IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 25.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.No.759 of 2012

Ramamurthy ...Appellant/ Claimant

Vs.

1. Srinivasan

2. The Manager, United India Insurance Co. Ltd.,
   Divisional Office-3, 58,
   Purasaiwalkkam High road,
   Chennai-7. ...Respondents/ Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 17.11.2003 passed in M.C.O.P.No.247 of 2000 by the Additional District Judge,FTC V Chengalpet, Motor Accident Claims Tribunal, Tiruvallur.

For Appellant : Mr.M.L.Ramsh

For II respondent : Mrs. R.Rathnathara

for I respondent : Notice dispensed with

J U D G M E N T

Not satisfied with the quantum of compensation, the claimant is before this court to enhance the compensation awarded by the Tribunal.

2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.14,00,000/- for the injuries sustained by him in a rod accident that took place on 18.01.1999.

3. The brief case of the claimant is as follows: On 08.01.1999, at 6.30 pm. the claimant was walking along the M.T.H.Road, Villivakkam and while nearing the place, opposite to Kalpana Hotel, a speedy lorry bearing registration No.TAR 4999 dashed against him, thereby he sustained fracture on his left leg and also grievous injuries all over his body and he was

admitted to Government Hospital, Chennai and was taking treatment as inpatient for a period of five months. According to the claimant, the rash and negligent driving of the driver of the lorry was the cause of accident and since the first respondent/ owner of the vehicle insured his lorry with the second respondent/ insurance company, both of them are liable to pay compensation.

4. The claim petition was resisted by the insurance company by filing counter affidavit.

5. Before Tribunal, the claimant and four other witnesses were examined as PW1 to PW5 and Ex.P1 to Ex.P16 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,64,000/- to the claimant. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Loss of earning power	1,80,000
2	Disability	70,000
3	Pain and sufferings	10,000
4	Transportation charges	2000
5	Extra nourishment	1000
6	Damages to clothes	1000
	Total	2,64,000

Not satisfied with the compensation awarded by the Tribunal, the claimants have filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and the learned counsel for the insurance company and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that due to the above said accident, the claimant had lost his earning capacity and the Medical Board had certified that the claimant is medically 'unfit' to continue his job and therefore, he was terminated from the service as Grade-I Constable, however, the Tribunal has awarded a very meagre amount towards " Loss of earning power". Further he

submitted that the claimant was admitted as inpatient on 18.01.1999 and was discharged only on 20.05.1999 and he has taken treatment for a period of four months and during the treatment, S.S.G and V.Nailing were done. But, without considering the above facts, the Tribunal has awarded only a sum of Rs.10,000/- towards " Pain and sufferings". It is his contention that the Claimant had sustained fracture of both bones of left leg with loss of muscle and skin and also crush injury of left forearm with loss of skin. Therefore, the claimant has not only taken treatment during the admitted period and in future also had taken treatment, but the Tribunal has not awarded any amount towards "Future medical expenses". Besides, the compensation awarded towards " Transportation charges" , and " Extra Nourishment" is very low and hence, the compensation awarded by the Tribunal has to be enhanced.

9. The learned counsel appearing for the second respondent/ insurance company submitted that after analysing the evidence on record, the Tribunal has rightly assessed the loss of earning power and disbility suffered by the claimant and has awarded a just and reasonable compensation and hence, the same does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

According to the appellant, during the accident, he sustained grievous injuries and fracture and during the treatment, S.S.G and V.Nailing was done. Ex.P16 Disability Certificate, issued by Dr.R.R.Thiagarajan was also produced, wherein the Doctor has assessed the total disability suffered by the appellant/ claimant as 85%. The above said Dr.R.R.Thiagarajan was examined as PW5 and he deposed that the claimant sustained fracture of both bones of left leg, below the knee in which rod was fixed and still it is inside and the above said bones were malunited and due to the fibrous the petitioner can fold his right knee only upto 80 degree and also there is no movement in the left knee and for the same, he is walking only along with stock and therefore, he assessed the disablement at 45%. He further deposed that the fractured bones of left leg and the fingers of left hand were bent and as such, he assessed the disablement at 40%. During the examination, PW5 stated that x-ray was taken for assessing the disability. However, since the x-ray was not produced, the Tribunal has assessed the disability suffered by the claimant as 55%. According to the appellant/ the above said reason stated by the Tribunal is wrong.

12. Ex.P11 is the report given by the Chairman, Government General Hospital, Chennai, wherein, it is stated that the appellant/ claimant is medically unfit to continue his service. To support the above said report, PW2 was examined and he deposed that after examination, the Medical Board reported that the appellant is "permanently incapable" to do his work. According to the appellant, he was not able to continue his service in the Police Department till his superannuation and therefore, he resigned his job.

13. The other contention of the appellant is that the Tribunal has awarded a very meagre amounts towards " Pain and sufferings", "Transportation Charges", " Extra Nourishment" and "Damages to clothes" and the Tribunal has not awarded any amounts towards " Future medical expenses".

14. In reply to the above, the learned counsel appearing for the respondent/ insurance company relied upon the evidence of PW1, wherein, the appellant stated that he has voluntarily submitted his resignation letter to the department and based on the resignation letter, he was referred to the Medical Board. He also relied upon the evidence of PW5, Dr.R.R.Thiagarajan, who has admitted in the cross examination that he has taken x-ray, before assessing the disability and he does not know whether the x-rays are produced or not before the court by the claimant. Therefore, it is contended by him that the Tribunal has rightly assessed the percentage of the disability suffered by the claimant.

