IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2021

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.3381 of 2019

Andi
S/o.Subbarayan ... Appellant

vs

1.Shankar
S/o.Ponnusamy
(first respondent was set *ex parte*
in the trial Court)

2.Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
6th Floor, Nungambakkam,
Chennai – 600006. ... Respondents

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 27.11.2017 made in MACTOP No.7570 of 2014 on the file of III Small Causes Court, Chennai.

For Appellant : Mr.K.V.Muthu Visakan

For Respondents : Mr.M.B.Raghavan [R2]

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JUDGMENT

[Judgment of the Court was delivered by ***R.SUBBIAH, J***]

This matter is heard through Video Conference.

2. Not being satisfied with the quantum of compensation awarded by the Tribunal in any by judgment and decree dated 27.11.2017 made in MACTOP No.7570 of 2014 on the file of Motor Accident Claims Tribunal, III Small Causes Court, Chennai, the present appeal has been filed by appellant/claimant.

3. The brief facts of the case is as follows:

On 10.05.2014, at about 20.00 hours, while appellant/claimant was riding his bi-cycle on the Poonamallee High Road, a Van bearing Registration No.TN-20-BX-5654 came in a rash and negligent manner and dashed the appellant/claimant owing to which the appellant/claimant sustained grievous injuries. First respondent is the owner of the Van and second respondent is its insurer. It is the case of appellant/claimant that he was a mason by avocation and was earning a sum of Rs.800/- per day. In the accident, the appellant/claimant suffered crush injury on the right lower limb, fracture of both bones on the right leg and fracture in shaft femur of the right leg and amputation of right leg below the knee. As the appellant/claimant is unable to carry out his avocation as he was doing before the accident, he claimed compensation in a sum of Rs.50,00,000/-.

4. Resisting the claim made by appellant/claimant, second respondent insurance company had filed a detailed counter *inter alia* contending that the accident had not occurred in the manner projected by appellant/claimant. They have also denied the age, occupation and income of the appellant/claimant. Hence, second respondent insurance company prayed for dismissal of the claim petition.

5. To prove his case, before the Tribunal, appellant/claimant examined PWs.1 and 2 and marked 13 documents viz., Exs.P1 to P13. On the side of second respondent insurance company, none were examined and no exhibit was marked.

6. On appreciation of materials on record, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the Van belonging to first respondent and held that the insurance company, being the insurer of the offending vehicle, was liable to pay compensation. Based on Ex.P13 – Disability Certificate issued by PW-2, Doctor, the Tribunal has fixed the permanent disability at 60% and considering the nature of injuries suffered by the appellant/claimant applied multiplier while awarding compensation. The compensation awarded by the Tribunal is as follows:

Sl. No.	***Compensation awarded under the head***	***Amount (in Rs.)***
1.	Functional Disability	11,23,200/-
2.	Pain and Suffering	2,00,000/-
3.	Loss of Income	1,44,000/-
4.	Transport to Hospital	1,00,000/-
5.	Extra Nourishment	70,000/-
6.	Attender charges	64,800/-
7.	Loss of Amenities	50,000/-
8.	Medical expenses	15,000/-
9.	Future Medical Expenses	10,000/-
10.	Damages to clothes	1,000/-
	Total	**17,78,000/-**

The said sum was directed to be paid together with interest at 7.5% p.a. (except for

Rs.10,000/- awarded towards future medical expenses) from the date of petition till the date of realization.

7. Learned counsel for appellant/claimant submits that the appellant/claimant was working as a mason and was earning a sum of Rs.24,000/- p.m. However, the Tribunal had fixed the monthly income of the appellant/claimant as Rs.12,000/-. The sum of Rs.12,000/- fixed by the Tribunal is on the lower side. Hence, by fixing at least a sum of Rs.15,000/- the amount awarded by the Tribunal under the head 'functional disability' has to be enhanced. Further, the learned counsel for appellant/claimant submits that the Tribunal while calculating the amount under the head 'functional disability' has not added any amount towards future prospects. Hence, by fixing a sum of Rs.15,000/- and adding 25% towards future prospects, the compensation has to be awarded in proportion to 60% disability. Learned counsel further submits that the amount awarded under the other heads is also on the lower side and hence, the same also has to be enhanced.

