appellant herein.

2.Brief facts of the case are as follows:

(a)On 27.06.2010 at about 00.30 hours at Salem Road, in front of TLS Building Murugan Tea Stall, while the claim petitioner/appellant herein was riding in a TVS Super XL motor cycle bearing Registration No.TN28/AD-4626, on the left side of the road, in a slow speed, a TATA Recovery Van bearing Registration No.TN-01/F-5808, which is owned by the first respondent herein, insured with the second respondent herein, driven by its driver in a rash and negligent manner without



observing the road traffic rules and hit against the claim petitioner along with the said TVS motor Cycle. Thereby, the claim petitioner has sustained grievous injuries.

(b) Accordingly, the claim petitioner has filed a claim petition in MCOP.No.260 of 2011, on the file of the Motor Accidents Claims Tribunal, Additional District Court, Namakkal, seeking compensation and the Tribunal has awarded a sum of Rs.5,80,943/- as compensation. Aggrieved against the same, the claim petitioner has preferred this Civil Miscellaneous Appeal before this Court.

3.The factum of the accident, manner of the accident, rash and negligence driving on the part of the driver of the offending vehicle are not under challenge and the same are hereby confirmed by this Court.

4.Before the Tribunal during the course of trial, on behalf of the claim petitioner, he himself was examined as PW1 and one Dr.Sivalingam was examined as PW2 and marked the documents as Exs.P1 to P14. On behalf of the respondents no oral evidence has been examined and no documents were marked.

5.Heard both the learned counsels and perused the materials placed on record.

6.The learned counsel for the appellant would submit that this Civil Miscellaneous Appeal has been filed for enhancement of the compensation awarded by the Tribunal in MCOP.No. 260 of 2011, on the ground that the claimant is a retired teacher, he has underwent amputation of leg and also underwent surgery in the right hand. He would also contend that the appellant is suffering loss of earning capacity and hence, multiplier method has to be adopted by taking into consideration the age as 59 years 4 months. Since, now he is a retired teacher, he has only B.Ed (Tamil and Special Tamil) qualification, and by conducting tuition, he earned more than Rs.15,000/- per month. He would further contend that the other heads viz., transportation expenses, attendant charges, extra-nourishment, pain and suffering, loss of amenities, the Tribunal has not properly awarded the compensation. Hence, claimant seeks for enhancement of the compensation awarded by the Tribunal.

7.The learned counsel for the Insurance Company would rely upon the Division Bench judgment of this Court reported in 2013 (1) TNMAC 47 (DB) - (New India Assurance Company Limited Vs. Ponnurngam), wherein, it is stated that the claimant not lost job and attending to his job after treatment, he is not entitle for multiplier method.



WEB COPY

8.Per contra, by relying upon the judgment reported in ACJ 2008 Page 2259 - (Oriental Insurance Company Limited Vs. Satish Sharma and Other), the learned counsel for the appellant/claimant would contend that the multiplier method can be applied.

9.The learned counsel for the Insurance Company would also draw my attention that the claim of the claimant is that he went to foreign and also claimed flight charges and medical bills and the same was marked by the Tribunal on the ground that the sufficient treatments are available in India and hence, rejected the claim said to have been made for treatment in the Foreign Country. Hence, Ex.P8/Bill for fixing of duplicate leg, Ex.P11/Medical Bills and Ex.P12/Transportation expenses, stands negative.

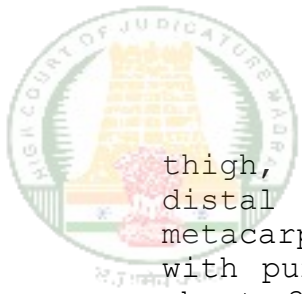
10.As stated supra, the rash and negligence driving of the driver of the offending vehicle is not under challenge and the factum of validity of the insurance duly covering the offending vehicle during the period of accident is not in dispute.

11.As contended by the learned counsel for the claim petitioner/appellant herein, multiplier method ought to have been adopted since the claim petitioner said to have suffered functional disability. The claim petitioner/appellant herein is a retired teacher aged about 60 years at the time of the accident. Accordingly to the claim petitioner, after retirement he has taken tuition and earned a sum of Rs.15,000/- per month and there is no other document or any income tax returns has been filed before the Tribunal to substantiate the said plea, which assumes significance.

