IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

Civil Miscellaneous Appeal No.2728 of 2021

Pandi ...Appellant/Petitioner

Vs.

1.Solamalai Express

2.Reliance General Insurance Co. Ltd.
"Reliance House", 6th Floor,
No.6, Haddows Road,, Chennai 600 006.

3.S.R.M.Transports India (P) Ltd.,
No.3, Veerasamy street,
West Mambalam, Chennai 600 033.

4.ICICI Lombard General Insurance Co. Ltd.,
'Chottabai Centre' II & III Floor,
No.140, Nungambakkam High Road,
Chennai 600 034.
...Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the amount awarded in MCOP No.7297 of 2015 dated 27.11.2020 on the file of Motor Accident Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellant : Mr. K.Varadhakamaraj

For Respondents : Mrs.C.Bhuvanasundari, for R2

Mr.Siva Kollappan, for R4

J U D G M E N T

Aggrieved by the award of a sum of Rs.19,36,000/- as compensation for the injuries suffered by him in a motor accident that occurred on 16.04.2015, the claimant is on Appeal seeking enhancement.

2. The factum of the accident and the negligence are not in dispute, since the Insurance Companies have accepted the award of the Tribunal. The claimants sought for a compensation

of Rs.80,00,000/-, contending that he has suffered a 100% functional disability, as he could not carry on his avocation as a driver any longer. He would also seek compensation under various heads and the Medical expenses that were incurred by him.

3. The claim was resisted by the Insurance Companies namely respondents 2 and 4, who were the insurers of the two vehicles which had collided, contending that the other vehicle was responsible for the accident. They would also term the quantum of compensation claimed as very high. However, both the Insurance Companies did not choose to let in any evidence.

4. The Report of the Medical Board was marked as Ex.C1. The claimant examined himself as P.W.1 and Exhibits P1 to P34 were marked.

5. The Medical Board found that the petitioner has suffered as 60% permanent disability. Rejecting the contention of the petitioner that it would transform into a 100% functional disability, the Tribunal granted a compensation of Rs.11,23,200/- adopting the multiplier method for the 60% disability. The Tribunal also granted the following amounts as compensation under various heads.

Heads	Amount (Rs.)
Pain and suffering	25,000/-
Extra Nourishment	20,000/-
Transportation	25,000/-
Damage to Clothes	1,000/-
Attender Charges	30,500/-
Medical Expenses	6,86,542/-
Loss of Amenities	25,000/-

Including the sum of Rs.11,23,200/- awarded for functional disability, the Tribunal awarded a sum of Rs.19,36,000/- as the total compensation.

6. Mr.K.Varadhakamaraj, learned counsel appearing for the claimant/appellant would vehemently contend that the Tribunal was not right in fixing the disability only at 60% for awarding compensation. The learned counsel would contend that considering the avocation of the claimant, namely a driver, the Tribunal should have concluded that there was 100% permanent disability as he cannot carry on his avocation as a driver, inasmuch as, his left leg has become useless. The learned counsel would also fault the Tribunal for awarding a paltry sum

of Rs.25,000/- towards pain and suffering, having recorded a finding that the appellant was an inpatient for more than 61 days. The award of Rs.30,500/- for attender charges as well as Rs.25,000/- for loss of amenities is also termed as very meagre by the learned counsel for the appellant.

7. Contending contra, Mrs.Bhuvanasundari, learned counsel appearing for the second respondent/Insurance Company and Mr.Siva Kollappan, learned counsel appearing for the fourth respondent/Insurance Company would submit that even though the action of the Tribunal in adopting multiplier method for 60% permanent disability is not acceptable to the Insurance Companies, they have chosen to accept the award, since the award as a whole was reasonable. They would also contend that in the absence of any proof of his employment and earning, the Tribunal was right in adopting Rs.12,000/- as monthly income for the claimant.

8. Adverting to the contention of Mr.K.Varadhakamaraj, regarding non inclusion of future prospects while assessing the compensation for disability by adopting multiplier method, the learned counsel appearing for the Insurance Companies would submit that future prospects could be considered only in cases where there is a very serious injury and the case on hand being a case of both bone fracture may not attract the concept of future prospects. They would also submit that the award made under other heads is also reasonable and hence the award of the Tribunal does not require any modification.

