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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2021

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.3365 of 2017

R.Veera Kumar

...Appellant/Petitioner

Vs

1.R.Ravi

2.Radha Dye Chem

3.Balaji Allianz General Insurance Company Ltd.,

Door No.11 (Office No.6-A) Peoples part, 3rd Floor,

Government Arts College Road,

Coimbatore - 641 018.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, prayed for enhancement of compensation amount awarded in the judgment and decree dated 22.04.2013 made in M.C.O.P.No.457 of 2011 on the file of the MACT/Sub Court, Bhavani.

For Appellant : Mr.Ma.P.Thangavel

For R3 : Mr.N.Somasundaar

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 22.04.2013 made in M.C.O.P.No.457 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani.

2.The appellant is the claimant in M.C.O.P.No.457 of 2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Bhavani. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 13.03.2011.

3.The Tribunal considering the pleadings, oral and



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documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent-driver of the car belonging to the 2nd respondent and directed the 3rd respondent-Insurance Company to pay a sum of Rs.14,24,500/- as compensation to the appellant.

4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The fact of the case is that on 13.03.2011, at about 7.15 p.m., while the appellant riding the motor cycle bearing Registration No.TN-33/AR 2098 on the left side of the Muthoor to Kodumudi road from west to east direction, at that time, near Kolandapalayam petrol bunk, the car bearing Registration No.TN-39/R-4243 driven by its driver-1st respondent came from opposite direction in a rash and negligent manner and hit against the appellant. Due to the accident, the appellant sustained multiple grievous injuries in his spinal cord and he has undergone major operation in his spinal cord.

6. The learned counsel for the appellant-claimant submitted that the Tribunal has awarded a sum of Rs.6,000/- towards notional income of the claimant. The accident was occurred on 13.03.2011. Due to the said accident, the claimant sustained grievous injury. The claimant is not able to move anywhere. He cannot perform his day to day work on his own. Therefore, the Tribunal considered the 95% permanent disability assessed by the Doctor as 100% functional disability and awarded loss of future earnings.

7. The learned counsel for the appellant further submitted that the appellant -claimant was working as a driver under P.W.3. P.W.3 also deposed that the appellant was working as driver under him. At the time of accident, the appellant was drawing a sum of Rs.8,000/- per month plus Rs.150/- as daily bata. The Court below has not considered all these aspect and fixed the notional income as a sum of Rs.6,000/- without any basis. The accident is of the year 2011. The Hon'ble Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance reported in 2014 1 TNMAC 459 (SC) awarded a sum of Rs.6,500/- for the vegetable vendor for the accident occurred in the year 2008. Considering the increase in cost of living from the year 2008 - 2011, the Court below ought to have fixed a sum of Rs.8,000/- as notional income of the claimant but it has fixed a sum Rs.6,000/- which is meagre, therefore, he submit that Rs.8,000/- may be fixed as notional income of the claimant.

8. Further, he submit that the claimant was 24 years 11 months old at the time of accident. Therefore, the correct multiplier



applicable is 18 as held by the Hon'ble Supreme Court in the case of Sarla Verma & others vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 SC. The Tribunal has applied multiplier 17, which has to be redetermined.

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9.As held by the Hon'ble Supreme Court in the case of National Ins. Co. v. Pranay Sethi & others reported in 2017(2) TNMAC 609 (SC), when the multiplier method is applied, the Court supposed to have add certain percentage of amount towards future prospect. But, in the present case, no amount added towards future prospect. As held by in the case of Pranay Sethi stated supra, the Tribunal ought to have added 40% towards future prospect for the age group below 40. In the present case, the age of the injured is 24 years 11 months therefore, 40% towards future prospect needs to be added.

10.The learned counsel also brought into the knowledge of this Court that the Court below awarded a sum of Rs.25,000/- towards Attender Charges by fixing Rs.150/- per day for a period of 6 months. Therefore, he pleaded that since the appellant is not able to move his body, the attender charges provided by the Tribunal for a period of 6 months may be enhanced for 25 years.

11.Per contra, Mr.Somasundaar, learned counsel for the 3rd respondent submitted awarding a sum of Rs.8,000/- towards notional income is on the higher side. Further, he disputed the avocation of the claimant as driver. In the F.I.R., it has been stated that claimant was an Agricultural Coolie, whereas in the claim statement it has been stated as driver. Therefore, he contended that since the claimant stated his avocation wrongly, he is not entitled for any relief legally.

12.In reply, the learned counsel for the appellant submitted that based on the complaint F.I.R was registered, the Police has recorded wrongly the avocation as Agricultural Coolie for which the claimant would no way responsible and he has stated in the claim statement that he was working as driver under P.W.3. The Tribunal also accepted the contention of the claimant as driver but only the receipt of salary was not accepted and arrived the notional income on its own as a sum of Rs.6,000/-. The claimant received salary along with daily bata of Rs.150/- as per the salary certificate issued by P.W.3. Further, he contended that against the finding of the Tribunal, the avocation of the claimant, the Insurance Company, 3rd respondent has not preferred any appeal. Therefore, in the appeal filed by the Claimant, the Insurance Company is not entitled to raise all these objection. Therefore the 3rd respondent-Insurance Company is not entitled to raise such plea at this stage.