12.In the decision reported in 2013 (1) TNMAC 47 (DB) - (New India Assurance Company Limited Vs. Ponnurngam), the claim petitioner has not lost any earning capacity since he has already retired, alleged to have taking tuition. However, the said plea was not substantiated by any positive legal evidence and hence, the Tribunal has rightly negated the plea of applying of multiplier method on the ground that the injury sustained during the accident has not resulted any functional disability, thereby, affected earning capacity to the claim petitioner. On the point of percentage of disability, based upon the evidence of PW2/Doctor, the Tribunal has fixed the disability at 70% while, the doctor has chosen at 80%.

13.On a perusal of the evidence of PW2/Doctor and Ex.P14/Disability certificate, it is seen that

(a)the claim petitioner/appellant herein is suffering from weakness, wastings, deformity with painful restriction of right



thigh, knee due to Grade III below knee open fracture right distal tibia and fibula fracture, right foot 1st, 2nd, 4th, metacarpal fractures, open fracture 2nd and 3rd Metacarpal Neck with punctured wound left hand sustained injuries due to RTA at about 36 months ago. He underwent multiple surgical line of treatment with below knee amputation right side and 2nd, 3rd metacarpal Neck Left Hand at Ganga Medical Centre and Hospital (P) Ltd, Coimbatore.

(b) The stump is measuring 4 inches from the Tibial Tuberosity level. He was doing Retired Teacher work at the time of accident. He cannot do any work using his right lower limb. He needs walking aids and nursing assistance and below knee prosthesis through out his life time. It is highly strainful to do work using his left upper limb.

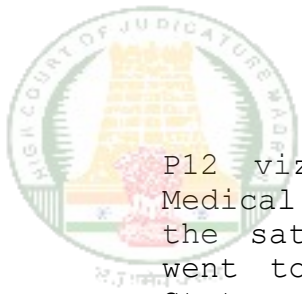
14. Taking into consideration of the disability suffered by the claim petitioner/appellant herein as reflected in the oral and documentary evidence, this Court finds that the disability may be fixed at 75%. The date of the accident is 27.06.2010. Accordingly, for the reasons stated supra, this Court finds that the claim petitioner/appellant herein has not suffered any functional disability whereby, he has lost his earning capacity and hence, the plea of the learned counsel for the claim petitioner/appellant herein is that the multiplier method has to be adopted stands negatived on the factual background and hence, this Court is inclined to award a sum of Rs.2,000/- per one percentage of disability and the compensation under the head of functional disability is calculated as under:

$75\% \times \text{Rs.}2,000 = 1,50,000/-$.

15. On a perusal of Ex.P5/discharge summary issued by the Ganga Medical Centre and Hospital (P) Ltd, Coimbatore, the Tribunal had rightly awarded a sum of Rs.3,54,943/- as per Ex.P6/medical bill and Ex.P8/cost for fixation of the artificial limb and the same is hereby confirmed by this Court.

16. Taking into consideration the period of inpatient viz., 40 days, this Court finds that due to the amputation below knee, the claim petitioner/appellant herein is entitled to grant of attendant charges and also for remaining period of life. Accordingly, this Court is inclined to award a sum of Rs.50,000/- under the head of attendant charges, Rs.30,000/- for transportation during the period of treatment, Rs.30,000/- for Nutrition and extra Nourishment, on the documentary evidence adduced by the claim petitioner/appellant herein, compensation under the head of pain and suffering enhanced to Rs.50,000/-.

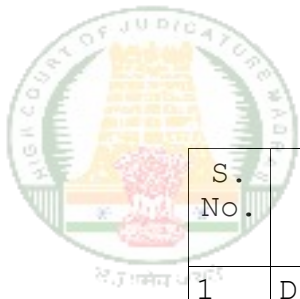
17. The learned counsel for the claim petitioner/appellant herein would rely upon the documentary evidences viz., Exs.P11 &



P12 viz., since the artificial limb purchased by the Ganga Medical Centre and Hospital (P) Ltd, Coimbatore, is not fit to the satisfaction of the claim petitioner/appellant herein, he went to abroad and had artificial limb made from the United States of America and hence, he has claimed flight charges for going to USA as well as for purchase of another artificial limb as per his convenience. As per the Motor Vehicles Act, a claimant has been provided for giving compensation, it should be just, reasonable and fair compensation and not any luxury payable.

