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IN THE HIGH COURT OF JUDICATURE AT MADRAS

[RESERVED ON : 18.03.2021]

[PRONOUNCED ON : 24.03.2021]

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.M.A.NO.2329 OF 2016

Karthi @ Karthikeyan

... Appellant/Claimant

.Vs.

1. T.Ravi Kumar

2. Velusamy Gounder

3. The United India Insurance Company Limited,
Branch Office at No.5,
Big Bazaar Street,
Dharapuram.

... Respondents/Respondents

[The 1st and 2nd respondents are set
ex-parte before the Tribunal and hence,
notice may be dispensed with for them].

PRAYER:-

Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 26.02.2016 made in M.C.O.P.No.215 of 2011 on the file of the Motor Accidents Claims Tribunal, Sub Court at Dharapuram.

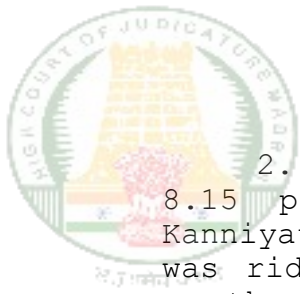
For Appellant : Mr.Ma.P.Thangavel

For RR-1 and 2 : Ex-parte

For R-3 : Mrs.I.Malar

JUDGMENT

Claimant has filed this appeal seeking enhancement of compensation awarded by the learned Sub Judge, (Motor Accidents Claims Tribunal), Dharapuram, in M.C.O.P.No.215 of 2011, dated 26.02.2016.



2. The accident in this case happened on 09.04.2010 at about 8.15 p.m., on the Dharapuram to Udumalai main road near Kanniyathal Kovil. On the date of the accident, the claimant was riding a TVS 50 moped bearing Registration No.TN-37-J-2963 on the left edge of the road from North to South and at that time, the first respondent drove a Maruthi Omni Van bearing Registration TN-09-F-9857 from South to North in a rash and negligent manner from the opposite direction and dashed against the moped. As a result of which, the claimant sustained grievous injuries and multiple injuries all over his body. Immediately after the accident, the claimant was taken to Dharapuram Government Hospital and thereafter shifted to Ganga Hospital at Kovai, where he was taken treatment as an inpatient for 27 days; surgery was done in many places and plate was also fixed. For the injuries sustained by him, he has filed a claim petition claiming a sum of Rs.6,00,000/- as compensation.

3. Before the Tribunal, the injured/claimant examined himself as P.W.1 and P.Ws.2 and 3 were also examined and documents Exs.P.1 to P.19 were marked. No witness was examined and no document was marked on the side of the respondents before the Tribunal.

4. The Tribunal, after considering both oral and documentary evidence adduced on the side of the injured/ claimant, awarded a sum of Rs.4,46,570/- under various heads as compensation. Having not satisfied with the award passed by the Tribunal, the injured/claimant has preferred this appeal for enhancement of compensation.

5. The factum of the accident, manner of the accident and negligence on the part of the driver of the first respondent's vehicle are not in dispute and hence, the same are hereby confirmed.

6. Heard the learned counsel for the appellant/claimant and the learned counsel for the third respondent/insurance company.

7. On a perusal of oral evidence, it is seen that P.W.3- Dr.Periyasamy, based upon the physical examination of the injured/P.W.1, along with Ex.P.2-Accident Register and Exs.P.9 to P.12- Discharge Summaries issued by Kovai Ganga Hospital, has assessed the permanent disability and fixed it as 52%. The Tribunal, has fixed the permanent disability at 50% and awarded a sum of Rs.2,000/- per percentage of disability and consequently, awarded compensation of Rs.1,00,000/- under the head of permanent disability.

8. Learned counsel for the appellant/claimant would contend that the appellant/claimant had sustained grievous injuries and



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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 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."



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13. 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."

14. 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].

