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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 09.03.2021
Judgment Delivered on : 21.04.2021

CORAM

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

C.M.A.No.1529 of 2014

M.Radhakrishnan

...Appellant/Petitioner

Vs.

1. A.Kabali

2. M/s. Tata AIG Gen. Ins. Co. Ltd.,
Commender-in-Chief Raod,
Egmore, Chennai - 600 008.

...Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.1482 of 2008 dated 06.10.2012 on the file of the Motor Accidents Claims Tribunal, XVII Additional Judge, Small Causes Court, Chennai.

For Appellant : Mr.T.G.Balachandran
For Respondents : R1- Exparte
Mr.M.B.Gopalan for R2

JUDGMENT

(This case has been heard through video conference)

This Civil Miscellaneous Appeal has been filed by the appellant seeking enhancement of compensation awarded by the Tribunal in the award dated 06.10.2012 in MCOP.No.1482 of 2008 on the file of the Motor Accidents Claims Tribunal, XVII Additional Judge, Small Causes Court, Chennai.

2. The case in brief is as follows:

On 28.02.2008 at 10.30 hours, while the claimant was walking at Kelambakkam to Vandaloor road, a Crane bearing registration No.TN-22-AY-3110 driven by its driver in a rash and negligent manner from behind took a left turn in order to avoid collision with a vehicle coming in the opposite direction and in that process hit the claimant, as a result of which, he sustained grievous injuries on his right leg. Immediately, he



was taken to Stanely Government Hospital for treatment. The first respondent remained ex-parte before the Tribunal.

3. The second respondent/Insurance Company had disputed the claim of the claimant and filed the counter statement. After due enquiry, on assessment of the evidence before the Tribunal, the Tribunal had passed the award of Rs.2,36,225/- as compensation.

4. As per the contentions of the injured victim of the accident, his claim was Rs.8,00,000/-. The claimant stated that he was a coolie in QBM Blue Metal Crusher, Nallambakkam and was earning a sum of Rs.200/- per day, and an average income of Rs.5000/- per month. The Tribunal had fixed the notional income as Rs.4500/-. Therefore, the claimant has preferred this appeal.

5. Mr.T.G.Balachandran, learned counsel for the appellant has submitted his arguments. As per his submissions, the disability was assessed by the Doctor who had deposed as P.W.2, regarding the fracture of both bones of the right leg and 2nd and 5th Metatarsal bone and loss of muscle on the right foot. The Tribunal failed to consider the same and the loss of earning capacity of the appellant could be fixed at 20%. For non pecuniary heads, the Tribunal had granted only meagre amounts. The Tribunal had not awarded any amount for loss of amenities. The learned counsel for the appellant had relied on the following Rulings of the Hon'ble Supreme Court and this Court.

(i) 2014 (1) TNMAC 459 (SC) (Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd.,) Compensation Assessment

Vegetable Vendor - Income of - Rs.6500 p.m., taken as against Rs.3,500 p.m., fixed by High Court - 50% added towards Future Prospects following Santosh Devi.

Permanent Disability - Functional Disability - Amputation of right leg - 65 % disability fixed by High Court not proper - Functional Disability fixed at 85 % - Applying Multiplier Method, Rs.17,90,100 awarded as Loss of Earning Power.

Functional Disability - Type-3 Compound fracture of right femur, Tibia & Fibula - 69% disability - High Court fixing disability at 25% not proper - Fixing Functional Disability at 35 % Loss of earning Power awarded at Rs.7,37,100 applying multiplier of 18.

Communitied fracture of right Tibia as also fracture of right humerus - Functional Disability fixed at 85% as against 35 % fixed by High Court.



Cost of Litigation - Rs.25,000 awarded following principles in Balram Prasad.

(ii) 2015 (2) TNMAC 624 (The Managing Director, Tamil Nadu State Transport Corporation (Villupuram) Ltd., Vs. R.Hyder Ali

Permanent Disability

Fracture of Tibia & Fibula of right leg - 45% disability - Tribunal, fixing Loss of Earning Capacity at 30%, awarding Rs.2,97,000 as compensation towards Loss of Earning Capacity applying Multiplier method - Confirmed in Appeal.

7. Mr.M.B.Gopalan, learned counsel for the second respondent/Insurance Company submitted his arguments. As per his submissions, the Tribunal had properly appreciated the evidence available before the Tribunal and had passed a reasonable award. There is no need to interfere with the award passed by the Tribunal. The appeal lacks merits and it has to be dismissed.