9. I have considered the contentions of the learned counsel on either side.

10. The Medical Board has assessed the disability at 60%. It is a case of both bone fracture. The fact that the claimant cannot work as a driver in future has been recorded by the Tribunal. The employment was not questioned in fact the employer of the petitioner is the third respondent and the insurer of the third respondent’s vehicle is the fourth respondent. The employment of the petitioner as a driver with the third respondent was almost conceded, though not expressly. Therefore, I do not think the contention of the counsel for the Insurance Company that there was no proof of employment and as such the action of the Tribunal taking Rs.12,000/- as the monthly income itself is on the higher side.

11. Once the Tribunal comes to the conclusion that there was a functional disability and the injured claimant cannot under take his avocation in future, adoption of multiplier method can be justified. While adopting multiplier method, the Tribunal should also adopt a reasonable sum as a monthly income

and in appropriate cases add a certain percentage, as suggested by the Hon'ble Supreme Court in National Insurance Company Ltd. v. Pranay Sethi, for future prospects. It is admitted that the claimant cannot continue his avocation as a driver in future. Therefore, there is a definite loss of earning capacity. Since the Medical Board has assessed the disability at 60%, the loss of earning capacity can be taken at 60%. We have to ascertain the monthly income and in order to quantify the loss of earning capacity.

12. In the light of the evidence that is available and the fact that the claimant has produced his driving licence also, I am of the opinion that adoption of Rs.12,000/- per month as income for a driver in the year 2015 itself is on the lower side. I am of the opinion that adoption of Rs.15,000/- per month would be reasonable. I am unable to accept the contention of the learned counsel for the claimant that the future prospects should be added. There is no prohibition on adoption of future prospects in injury cases, but the adoption to be justified should be applied only in cases where it is shown that the claimant cannot do any other work. In the case on hand, the Tribunal has recorded a clear finding that the claimant can do some other work. Therefore, I do not see any reason to adopt future prospects.

13. Accepting the finding of the Tribunal regarding the disability at 60%, the loss of earning capacity due to the functional disability is assessed as follows:

Rs.15,000/- x 12 x 13 x 60/100 = 14,04,000/-

It is really disheartening to find that the Tribunal awarded a sum of Rs.25,000/- towards pain and suffering, where it is proved that the claimant was inpatient for nearly 61 days and the treatment spanned over a period of six months. Once it is shown that there was a both bone fracture in one of the legs, it goes without saying, that the claimant would have suffered a substantial pain and suffering during the period of treatment and thereafter also. Hence I find that award of a sum of Rs.25,000/- towards pain and suffering is too meagre and it requires enhancement. Therefore, the award towards pain and suffering is enhanced to Rs.75,000/-.

14. The Tribunal has awarded attender charges at Rs.500/- per day, the same in my opinion is very meagre. Therefore, the attender charges is enhanced to Rs.50,000/-. The award of Rs.25,000/- towards loss of amenities is enhanced to Rs.50,000/-, considering the nature of the injury and the fact that the left leg is rendered completely useless because of the accident. In light of the above, the award of the Tribunal is modified and the compensation is granted as follows:

S.No.	Heads	Amount (Rs.)
1	Functional Disability	14,04,000/-
2	Pain and suffering	75,000/-
3	Transportation to Hospital	25,000/-
4	Extra Nourishment	20,000/-
5	Damage to Clothing	1,000/-
6	Loss of Amenities	50,000/-
7	Attender Charges	50,000/-
8	Medical Expenses	6,86,542/-
	Total	23,11,542/-

and the same is rounded off to Rs.23,11,000/-.

15. In view of the above, the appeal is partly allowed. The enhanced amount is also apportioned between the two Insurance Companies in the same ratio i.e., at 50% each as fixed by the Tribunal. The enhanced award will carry interest at 7.5% per annum from the date of petition till date of deposit. The Insurance Companies are directed to deposit the enhanced award amount within a period of six (6) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant is permitted to withdraw the entire amount. There shall be no order as to costs in this appeal.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

jv

To

1.The IV Judge,
Motor Accident Claims Tribunal, Small Causes Court, Chennai.

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

+1cc to Mr.K.Varadhakamaraj, Advocate SR. No. 4999

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JPL (CO)
PR (22/04/2022)