15. According to the appellant/ claimant, he had drawn a monthly salary of Rs.6660/- per month and due to some minor punishment imposed on him, he had drawn a sum of Rs.4,100/- as monthly salary, however, while calculating Loss of earning power, the Tribunal has wrongly fixed the monthly salary at Rs.1,000/-, which is unsustainable.

16. In so far as the assessment of disability suffered by the claimant is concerned, the PW5, who had examined the claimant had assessed 45% disablement for the fractured bones of left leg and assessed 40% disablement for the bent of left hand fingers and totally he had assessed disability suffered by the claimant at 85%. There is no rebuttable evidence on the side of the respondents to disprove the above said evidence and the Ex.P16 disability certificate. However, it is unfortunate that the Tribunal on its own has assessed the disability suffered by the claimant as 55%. The Tribunal is not an expert to assess the disability of the claimant. If the assessment made by the Doctor is improper, the respondent/ insurance company has to produce relevant materials to disprove the same or to seek permission to send the claimant to appear before the concerned

Doctor or before the Medical Board to assess the disability. In the absence of any such steps taken by the insurance company, this court is unable to accept the assessment made by the Tribunal.

17. The next argument advanced by the appellant/ claimant is that, the claimant has suffered partial permanent disability during the said accident. Dr.R.R.Thiagarajan has assessed the total disability suffered by the claimant as 85%. Subsequently, the appellant/ claimant had submitted his resignation due to his inability to continue his work in the department. Based on his resignation, he was referred to the Medical Board by the Department and the report of the Medical Board was marked as Ex.P11. To prove the above said report, PW2 Mr.Dasarathan was examined and he deposed that after examination of the claimant, it was reported that the claimant was " Permanent incapable" and he is medially unfit to do his service and the above said report was forwarded to the Joint Commissioner of the Department. Thereafter, accepting the report of the Medical Board, the claimant was relieved from the service. Therefore, taking note of the afore said fact, this court accepted the contention of the claimant and decided that the claimant has suffered partial and permanent disability due to the above said accident. Therefore, this court is of the view that as per the disability certificate Ex.P16 and based on the evidence of PW5, the claimant suffered 85% disability and inview of the same he is entitled to get " Future prospects", as per the decision of the Honourable Supreme Court in Raj Kumar Vs. Ajay Kumar and another reported in 2011(1) SCC 343.

18. It is admitted fact that at the time of accident, the claimant was aged 42 years and was working as Grade-I Constable and was earning a sum of Rs.4,100/- as monthly salary. However, the Tribunal has fixed the loss of income per month as Rs.1,000 and applied multiplier '15' and arrived at Rs.1,80,000/- towards " loss of earning power". Though the Tribunal accepted that the claimant is entitled for compensation towards " Loss of earning Power", has stated reason for fixing a sum of Rs.1,000/- towards loss of income that the petitioner can get any other white colour job for his better living. The above said reason is without any basis. Therefore, considering all the facts and circumstances of the case and at the time of accident, the claimant has drawn a monthly salary of Rs.4,100/-, the loss of income is fixed at Rs.4,100/-. the petitioner was aged 42 years, on the date of accident and therefore, as per the decision of the Constitution Bench of the Honourable Supreme Court of India in National Insurance Company Limited Vs. Pranay Sethi and others reported in 2017 (2) TNMAC 601, 25% should be added to the monthly income towards " Future prospects". Accordingly loss of earning capacity is calculated

4100+1025=5125x12x14= 8,61,000) as Rs,8,61,000/-. In so far as the other heads are concerned, the Tribunal has not awarded any amounts towards " Loss of amenities" and " Attenders charges". Accordingly a sum of Rs.10,000/- each is awarded for the above said heads. Further the Tribunal has awarded only a sum of Rs.10,000/- towards " pain and sufferings', which is very meagre and the same is enhanced to Rs.20,000/-.

19. The Tribunal has awarded a sum of Rs.70,000/- towards " Permanent Disability", since the claimant suffered fracture of both bone of left leg and crush injury on his left hand fingers. However, as rightly pointed out the by the learned counsel appearing for the respondent/ insurance company, the claimant is not entitled to the above said compensation, since he is entitled for compensation towards " Loss of earning power in future" . Accordingly, the revised compensation awarded under the various heads is extracted hereunder.

Sl. No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Loss of earning power	1,80,000	8,61,000
2	Disability	70,000	-
3	Pain and sufferings	10,000	20,000
4	Transportation charges	2,000	2.000
5	Extra nourishment	1,000	1,000
6	Damages to clothes	1,000	1,000
7	Loss of amenities	-	10,000
8	Attender's charges	-	10,000
	Total	2,64,000	9,05,000

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

20. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.2,64,000/- to Rs.9,05,000/-. No costs.

(ii) The insurance company is directed to deposit the revised compensation of Rs.9,05,000/- with interest at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, as per the apportionment made by the Tribunal, after following due process of law.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mst

To

The Additional District Judge,
Fast Track Court V,
Chengalpet,
Motor Accident Claims Tribunal,
Thiruvallur.

+1cc to M/s.M.L.Ramesh, Advocate, Sr.11786

CMA. No.759 of 2012

NRL[co]
NSK 21/10/2021