



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.1050 of 2020

N.Chandrasekaran

.. Appellant/Petitioner

Vs.

Ravikumar (Died)

1. United India Insurance Co. Ltd.,
Branch Office at New Edappadi Road,
Sankari, Salem District.

2. Vasu

3. National Insurance Company Ltd.,
Divisional Office - 7, Janpath,
New Delhi 110 001.

.. Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2019, made in M.C.O.P. No.26 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode.

For Appellant : Mr.T.S.Arthanareeswaran
for M/s.C.Paraneedharan

For Respondents: Mr.J.Chandran (For R1)

No appearance (For R2)

R3- Not ready in notice

J U D G M E N T

This appeal has been filed for enhancement of the compensation granted by the Tribunal in the award dated



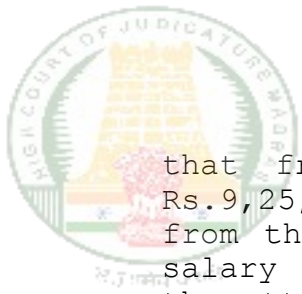
20.12.2019, made in M.C.O.P. No.26 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode.

2.The appellant-claimant, filed M.C.O.P. No.26 of 2010, on the file of the Sub Court, (Motor Accident Claims Tribunal) Tiruchengode, claiming a sum of Rs.50,00,000/- as compensation for the injuries sustained by him in the accident that took place on 11.01.2010.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by driver of the Mini Lorry belonging to the deceased S.Ravikumar and directed the 1st respondent as insurer of the Mini Lorry to pay a sum of Rs.44,18,710/- as compensation to the appellant.

4.Not being satisfied with the amounts awarded by the Tribunal in the award dated 20.12.2019, made in M.C.O.P. No.26 of 2010, the appellant has come out with the present appeal.

5.The learned counsel appearing for the appellant contended that in the accident, the appellant suffered grievous injuries and fractures and has taken treatment as in-patient at the Ganga Medical Centre and Hospital at Coimbatore in two different spells viz., from 11.01.2010 to 08.02.2010 and from 03.03.2010 to 22.03.2010. Further, he has taken treatment as in-patient at Apollo Hospital, Chennai, from 19.08.2010 to 24.08.2010. He has underwent multiple surgeries and split skin grafting done in right lower limb, plate and screws were fixed in C4 and C5 spinal cord. The Ganga Medical Centre and Hospital at Coimbatore examined the appellant and certified that the appellant suffered 100% disability and issued disability certificate marked as Ex.P21. Even though the Medical Board has examined the appellant and certified that the appellant suffered 80% of permanent disability, the above disability certificate clearly shows that the appellant is only speaking, hearing and seeing and he has no movements of his body without the help of others. He has pain and deformity at the fracture site. This condition is non progressive and not likely to improve. The Tribunal ought to have fixed the disability at 100%, instead of 80%. The appellant has spent a sum of Rs.12,55,000/- towards personal attender's salary from 01.03.2010 till 31.08.2019. Before the Tribunal, the salary bills of the attenders were marked as Exs.P15 and P25. P.W.2 - Sumathi, Proprietor of Lakshmi Home Care Coimbatore clearly deposed that from the period of 01.03.2010 to 30.06.2013, she received a sum of Rs.3,30,000/- towards attendant charges. The attender appeared before the Tribunal as P.W.6 and clearly deposed regarding the patient conditions and her salary particulars. P.W.6 - attender Jothi clearly deposed



WEB COPY

that from 01.07.2013 to 31.08.2019, she received a sum of Rs.9,25,000/- towards attender salary. Further she deposed that from the date of 01.08.2018 till date, she is getting attender salary of Rs.15,000/- per month. The Tribunal notionally fixed the attendant charges at Rs.6,000/- per month (from the date of 01.03.2010 to 28.02.2019) and awarded a sum of Rs.6,48,000/- towards attendant charges, which is very meagre. At the time of accident, the appellant was owning a Bus and Rice Mill and was doing Agriculture in his own land and was earning a sum of Rs.25,000/- per month. Due to the injuries sustained in the accident, he is wheel chair bound and has no function in the hands and fingers. He is passing urine by self intermittent catheterization and bowel movements are initiated by medication like enema. The appellant is completely dependent on others for day-to-day activities like personal cleaning, moving from bed to wheel chair and even for eating. He is living in this condition of Quadriplegia since the time of accident and hence, lost his entire earning power. The amounts awarded by the Tribunal for loss of earning capacity, extra nourishment, future medical expenses and wheel chair and air bed expenses are meagre and prayed for enhancement of the compensation.