15. 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]. With the above legal position in mind, after going through the evidence of P.W.3-Doctor Periyasamy, who had issued Ex.P.18-Wound Certificate and taking note of the injuries sustained by the claimant in the said accident; the nature of the treatment and three operations have been carried on and treatment has been given on multiple basis as could be seen from Ex.P.16-Photographs and also the discharge summary under Exs.P.9 to P.12, the Tribunal has rightly come to the conclusion that the petitioner had suffered permanent disability at 50% and the same is hereby confirmed.

16. On the point of notional income for the purpose of computation of financial loss or pecuniary loss sustained by the claimant, he being the Tailor he could have earned a sum of Rs.6,500/- per month. Following the decision of the Hon'ble Supreme Court reported in 2014(1) TN MAC 459 SC [Syed Sadiq etc Vs. Divisional Manager, United India Insurance Company Ltd.,], the disability is fixed at 50%. Since the claim petitioner being a Tailor, after going through the evidence on record, discharge summary and the medical evidence of P.W.3-Doctor, I find that



50% could be considered for permanent disability and 40% for future prospects. Accordingly, a sum of Rs.9,28,200/- [Rs.6,500 + 2600 (40% of Rs.6500) x 12 x 17 x 50/100 = Rs.9,28,200/-] is awarded for loss of income.

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17. Further, the Tribunal has awarded a sum of Rs.50,000/- towards pain and sufferings and the said amount is confirmed. As per Exs.P.13, P.14 and P.15, a sum of Rs.2,67,071.04/- was awarded by the Tribunal under the head of medical expenses and the said amount is also confirmed. The amount awarded by the Tribunal under the head of extra nourishment has been increased from Rs.5,000/- to Rs.15,000/-. The Tribunal has awarded a sum of Rs.4,000/- towards transportation charges and the same is increased to Rs.15,000/-. Taking into consideration the surgeries that have been carried on the body of the claimant and as per the discharge summary notes, as extracted supra, which would go to show that the claimant needs a sum of Rs.25,000/- towards future medical expenses. Since the claimant was taken treatment for 55 days, attender charges is fixed at Rs.15,000/-. The Tribunal has awarded a sum of Rs.15,000/- towards loss of income during the treatment period and the said amount is confirmed.

18. Accordingly, the award of the Tribunal stands enhanced as follows:-

Sl. No	Head	Amount awarded by the Tribunal	Amount granted by this Court
1.	Loss of income	Rs. 1,00,000/-	Rs. 9,28,200/-
2.	Pain and Sufferings	Rs. 50,000/-	Rs. 50,000/-
3.	Medical expenses	Rs. 2,67,071.04	Rs. 2,67,071/-
4.	Extra nourishment	Rs. 5,000/-	Rs. 15,000/-
5.	Transportation charges	Rs. 4,000/-	Rs. 15,000/-
6.	Loss of Income	Rs. 15,000/-	Rs. 15,000/-
7.	Attender charges	Rs. 5,500/-	Rs. 15,000/-
8.	Future medical expenses	---	Rs. 25,000/-
	Total	Rs. 4,46,571/-	Rs. 13,30,271/-

19. In the result,

I. This Civil Miscellaneous Appeal is partly allowed enhancing the compensation from Rs.4,46,571/- to Rs.13,30,271/-.



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II.The interest granted by the Tribunal at 7.5% stands confirmed.

III.The third respondent-Insurance Company is directed to deposit the enhanced amount with interest and costs within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any.

IV.On such deposit being made, the appellant herein/claimant is permitted to withdraw the enhanced award amount with proportionate interest, less the amount already withdrawn, if any.

V. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation amount.

VI.No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jr1

To

1. The United India Insurance Company Limited,
Branch Office at No.5,
Big Bazaar Street,
Dharapuram.
2. The Section Officer,
V.R. Section,
High Court, Madras - 104.
3. The Subordinate Judge,
The Motor Accident Claims Tribunal,
Dharmapuram.

+1cc to Mr.T.Ravichandran, Advocate, S.R.No.19112
+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.19064

C.M.A.NO.2329 OF 2016

NRL(CO)
PBS/02/12/2021