18. Admittedly, PW2 is not a doctor, who treated the claim petitioner/appellant herein. The claim petitioner/appellant herein for the reasons best known to him has not chosen to examine any doctor from Ganga Medical Centre and Hospital (P) Ltd, Coimbatore, also assumes significance. In the absence of any positive evidence, whereby, necessitating the claim petitioner/appellant herein to go for a foreign made artificial leg at USA has not been proved in the manner known to law. In the absence of any medical opinion as to the deficiency in rendering the medical assistance to the claim petitioner by Ganga Medical Centre and Hospital (P) Ltd, Coimbatore or advising him to take treatment at USA nor even any document or scrap of paper is produced before the Tribunal to substantiate that no treatment is available at India for the injuries and the replacement of the artificial leg.

19. Hence, this Court finds that in the absence of any satisfactory explanation as to the charges for which he has gone to USA and purchased the second artificial leg, which was made in USA and in view of the presence of valid acceptable document that below knee amputation was done at Ganga Medical Centre and Hospital (P) Ltd, Coimbatore, since the injury suffered is rash injury and subsequently, he was provided the artificial limb and there was no medical record to show that the surgery of the artificial limb provided by the Ganga Hospital, Coimbatore, is not sufficient to render him to make a claim and hence, I find that the claim made by the claim petitioner under Ex.P11 flight charges to the Newyork and Ex.P12 cost of the second artificial limb purchased at USA is not out of necessity but appears to be out of cosmetic satisfaction of the claimant and hence, Ex.P8 was allowed towards the cost for fixation of the artificial limb and Exs.P11 & P12 were rightly rejected by the Tribunal. The reasons assigned therefor by the Tribunal coupled with the reasons as expressed by this Court in the preceding paragraphs, the claim made under Exs.P11 and P12 cannot be allowed and hence, this Court finds that there is no justification for sanctioning of additional compensation under Exs.P11 & P12 and hence, the compensation is re-assessed as under:



WEB COPY

S. No.	Description	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1	Disability	1,40,000/-	1,50,000/-
2	Transportation	15,000/-	30,000/-
3	Attendant charges	---	50,000/-
4	Nutrition and extra nourishment	25,000/-	30,000/-
5	Pain and suffering	28,000/-	50,000/-
6	Medical expenses	3,54,943/-	3,54,943/-
8	Wound	18,000/-	18,000/-
	Total	5,80,943/- rounded of to Rs.5,80,900/-	6,82,943/-

Hence, compensation awarded by the Tribunal is enhanced from Rs.5,80,943/- to Rs.6,82,943/- (Rupees Six Lakhs Eighty Two Thousand Nine Hundred and Fourty Three Only).

20.In the result,

(a) This Civil Miscellaneous Appeal is partly allowed to the limited extent as indicated above.

(b) The Insurance Company/second respondent herein is directed to deposit the enhanced compensation amount as awarded by this court to the credit of MCOP.No.260 of 2011, on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

(c) The enhanced award amount will carry interest at the rate of 7.5% per annum from the date of filing of the petition till the date of payment.

(d) On such deposit, the appellant herein/claim petitioner is permitted to withdraw the enhanced award amount less the amount already withdrawn, if any.

(e) The claim petitioner/appellant herein shall pay necessary Court fee, if any, on the enhanced compensation.

(f) No costs.

Sd/-
Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

dua



To

1.The Additional District Court,
Motor Accident Claims Tribunal,
Namakkal.

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

+3ccs to Mr.C.Thangaraju, Advocate SR.No.24862

+1cc to Mr.S.Vadivel, Advocate SR.No.25549

C.M.A.No.1885 of 2016

KK(CO)
RVM(01/12/2021)