6.Per contra, Mr.J.Chandran, learned counsel appearing for the 1st respondent-Insurance Company contended that the Tribunal considering Ex.P21 - disability certificate issued by the Ganga Medical Centre and Hospital at Coimbatore and Ex.P30 - disability certificate issued by the Medical Board, accepted the disability certificate issued by the Medical Board and adopted multiplier method and granted compensation for 80% disability. The appellant failed to prove his avocation and income. The Tribunal excessively fixed a sum of Rs.12,000/- per month as notional income of the appellant. The total compensation awarded by the Tribunal is also excessive. The appellant has not made out any case for enhancement of the compensation and prayed for dismissal of the appeal.

7.Though notice has been served on the 2nd respondent and his name is printed in the cause list, there no representation for him either in person or through counsel.

8.Heard the learned counsel appearing for the appellant through video conference as well as the 1st respondent-Insurance Company and perused the materials available on record.

9.It is the case of the appellant that due to the injuries sustained in the accident, he has taken treatment as in-patient at the Ganga Medical Centre and Hospital at Coimbatore in two different spells viz., from 11.01.2010 to 08.02.2010, for a period of 28 days and from 03.03.2010 to 22.03.2010, for a



period of 19 days. Further, he has taken treatment as in-patient at Apollo Hospital, Chennai, from 19.08.2010 to 24.08.2010, for a period of 5 days. He has filed three discharge summaries and substantiated the same. The Doctor who treated the appellant as P.W.5 deposed that there is no movement of the appellant and he is in wheel chair. He has deposed that the appellant can do his daily work only with the help of others. The group of Doctors at the Ganga Medical Centre and Hospital issued disability certificate - Ex.P21 and certified as follows:

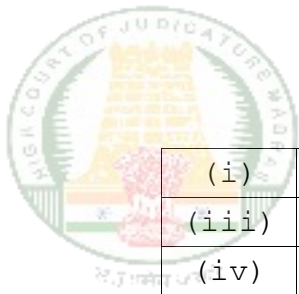
"He was examined today radiologically and clinically. There is evidence of ACDF at the level of C4-C5 present with plating. The right femoral neck is fractured and the femur is migrated proximally. There is heterotrophic ossification around the right hip. The patient has gross motor and sensory deficit below the level of C5. There is no usual function below C5. Patient is wheel chair bound. He has no function in the hand and fingers. He is passing urine by self intermittent catheterisation and bowel movements are initiated by medication like enema. Patient is completely dependent on to others for day to day activities like personal cleaning, moving from bed to wheel chair and even for eating. He is living in this condition of quadriplegia since the time of injury in 2010. The possibility of recovery is very very remote, unpredictable and not scientifically recorded so far.

Hence, his permanent physical disability is calculated to be around 100% (Hundred Percentages). This disability is based on the guidelines & Gazette notification (Committee under chairmanship of DGHS, GOI) issued by Ministry of Social Justice & Empowerment, GOI, Regd. No.DL33004/99 (Extraordinary) Part II, Sec.1, June 13, 2001."