8. *Per contra,* learned counsel for second respondent insurance company

submits that absolutely no documentary proof was produced before the Tribunal to prove that the appellant/claimant was earning a sum of Rs.24,000/- p.m. as stated in the claim petition. In the absence of any proof, the monthly income fixed by the Tribunal at Rs.12,000/- cannot be found fault with. Hence, there is no need to enhance the compensation amount awarded under the head 'functional disability' by fixing a sum of Rs.15,000/- as monthly income as submitted by learned counsel for appellant/claimant. Similarly, the amount awarded by the Tribunal under the other heads are also reasonable. Submitting as above, learned counsel prays for dismissal of the appeal.

9. This Court has considered the rival submissions. Perused the materials on record.

10. As rightly submitted by learned counsel for second respondent insurance company, absolutely no proof was produced before the Tribunal to establish the income of the appellant/claimant. In such circumstance, this Court finds that the monthly income fixed by the Tribunal at Rs.12,000/- is justifiable. Further, the

Tribunal had rightly applied multiplier taking into account the percentage of permanent disability suffered by appellant/claimant while awarding compensation under the head 'functional disability'. However, the Tribunal had not awarded any amount towards future prospects. Given the nature of injuries suffered by appellant/claimant, this Court considers that it would be appropriate to award 25% towards future prospects. Accordingly, the amount awarded under the head 'functional disability' is re-calculated as follows:

Monthly Income	:	Rs. 12,000/-
Add : future prospects		
25% of Rs.12,000/-	:	Rs. 3,000/-

		Rs. 15,000/-
Annual Income (15000*12)	:	Rs.1,80,000/-
60% permanent disability	:	Rs.1,08,000/-
(60% of Rs.1,80,000/-)		
Multiplier	:	13
Functional disability	**:**	**Rs.14,04,000/-**

11. In the accident, besides other injuries, the right leg of appellant/claimant was amputated below knee. In such circumstance, this Court considers that it

would be appropriate to award a sum of Rs.2,00,000/- towards fixing of artificial leg. Further, taking note of the fact that as a result of the accident, appellant/claimant cannot carry on his avocation as he was doing before the accident, this Court is of the view that the amount awarded by the Tribunal under the head 'loss of amenities' at Rs.50,000/- is on the lower side and hence, the same is enhanced to Rs.90,000/-. In all other aspects, the award of the Tribunal is hereby confirmed.

12. Accordingly, the modified compensation payable would be:

Sl. No.	***Compensation awarded under the head***	***Amount awarded by Tribunal (in Rs.)***	***Amount awarded by this Court (in Rs.)***
1.	Functional Disability	11,23,200/-	14,04,000/-
2.	Pain and Suffering	2,00,000/-	2,00,000/-
3.	Fixing of artificial leg	-	2,00,000/-
4.	Loss of Income	1,44,000/-	1,44,000/-
5.	Transport to Hospital	1,00,000/-	1,00,000/-
6.	Loss of Amenities	50,000/-	90,000/-
7.	Extra Nourishment	70,000/-	70,000/-
8.	Attender charges	64,800/-	64,800/-
9.	Medical expenses	15,000/-	15,000/-
10.	Future Medical Expenses	10,000/-	10,000/-

Sl. No.	*Compensation awarded under the head*	*Amount awarded by Tribunal (in Rs.)*	*Amount awarded by this Court (in Rs.)*
11.	Damages to clothes	1,000/-	1,000/-
	Total	**17,78,000/-**	**22,98,800/-**
	Rounded off to		**23,00,000/-**

In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.17,78,000/- awarded by the Tribunal is hereby enhanced to Rs.23,00,000/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.23,00,000/- (Rupees Twenty Three Lakhs only), less the amount already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. On such deposit being made by second respondent insurance company, appellant/claimant is permitted to withdraw the amount, along

with accrued interest and costs, less the amount, if any already withdrawn by him, by filing necessary application before the Tribunal. No costs.

[R.P.S., J] [S.S.K., J]
20.01.2021

Speaking / Non-speaking order
Index: Yes/No
Internet: Yes
gm

To
The Motor Accident Claims Tribunal,
III Small Causes Court,
Chennai.

R.SUBBIAH, J
and
SATHI KUMAR SUKUMARA KURUP, J

gm

C.M.A.No.3381 of 2019

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