



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.10.2021

Delivered On : 23.11.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.936 of 2017

WEB COPY

S.Sellamuthu

...Appellant/Petitioner

Vs.

1.M.R.Srinivasan

2.The Manager,
National Insurance Company Ltd.,
Flat No.101-106,
No.1.B.M.C.House,
Cannaught Place,
New Delhi - 110 001.

... Respondents/Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to modify the award passed in M.C.O.P.No.140 of 2012 on the file of the learned Additional Sub Judge, Motor Accident Claims Tribunal, Karur, dated:30.08.2013.

For Appellants	: Mr.N.Sudhagar Nagaraj
For 2 nd Respondent	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.G.Venugopal

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.140 of 2012 dated 30.08.2013, on the file of the Motor Accident Claims Tribunal, Additional Sub Judge, Karur.

2.The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.140 of 2012, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 25.10.2011. The Tribunal has awarded a sum of Rs.11,85,200/- (Rupees Eleven Lakhs Eighty Five Thousand and Two Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.140 of 2012 is as follows:

On 25.10.2011, at about 08.30 p.m., a car bearing registration No.TN-47-W-7776 was driven by its driver in a rash and negligent manner dashed against the petitioner. The petitioner sustained injuries. He was admitted in Karur Amaravathy Hospital and then he

<https://hcservices.ecourts.gov.in/hcservices/>



was admitted in Coimbatore K.G.Hospital and he took treatment as 'in patient' for a period of one month. The petitioner claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) as compensation.

4.Brief substance of the counter filed by the respondents therein is as follows:

The petitioner himself is responsible for the accident. The petitioner has to prove his age, income, profession, injuries, medical expenses, disability and the mode of treatment. The first respondent is the owner of the vehicle. The second respondent is the insurer. Both the respondents are not liable to pay compensation.

5.On the side of the claimant, four witnesses were examined and 15 documents were marked. On the side of the respondents, one witness was examined and two documents were marked. After trial, the Tribunal has awarded a sum of Rs.11,85,200/- (Rupees Eleven Lakhs Eighty Five Thousand and Two Hundred only) as compensation to be paid by the second respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of the award.

6.On the side of the appellant, it is stated that the Tribunal failed to consider the injuries sustained by the appellant. The appellant sustained injuries and multiple fractures. The appellant has spent Rs.6,98,200/- (Rupees Six Lakhs Ninety Eight Thousand and Two Hundred only) towards medical expenses. The appellant is bed ridden and he could not do even the day to day works. Before the accident, the appellant was running a hotel and was earning Rs.10,000/- (Rupees Ten Thousand only) per month. The Tribunal failed to consider Ex.P15, professional tax receipt. The Tribunal erroneously fixed the monthly income as Rs.4,000/- (Rupees Four Thousand only). The Tribunal failed to follow the judgment of the Hon'ble Supreme Court in the case of **Rajkumar v. Ajaykumar** reported in **2011 (ACJ) 1** and another judgment of the Hon'ble Supreme Court in the case of **Manickam v. Metropolitan Transport Corporation** reported in **2013 (2) TNMAC 88**. The appellant lost his future prospects due to his accident. The Tribunal ought to have awarded compensation for future medical expenses, loss of enjoyment of life, future prospects, loss of amenities of life and attendant charges. The award of the Tribunal for extra nourishment, transportation expenses, pain and suffering ought to be enhanced.

7.On the side of the appellant, it is stated that the appellant sustained 60% disability including head injury. The notional income in the year 2011 is Rs.6,500/- (Rupees Six Thousand and Five Hundred only). P.W.4 Doctor has deposed that the right hand and the right leg of the petitioner are not functioning properly. His speech is affected and his memory power is affected and prayed the award to be enhanced.



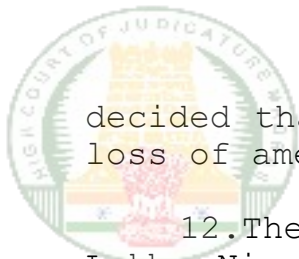
8. On the side of the respondents, it is stated that the appellant cannot advance any new points unless they are referred in the grounds of appeal. There was no evidence as to the need for future medical treatment. When there is no proof for requirement of future medical treatment, there is no necessity to award any amount towards future medical expenses. Only when the injured is in a state of vegetative condition or totally invalid, future prospects can be awarded and not in any other cases. There was no proof for extra nourishment or transportation expenses. There is no prove for functional disability. The Tribunal assessing the loss of earning capacity by applying multiplier method is wrong. The award passed by the Tribunal for pain and suffering is reasonable and prayed the appeal to be dismissed.

