



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved On : 02.02.2023
Delivered On : 17.03.2023
CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI
C.M.A.(MD)No.259 of 2020

S.K.Murugesan

... Appellant /claimant

Vs.

1.The Correspondent,

Latha Madhavan Matriculation School,

Kidaripatti, Melur Taluk,

Madurai District.

2.The Oriental Insurance Company Ltd.,

Through its Divisional Manager,

3rd Floor, Banguru Dharmastala Buildings,

Near Hotel Royal Court,

6-A, West Veli Street, Madurai.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount in M.C.O.P.No.504 of 2015, dated 25/10/2017 on the file of the Motor Accident Claims Tribunal - IV Additional Sub Judge, Madurai.

For Appellants

: Mr. K.Kumaravel

For Respondents

: No appearance for R1

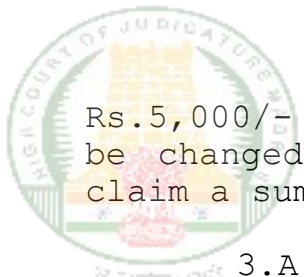
: Mr.K.Balasubramanian for R2

JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the compensation amount in M.C.O.P.No.504 of 2015 on the file of the Motor Accident Claims Tribunal - IV Additional Sub Judge, Madurai. The appellant herein is the claimants and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.504 of 2015, is as follows:-

On 26.06.2015, at about 08.10 am., when the petitioner was walking along the mud road, adjoining Melur - Madurai main road, near P.S.P. Petrol Bunk, a school bus bearing Registration No.TN-59-AX-7785, which came in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries and the right leg below the knee level was amputated. The petitioner took treatment as in patient from 26.06.2015 till 02.08.2015. The petitioner was a retired Special Sub Inspector of Police and he was working as a salesman at Guru Chola Hot and Cool drinks and was earning Rs.6,000/- pm., he was doing real estate business and was earning



Rs.5,000/- per month. He has to wear artificial leg, which to be changed in every two years, until his death. The petitioner claim a sum of Rs.15,00,000/- as compensation.

3.A brief substance of the counter filed by the first respondent, in M.C.O.P.No. 504 of 2015 is as follows:-

The manner of accident as alleged by the petitioner is not true. The driver of the bus drove the vehicle in a moderate speed, adhering to the traffic rules. The petitioner was walking along the road speaking to somebody, through mobile phone. It was the petitioner, who was careless and he invited the accident. The petitioner has to prove his age, occupation, monthly income, nature of injuries and disability with documentary evidence. The claim is excessive.

4. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.504 of 2015 is as follows:-

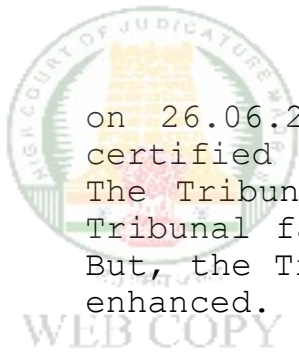
The manner of accident is denied. The first respondent vehicle has no valid insurance policy. The driver did not possess valid driving licence. The respondent is not liable to pay compensation. The driver of the first respondent drove the vehicle in a careful and cautious manner. It was the petitioner, who suddenly crossed the road and he invited the accident. The petitioner has to prove the age, occupation, income, injuries and disability. The claim is excessive.

5. Two (2) witnesses were examined and 19 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. One (1) document was marked as witness document. One (1) Document was marked as Court document. After considering both sides, the Tribunal awarded a sum of Rs.5,55,100/- as compensation to be paid by the second respondent.

6. Against the award, the claimant - appellant has filed this Appeal on the following grounds:-

The Tribunal failed to consider that the respondent failed to examine any witness or to mark any document. The Tribunal failed to consider that the petitioner was working as a salesman in a private company and was getting Rs.6,000/- per month and the Tribunal has failed to consider that he was getting Rs.5,000/- by doing real estate business and the income fixed by the Tribunal has to be enhanced. The Tribunal is wrong in applying multiplier '5', the age of the claimant at the time of accident is 63 years and multiplier '7' is to be adopted.

