

D. Vasantha Vs. E. Balasubramaniam and Another

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Court : Chennai

Decided On : Aug-24-2012

Judge : The Honourable Mrs. Justice Aruna Jagadeesan

Appeal No. : CMA.No.1100 of 2009

Appellant : D. Vasantha

Respondent : E. Balasubramaniam and Another

Advocate for Pet/Ap. : For the Appellant: M. Swamikannu, Advocate. For the Respondents: R2, K.S. Narasimhan, Advocate.

Judgement :

(Prayer: This Civil Miscellaneous Appeal is filed against the Judgement and Decree dated 30.12.2008 made in MCOP.No.4866/2005 by the learned II Judge, Court of Small Causes (MACT) Chennai.)

1. This Civil Miscellaneous Appeal is filed against the Judgement and Decree dated 30.12.2008 made in MCOP.No.4866/2005 by the learned II Judge, Court of Small Causes (MACT) Chennai, whereby the Tribunal awarded a sum of Rs.2,42,300/- as total compensation to the claimant/appellant for the injuries sustained by her in the motor accident that occurred on 24.10.2005.

2. The accident dated 24.10.2005 resulted in grievous injuries to the Appellant. As a result of the said injuries, her left leg was amputated below the knee. The

disability of the claimant has been assessed at 40 per cent in respect of lower limb by disability certificate Ex.P8 issued by PW.4 Doctor. PW.4 had deposed that the victim would find it difficult in walking even if an artificial limb is fixed and she cannot carry on her avocation as 'Sitthal' in the construction work. He has further deposed that she would need assistance of a third person even to walk.

3. The injured was working as 'Sitthal' in construction work at the time of the accident. But, there is no evidence to prove the said avocation as well as the income of Rs.3200/- p.m. said to have been earned by her. In the absence of any definite evidence, the Tribunal has taken her monthly income at Rs.3000/- p.m. and applied the multiplier of 13 and deducted the loss of earning capacity at 40 per cent. Thus, the Tribunal awarded a sum of Rs.1,87,200/- for the loss of future earning due to the disability suffered by her. Apart from this, the Tribunal awarded a sum of Rs.30,000/- for pain and suffering, Rs.1600/- for transportation expenses, Rs.5000/- towards extra nourishment, Rs.500/- for damages to clothes, Rs.2000/- for medical expenses, Rs.5000/- for attendant's charges, Rs.10,000/- for mental agony and Rs.1000/- for additional transportation expenses. In all, a sum of Rs.2,42,300/- has been awarded as total compensation.

4. The learned counsel for the Appellant has relied upon the decision of Honourable Supreme Court reported in 2011-ACJ-1975 (Kumaresh Vs. The Divisional Manager, National Insurance Company Limited and another) wherein the Honourable Supreme Court has assessed permanent physical disability at 50 per cent in case of amputation of right leg below the knee in the case of building centering worker drawing a monthly salary of Rs.3000/- per month and accordingly, awarded compensation. The learned counsel also relied upon the decision of the Honourable Supreme Court reported in 2011-2-TNMAC-661-SC (Govind Yadav Vs. New India Insurance Company Limited), wherein in a case of a helper/cleaner in a mini bus who suffered amputation of left leg, the disability was assessed at 70 per cent.

5. The Appellant contended that she was earning a monthly salary of Rs.3200/- by doing 'Sitthal' work in construction. As rightly pointed out by the Tribunal, there is no definite evidence to show her avocation as well as the monthly income of the

Appellant. In the absence of any concrete evidence, the monthly income of the Appellant can be taken as Rs.3000/- p.m. PW.4 Doctor has testified to the effect that on account of the amputation suffered by her below knee, she will not be in a position to carry on her avocation as "Sitthal" and assessed her disability to an extent of 40 per cent as permanent. As per the Schedule I to the Workmen's Compensation Act, 1923, the disability percentage of loss of earning capacity due to the amputation below the knee was determined at 50 per cent. In the present case, though the Doctor has assessed permanent disability at 40 per cent, but as per the Schedule I to the Workmen's Compensation Act, 1923, the disability percentage of loss of earning capacity is determined at 50 per cent. It is clear that the claimant is a manual labourer and loss of her leg below the knee would definitely and drastically affect her ability to perform the construction activities as "Sitthal" or even any other manual labour work.

6. In the claim petition, the age of the Appellant is mentioned as 42 years. As there is no evidence to prove the age of the Appellant, the multiplier adopted by the Tribunal is just and proper and therefore, the same is applied to assess the loss of future earning capacity due to the disability suffered by her. Thus, a sum of Rs.2,34,000/- ($\text{Rs.3000} \times 12 \times 13 \times 50/100$) is awarded for the loss of future earning capacity.

7. The amputation of leg below the knee not only severely affect her earning capacity, but also she will be permanently disabled and suffering discomforts living with one leg for life. The evidence placed on record is to the effect that she needs help of a third person even for walking as the stump below the knee is not suitable for fixing an artificial limb and further as she comes from a very poor family, there is no chance for her to fix implanting an artificial limb to enable her to walk. Therefore, in the light of the above, some amount has to be awarded for the loss of amenities and enjoyment of life. Accordingly, a sum of Rs.1,00,000/- is awarded for the loss of amenities and enjoyment of life.

8. The Tribunal has awarded Rs.50,000/- for pain and suffering and Rs.10,000/- for mental agony, which are just and proper and remain unaltered. Considering the nature of injuries and the period of treatment undergone by the claimant,

Rs.5000/- for transportation expenses, Rs.5000/- for medical expenses and Rs.5000/- towards extra nourishment are awarded. She was hospitalised and she has been taking continuous treatment, which is evident from Ex.P6 case sheet. Therefore, a sum of Rs.25,000/- is awarded for attendant's charges. In all, a sum of Rs.4,34,500/- is awarded to the claimant as total compensation with interest at 7.5 per cent p.a. from the date of the claim petition till the date of realization for the enhanced amount.

9. In the result, this Civil Miscellaneous Appeal is allowed . The impugned award is enhanced from Rs.2,42,300/- to Rs.4,34,500/- as mentioned above. In all, the claimant is entitled to a total compensation of Rs.4,34,500/- (Rupees four lakhs thirty four thousand and five hundred only) with interest 7.5% p.a. from the date of the claim petition till the date of realization for the enhanced amount. The 2nd Respondent/Insurance Company is directed to deposit the enhanced award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order and on such deposit being made, the claimant is entitled to withdraw the entire amount with interest. No costs.

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