13. The learned counsel appearing for the 3rd respondent-Insurance Company fairly submitted that 40% may be added towards future prospect. Further he submitted that a sum of Rs.27,000/- awarded by the Tribunal towards attender charges is just and fair and he made a strong objection for re-determining the same.

14. Heard the learned counsel for the appellant as well as the 3rd respondent-Insurance Company and perused the materials available on record.

15. The present appeal has been filed by the appellant-claimant, the claimant challenged the quantum of compensation awarded by the Tribunal. The learned counsel for the claimant contended that he is working as a driver and in this regard he produced Ex.P15- driving license and Ex.P14-salary certificate and the Court below has refused to consider the salary as Rs.8,000/- plus Rs.150/- as daily bata since there was discrepancy in the cross examination of P.W.3, but the Tribunal has confirmed that the claimant was driver at the time of accident. As on date there is no controversy though the respondent raised issue that the claimant is not the driver and the salary certificate issued and filed before the Court below was fictitious. This Court is inclined to go by the undisputed fact as settled by the Tribunal. The Tribunal found that the claimant is a driver at the time of accident and as long as no appeal is filed by the Insurance Company against the finding of the Tribunal, the avocation of the claimant at the time of accident was driver. Therefore, the only issue to be decided is as to whether the fixation of Rs.6,000/- as notional income is correct or not? The accident is of the year 2011 and the learned counsel for the appellant pleaded to fix a sum of Rs.8,000/- as notional income.

16. The Hon'ble Supreme Court in the case of Syed Sadiq stated supra has awarded a sum of Rs.6,500/- as notional income for the vegetable vendor for the accident took place in the year 2008. By following the same yardstick and considering the increase in cost of living, the notional income can be fixed as Rs.7,000/-. The claimant has stated his avocation as Agricultural Coolie in F.I.R and the same is not reflected anywhere in the claim statement as well as in the deposition. The claimant has taken the stand that the information recorded by the Police in F.I.R is wrong. However, the claimant has not stated anything about the recording of wrong information in the F.I.R, in the claim statement. The learned counsel for the respondent-Insurance Company by referring the judgment passed by the Division Bench of this Court in the case of Managing Director, Tamilnadu State Transport Corporation vs. Nagamalli & others reported in 2016 1 TNMAC 596. and M.Anbalagan vs. K.M.Asalam Basha reported in 2015 (2) TNMAC 362 submitted that the notional income may be fixed



Rs.6,500/-. Taking into consideration, the submission of the respondent and claimant and in view of the finding of the Tribunal that the avocation of the claimant at the time of accident was driver, this Court is inclined to refix the notional income of the claimant at Rs.7,000/-

17.The Hon'ble Supreme Court in the case of Pranay Sethi stated supra held that when the loss of income awarded by applying multiplier method, 40% future prospect needs to be added for the age of 24 years. The Tribunal has not added any amount towards future prospect. Both the parties fairly submitted that 40% may be added towards future prospect. Therefore, this Court is inclined to add 40% towards future prospect. The Tribunal has applied multiplier 17. In the present case, as per the law laid down by the Hon'ble Apex Court in Sarala Verma case stated supra, multiplier 18 is correct, hence, this Court inclined to apply multiplier 18. The amount awarded by the Tribunal towards loss of future earning capacity is redetermined as follows:

Rs.7,000/- + 2800 (40% of Rs.7,000/-) x 12 x 18 =
Rs.21,16,800/-

18.The Doctor has assessed 95% permanent disability for the claimant. However, the Tribunal has taken 100% functional disability. This Court is concur with the finding of the Tribunal on the aspect of functional disability. With regard to the attender charges, the Tribunal has awarded a sum of Rs.27,000/-. Since the claimant has suffered grievous injuries in his spinal cord, the claimant is unable to do the day to day work without the help of others. Therefore, this Court redetermine the amount awarded by the Tribunal towards attender charges as Rs.75,000/-. The amount awarded by the Tribunal under all the other heads are just and reasonable and stands confirmed. Hence, the amount awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Future Earnings	12,24,000	21,16,800
2.	Pain and Sufferings	20,000	20,000
3.	Medical bills	65,000	65,000
4.	Extra-nourishment	5,000	5,000
5.	Transportation	23,500	23,500
6.	Damages to clothes	1,000	1,000



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7.	Attender Charges	27,000	75,000
8.	Loss of Amenities	9,000	9,000
9.	Permanent Disability	50,000	50,000
	Total	14,24,500	23,65,300

19. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs14,24,500/- is hereby enhanced to Rs.23,65,300/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the entire award amount to the appellant by way of RTGS, to his bank account directly, within a period of three weeks from the deposit or application made by the appellant for withdrawal, whichever is later. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To:

The Motor Accident Claims Tribunal,
The Subordinate Judge, Bhavani.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.N.Somasundar, Advocate SR.No.23441

+1cc to Mr.Ma.P.Thangavel, Advocate SR.No.23550

C.M.A.No.3365 of 2017

GMV (31/08/2021)