7. On the side of the appellant, it is stated that the tribunal failed to consider that the petitioner has undergone surgery and his right leg was amputated and he took treatment as in patient from 26.06.2015 till 02.08.2015 and he undegone 3 surgeries



on 26.06.2015, 29.06.2015 and on 21.07.2015. Medical board as certified that the petitioner sustained 75% permanent disability. The Tribunal ought to have fixed 100% functional disability. The Tribunal failed to consider that the appellant need artificial leg. But, the Tribunal has awarded only Rs.50,000/- and the same is to be enhanced.

8. On the basis of the evidence of P.W.1 and considering Ex.P1-copy of F.I.R, Ex.P2-Copy of charge sheet, the Tribunal fixed the liability on the bus driver. No appeal or cross objection was filed on the side of the respondent. There was no witness or document placed before the Tribunal. Considering the above points, it is decided that the liability fixed by the Tribunal is reasonable.

9. On the side of the appellant, it is stated that the appellant was a retired Special Sub Inspector of Police. After retirement, he was working as a salesman and was earning Rs.6,000/- and through by doing real estate business, he was earning Rs.5,000/-. But, the Tribunal has fixed only Rs.5,000/- and the same to be enhanced.

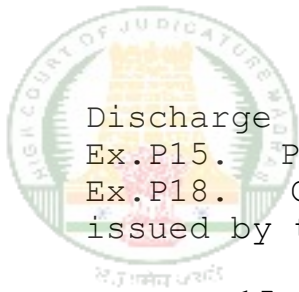
10. On the side of the appellant, it is stated that the income for 65% disability, the loss of income ought to be fixed as Rs.10,000/- per month. A judgment of this Court reported in **2022-2-TNMAC-183(DB) (Hariharan V. Kamaraj)** is cited.

11. On the side of the second respondent / Insurance Company, it is stated that no document was filed on the side of the appellant to prove the income and the award of Rs.5,000/- per month towards loss of income is reasonable. The petitioner has not filed any document to prove that he was getting Rs.6,000/- per month by doing the work of a salesman and the petitioner has not produced any document to show that he was earning Rs.5,000/- by doing real estate business.

12. On the side of the appellant, it is stated that for amputation of the right leg below the knee level, the earning capacity of the appellant is affected and the Tribunal ought to have fixed 100% functional disability. A judgment of this Court reported in **2017-2-TNMAC-108 (S.Govindraj V. The Managing Director, Tamil Nadu State Transport Corporation)** is cited.

13. In the case cited above one of the leg of the claimant was amputated below the knee level and the other leg was amputated up to thigh level. Hence, that judgment was not applicable to the present facts of the case.

14. On the side of the respondents, it is stated that with the use of artificial leg, he can work as before and there is no functional disability. Wound certificate was marked as Ex.P4.



Discharge summary was marked as Ex.P7. Lab report was marked as Ex.P15. Photos and CD were marked as Ex.P16. X-Ray was marked as Ex.P18. Case sheet was marked as Ex.X1. Disability certificate issued by the medical board was marked as Ex.C1.

15. Considering the said documents and considering the disability certificate issued by the Medical Board and considering that the appellant lost one of the legs, up to the knee level, the disability is fixed by 70%. Functional disability is fixed accordingly.

16. Considering the date of accident, the notional income is fixed as **(*)Rs.10,000/-**. The age of the claimant at the time of accident is 63 years. On the side of the appellant, it is stated that multiplier 7 is applicable for calculating the loss of income.

17. As per the dictum of the Hon'ble Supreme Court in Sarla Verma case for the age of the appellant, multiplier '7' is to be adopted. For 70% disability, the loss of income is calculated as **Rs.5,88,000/-** (Rs.10,000/- X 70/100 X 12 X7).