9. There is no dispute regarding the liability or regarding the validity of the insurance policy. P.W.2 has deposed that the appellant sustained injury on right clavicle and left side of the chest. The left side rib 2 to 7 were fractured. P.W.3, the Record Keeper of K.G. Hospital has deposed that Ex.P2, Ex.P5, Ex.P6, Ex.P7 were issued by the K.G. Hospital. P.W.4 has deposed that the appellant sustained head injury and that the appellant is having fracture on the left side skull, left side jaw bone and there was hemorrhage in the brain and that the right leg and hand of the appellant is not properly functioning and that the appellant could not work properly and that the appellant is having memory loss and he could not concentrate on any work and he fixed the disability as 60%. The disability certificate was marked as Ex.P12. X ray was marked as Ex.P11. Scan reports were marked as Ex.P13, Ex.P14. Considering the wound certificate and considering the evidence of P.W.2 and P.W.4, the Tribunal has come to the conclusion that the appellant is entitled for loss of income by applying multiplier method. Considering the evidence of P.W.2 and P.W.4 and considering Ex.P10 to Ex.P14, it is decided that the appellant is entitled for loss of income by applying multiplier method.

10. It is stated that the appellant was running a hotel and was earning Rs.10,000/- (Rupees Ten Thousand only) per month. Ex.P15 is the Receipt for payment of professional tax. Considering Ex.P15 and considering the notional income prevailing at the time of accident, the income of the appellant is fixed as Rs.6,500/- (Rupees Six Thousand and Five Hundred only) per month. For 60% disability, the loss of income is calculated as Rs.3,900/- (Rupees Three Thousand and Nine Hundred only). The age of the appellant is 42 years at the time of accident. Hence, multiplier '14' is applicable. The appellant is entitled for Rs.6,55,200/- (Rupees Six Lakhs Fifty Five Thousand and Two Hundred only) towards loss of income.

11. No claim was raised by the appellant under the head loss of amenities or for loss of enjoyment of life or for attendant charges.

<https://hccasesappellate.judiciary.mys.gov.in/> New points raised at the time of appeal and it is



decided that the appellant is not entitled for compensation towards loss of amenities, loss of enjoyment of life and attendant charges.

12.The Tribunal has awarded a sum of Rs.6,98,200/- (Rupees Six Lakhs Ninety Eight Thousand and Two Hundred only) towards medical expenses. Since the appellant has sustained head injuries, the award of compensation for medical expenses is reasonable. The compensation awarded by the Tribunal for pain and suffering (Rs.25,000), future prospects (Rs.20,000), transportation expenses and for extra nourishment (Rs.10,000) are reasonable. In total, a sum of Rs.14,08,400/- (Rupees Fourteen Lakhs Eight Thousand and Four Hundred only) is awarded as compensation.

13.The appellant is entitled to a sum of Rs.14,08,400/- (Rupees Fourteen Lakhs Eight Thousand and Four Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

14.The second respondent therein is directed to deposit Rs.14,08,400/- (Rupees Fourteen Lakhs Eight Thousand and Four Hundred only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant is permitted to withdraw the award amount with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. The appellant is directed to pay extra Court fee, if any. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

Note : In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



To

1.The Additional Sub Judge,
The Motor Accidents Claims Tribunal,
Karur.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.N. SUDHAGAR NAGARAJ, Advocate (SR-35667[F]
dated 24/11/2021)

+1 CC to M/s.S. SRINIVASARAGHAVAN, Advocate (SR-35569[F]
dated 23/11/2021)

+1 CC to M/s.M.P. SENTHIL, Advocate (SR-35818[F] dated 25/11/2021)
C.M.A. (MD)No.936 of 2017
23.11.2021

KM(CO)

GC(20.12.2021) 5P 7C