8. Whether the claimant is entitled to enhancement of the award in the appeal.

9. Perused the claim petition filed by the appellant/claimant before the Motor Accident Claims Tribunal/XVII Additional Judge, Small Causes Court, Chennai, in MCOP No.1482/2008, the counter filed by the second respondent/Insurance Company and the order passed by the Motor Accident Claims Tribunal.

10. On perusal of the award passed by the Tribunal, it is found that the injured victim/appellant herein was paid a sum of Rs.200/- per day which is not an exorbitant amount. Considering the nature of job, he has to stand for a long time but his legs will not help him due to the disability and he can lift with his arms. Therefore he claimed the disability as functional disability. Therefore, the Doctor, P.W.2, has assessed the disability suffered by the claimant as 65%. But this Court considers the disability under Schedule - I of Employees Compensation Act, for the loss of toes on both legs, the percentage of disability fixed is 40%. Here, only one leg is affected, therefore, 20% is the proper disability as per the Employees Compensation Act. Therefore, in the present circumstances, the income of the claimant, i.e, Rs.5000/- per month is taken as notional salary. Also in the light of the reported Rulings cited by the learned counsel for the appellant/claimant in 2014 (1) TNMAC 459 (SC) Syed Sadiq Vs. Divisional Manager, United India Insurance Company Ltd., the claim of the appellant/claimant regarding the functional disability considering his avocation as Mason/coolie is accepted. Loss of Income is arrived at as follows:



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Monthly Income = Rs.5000/-

Annual Income = Rs.5000x12=60,000

Taking the multiplier as 18 for the age group upto 25 years

Loss of earning capacity::Rs.60000 x18x20/100

::Rs.2,16,000/-

11. Considering the period of treatment and the nature of injuries sustained by the claimant, the Tribunal awarded a sum of Rs.20,000/- towards Pain and Sufferings and Rs.3000/- towards Extra Nourishment and Rs.2000/- towards Transportation which are meagre. Therefore, this Court enhances the same to Rs.25,000/-, 25,000/- 10,000/- towards Pain and Sufferings, Extra Nourishment and Transportation respectively.

12. This Court is of the considered view that income has to be fixed at Rs.5000/- per month. Therefore, this Court awards a sum of Rs.15,000/- towards loss of earning during the period of treatment (i.e., three months).

13. Since the appellant marked medical bills regarding the treatment taken as Ex.P.4 for a sum of Rs.3,725/- and the same is awarded by the Tribunal towards Medical Expenses, it is hereby confirmed. The break-up details of the amounts awarded under various heads are as follows:

Sl. No	Head under which the compensation is awarded	Amounts awarded by the Tribunal	Amounts awarded by this Court
1	Loss of 20% Earning Capacity	1,94,000	2,16,000
2	Pain and Sufferings	20,000	25,000
3	Nutrition	3,000	25,000
4	Transportation	2,000	10,000
5	Medical Expenses	3,725	3,725
6	Loss of income during the period of treatment	13,500	15,000
	Total	2,36,225	2,94,725

14. The point for consideration is answered in favour of the appellant/claimant and against the respondent/Insurance Company.

Accordingly, this Civil Miscellaneous Appeal is partly allowed. The second respondent/Insurance Company is directed to deposit the amount, which this Court determined in this appeal, to the credit of M.C.O.P.No.1482 of 2008 on the file of the



Motor Accidents Claims Tribunal, XVII Additional Judge, Small Causes Court, Chennai, with accrued interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit along with costs, through RTGS or NEFT method as held by this Court in (The Oriental Insurance Company Limited, Kannur Vs. Rajesh and two others) 2016 (1) TN MAC 433, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant shall be entitled to withdraw the award amount with accrued interest. The appellant is directed to pay appropriate Court fees within a period of two months, failing which, he is not entitled to claim interest on the award amount. No costs.

s/d-
Assistant Registrar

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Sub-Assistant Registrar

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To

1.The XVII Additional Judge,
Motor Accidents Claims Tribunal /
Small Causes Court, Chennai.

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

+1 CC to Mr.T.G.Balachandran, Advocate sr 24870.

C.M.A.No.1529 of 2014

KK(CO)
SP(29/10/2021)