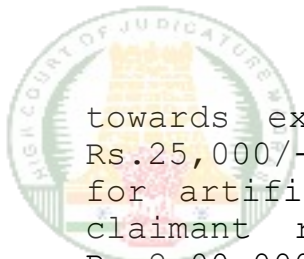
19. On the side of the claimant-appellant, it is stated that the artificial limb has to be changed in once in two years and the amount to be enhanced towards the future medical prospects.

18. On the side of the appellant, it is stated that a judgment of this Court reported in **2021-2-TNMAC - 698 (DB) (Ramachandran V. Famitha)** is cited, wherein, this Court has awarded Rs.2,00,000/- for fixing artificial limb.

20. On the side of the appellant - claimant it is stated that the Tribunal has awarded Rs.50,000/- towards pain and sufferings and the same is to be enhanced to Rs.2,00,000/- and that the Tribunal has awarded Rs.5,000/- towards transport expenses and the same is to be enhanced to Rs.25,000/- and that the Tribunal awarded Rs.5,000/- towards extra nourishment and the same is to be enhanced to Rs.10,000/- and that the Tribunal awarded Rs.1,000/- towards damages to articles and the same is to be enhanced to Rs.5,000/- and that the Tribunal failed to award future medical expenses and a sum of Rs.1,00,000/- to be granted towards future medical expenses and a sum of Rs.2,50,000/- to be awarded towards expenses for artificial limb.

21. On the side of the second respondent - Insurance Company, it is stated that the amount awarded by the Tribunal is reasonable and there is no necessity to enhance the amount.

22. Considering the fact that the right leg of the appellant-claimant was amputated below the knee level, it is decided that the appellant-claimant is entitled to Rs.1,00,000/- towards pain and sufferings, Rs.10,000/- towards transport expenses, Rs.10,000/-



towards extra nourishment, Rs.1,000/- towards loss of , Rs.25,000/- towards attender charges, Rs.2,00,000/- towards expenses for artificial limb. There is no evidence that the appellant - claimant require future medical expenses, already a sum of Rs.2,00,000/- was awarded towards artificial expenses for leg. Hence, it is decided that the appellant - claimant is not entitled to any separate amount towards future medical expenses. The Tribunal awarded Rs.2,59,000/- towards medical expenses and the same is confirmed.

23. The total compensation is calculated as follows:-

Loss of income	:	Rs. 5,88,000/-
Pain and sufferings	:	Rs. 1,00,000/-
Transport expenses	:	Rs. 10,000/-
Extra nourishment	:	Rs. 10,000/-
Damage to cloth	:	Rs. 1,000/-
Attender charges	:	Rs. 25,000/-
Artificial Limb	:	Rs. 2,00,000/-
Medical expenses	:	Rs. 2,59,000/-

total compensation : Rs. 11,93,000/-

24. This appeal is partly allowed. The compensation is enhanced from Rs.5,55,100/- to **Rs.11,93,000/-**.

(i) The claimant is entitled to a sum of **Rs.11,93,000/-** with accrued interest and costs.

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of **Rs.11,93,000/-** (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (CS II)

(*)Corrected as per the order of this Court dated 06/06/2023 made in C.M.A. (MD)No.259 of 2020

Sd/-

Assistant Registrar (CS II)

// True Copy //

/04/2023

Sub Assistant Registrar(CS)



LS

(*) To be substituted to the order already despatched on 24/04/2023

To

1.The Motor Accident Claims Tribunal -
IV Additional Sub Judge,
Madurai.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai. (2 COPIES).

+1 CC to M/s.K.BALASUBRAMANIAN, Advocate (SR-16172[F] dated
17/03/2023)

+1 CC to M/s.K.KUMARAVEL, Advocate (SR-15851[F] dated 17/03/2023)

C.M.A. (MD) No.259 of 2020

17.03.2023

SI/(19.04.2023) 6P/ 6C

RD(23/06/2023) 6P/ 6C