The appellant was referred to the Medical Board. The Medical Board after examining the appellant, issued disability certificate, marked as Ex.P13 and certified as follows:

4.Shri/Smt/Kum. Mr.Chandrasekar meets the following physical requirements for discharge of his/her duties:

(i)	F-can perform work manipulating with fingers	No
(ii)	PP-can perform work by pulling and pushing	No



WEB COPY

(i)	F-can perform work manipulating with fingers	No
(iii)	L-can perform work by lifting	No
(iv)	KC-can perform work by kneeling and crouching	No
(v)	B-can perform work by kneeling and crouching	No
(vi)	S-can perform work by sitting	No
(vii)	ST-can perform work by standing	No
(viii)	W-can perform work by walking	No
(ix)	SE-can perform work by seeing	Yes
(x)	H-can perform work by hearing/speaking	Yes
(xi)	RW-can perform work by reading and writing	No

10. From the above two disability certificates, it is clear that the appellant is totally disabled and he cannot do any work and is depending on others for his day to day work. Hence, the appellant is entitled to compensation for 100% disability. The appellant claimed that he was owning a Bus and Rice Mill and was doing Agriculture in his own land and was earning a sum of Rs.25,000/- per month. He did not file any document to prove the same. In the absence of evidence, the Tribunal fixed a sum of Rs.12,000/- per month as notional income. The accident is of the year 2010. The monthly income fixed by the Tribunal is not meagre. The appellant was aged 61 years at the time of accident. The Tribunal rightly applied the multiplier '7'. Thus, fixing 100% disability, the amounts granted by the Tribunal towards loss of earning capacity for 80% disability is modified to Rs.10,08,000/- [Rs.12,000/- x 12 x 7 x 100%]. Considering the nature of injuries and treatment taken by the appellant, this Court is of the view that the amount granted by the Tribunal for extra nourishment is meagre and the same is enhanced to Rs.1,00,000/-. The learned counsel appearing for the appellant contended that the appellant has spent a sum of Rs.12,55,000/- towards attendant charges and examined P.W.2-Sumathi, Proprietor of Lakshmi Home Care, Coimbatore and attender Jothi as P.W.6. P.W.6 deposed that she was paid Rs.10,000/- per month till 01.08.2018 and subsequently, she was paid Rs.15,000/- per month from 01.08.2018. She has not deposed that she is a qualified Nurse. In view of the same, the Tribunal did not accept the salary alleged to have been received by P.W.6 and fixed only a sum of Rs.6,000/- per month as notional income for P.W.6 and granted a sum of Rs.6,48,000/- towards attendant charges. The Tribunal has given valid reason for fixing Rs.6,000/- per month as notional income of P.W.6. Hence, the appellant is not entitled to any excessive amount for attendant charges. The Tribunal also considering the evidence of P.W.3 - Physiotherapist, granted a sum of Rs.6,60,500/- for



Physiotherapy and the same is proper. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	8,06,400/-	10,08,000/-	Enhanced
2.	Pain and suffering	3,00,000/-	3,00,000/-	Confirmed
3.	Loss of amenities	2,00,000/-	2,00,000/-	Confirmed
4.	Shock and mental agony	1,00,000/-	1,00,000/-	Confirmed
5.	Damages and extra nourishment	30,000/-	1,00,000/-	Enhanced
6.	Attendant charges	6,48,000/-	6,48,000/-	Confirmed
7.	Transport to hospital	48,810/-	48,810/-	Confirmed
8.	Medical bill	14,25,000/-	14,25,000/-	Confirmed
9.	Physiotherapy	6,60,500/-	6,60,500/-	Confirmed
10.	Future medical expenses	2,00,000/-	2,00,000/-	Confirmed
	Total	44,18,710/-	46,90,310/-	Enhanced by Rs.2,71,600/-

11. In the result, the appeal is partly allowed and the amount awarded by the Tribunal at Rs.44,18,710/- is enhanced to Rs.46,90,310/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent-Insurance Company is directed to deposit the award amount, now determined by this Court, along with interest and costs, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P. No.26 of 2010. On such deposit, the appellant is permitted to withdraw



the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary applications before the Tribunal. No costs.

WEB COPY

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Subordinate Judge,
(Motor Accident Claims Tribunal),
Tiruchengode.

Copy to:

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

+2ccs to Mr.T.S.Arthanareeswaran, Advocate, S.R.No.12869

+1cc to Mr.J.Chandran, Advocate, S.R.No.12619

C.M.A.No.1050 of 2020

VBM(CO)
SU(30/09/2021)