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S. PERUMAL

v.

K. AMBIKA & ANR.

(Civil Appeal No.2377 of 2015)

FEBRAURY 24, 2015

B

**[V. GOPALA GOWDA AND R. BANUMATHI, JJ.]**

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*Motor Vehicles Act, 1988 – s.168 – Compensation – Enhancement of – Claimant-poultry labourer suffered injuries in a motor accident – Award of compensation of Rs.25,300/- with interest of 7.5% per annum – Upheld by the High Court – On appeal held: Injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability – Courts below erred in brushing aside the evidence of the doctor who examined the claimant and the disability certificate – Tribunal erred in discarding radiologist report of the hospital on the ground that the claimant did not plead about his treatment in the hospital – Considering the nature of occupation and 25% disability, compensation enhanced to Rs.4,43,500/- with 9% interest from the date of claim petition.*

**Allowing the appeal, the Court**

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**HELD: 1.1 The tribunal and the High Court were not right in brushing aside the evidence of doctor who examined the claimant and the (disability certificate). Tribunal and High Court committed an error in holding that the claimant has sustained only simple injuries. In exercise of jurisdiction under Article 136 of the Constitution, though this Court would not normally re-appreciate the facts and evidence, however, when the courts below erred in ignoring material evidence, this Court can always re-appreciate the evidence in order to render justice to the parties. [Para 13] [269-C-D]**

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1.2 The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident. The claimant was a poultry labourer, he would have earned not less than Rs.4,500/- per month. Considering the nature of occupation of the claimant and the 25% disability, the compensation of Rs.25,300/- awarded to the claimant is enhanced to Rs.4,43,500/- payable with interest at the rate of 9% from the date of the claim petition. [Paras 14, 15, 16] [269-E-F; 272-A-B, D-E]

*Raj Kumar v. Ajay Kumar* 2011 ACJ 1 (SC) – referred to.

#### Case Law Reference

**2011 ACJ 1 (SC)** Referred to. **Para 14.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2377 of 2015

From the Judgment and Order dated 27.02.2013 of the High Court of Judicature at Madras in C. M. A. No. 554 of 2013

P. Sharath, Abhishek Atrey for the Appellant.

S. L. Gupta, Varinder Kumar Sharma, Ram Ashray for the Respondents.

The Judgment of the Court was delivered by

**R. BANUMATHI, J.** 1. Leave granted.

2. The appellant in the instant appeal is seeking enhancement of compensation awarded to him in M.C.O.P. No.597/2009 by the Motor Accident Claims Tribunal, Namakkal.

A 3. The brief facts of the case are:- On 18.11.2009, a lorry  
bearing Registration No. TN 27 0907 owned by Respondent  
No.1, while driven by his driver in a rash and negligent manner  
dashed TVS 50 (bearing Registration No. TN 28 X 4892)  
driven by the appellant from behind, due to which appellant  
B sustained in the eye-brow, chest and multiple injuries all over  
the body. The second respondent herein is an insurance  
company with which the vehicle involved in the accident was  
insured.

C 4. Appellant filed an application before the Motor Accident  
Claims Tribunal, claiming compensation of Rs.5,00,000/- for  
the injuries sustained by him in the alleged accident. The  
tribunal upon consideration of the rival contentions, vide order  
dated 9.09.2011 awarded compensation of Rs.25,300/-  
D alongwith interest at the rate of 7.5% per annum. The appellant  
being dissatisfied with the amount of compensation,  
approached the High Court of Judicature at Madras in C.M.A.  
No.554/2013, wherein vide impugned judgment dated  
27.2.2013, the High Court refused to interfere with the findings  
E of the tribunal on the ground that the appellant has suffered  
only simple injuries.

F 5. Contention of the appellant is that at the time of the  
accident he was working as a labourer in a Poultry Farm and  
was earning Rs.6,000/- per month. The accident has caused  
multiple rib fractures to the appellant which has severely  
affected appellant's ability to work in the Poultry Farm or to do  
any physical work. Thus, appellant has contended that he has  
sustained permanent disabling injury and therefore the learned  
tribunal erred in relying on self-contradictory testimony of Dr.  
G Balaji (RW-1) of Vinayaga Mission Hospital, Salem, who has  
prepared the wound certificate (Ex. X4) on the basis of case  
sheet (Ex. X3) to the effect that the appellant has suffered only  
two simple injuries.

H 6. Per contra, the learned counsel for the insurance

company has, by and large, supported the impugned judgment. A

7. We have considered the rival contentions of both the parties.

8. Appellant in his claim petition has pleaded that immediately after the incident, the injured appellant was admitted in Aravinth Hospital, Namakkal where he had taken his first aid and then he was admitted in Vinayaga Mission Hospital, Salem for treatment, and after taking treatment, appellant has taken further treatment in Maruthi Hospital. B

9. In his evidence, claimant stated that he had sustained multiple fractures and had taken treatment at Vinayaga Mission Kripananda Variyar Medical (VMKVM) College and Hospital. To substantiate his evidence, Dr. Govindasamy (PW-2), Medical Officer of VMKVM was examined on the side of the claimant. He deposed that the appellant was admitted as an inpatient on 18.11.2009 and medical treatment was given to him and he was discharged on 24.11.2009. PW-2 further stated that X-ray was taken of the chest portion and found fractures in right ribs 5<sup>th</sup> to 8<sup>th</sup> and Report of the same is marked as Ex.X1. Further in the primary records maintained in the hospital, it is stated in column of final diagnosis that there are multiple right rib fractures 5, 6, 7, 8 and the copy of the same was marked as Ex.X2 which is prepared after comparing with the original. During cross-examination of PW-2, suggestion was put to him that the appellant did not sustain fractures of right ribs 5<sup>th</sup> to 8<sup>th</sup> and the same was denied by PW-2. C  
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10. The tribunal discarded radiologist report of VMKVM College and Hospital on the ground that the claimant had not pleaded in his claim petition about the treatment in VMKVM College. Thus, appellant did not specifically plead that he was treated in VMKVM College and Hospital. However, in our considered view, it can not be taken as a ground to discard the radiologist report of VMKVM College and Hospital. Rather, G  
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- A this seems to be the inadvertence while drafting the claim petition, as confusion is likely to happen, when admittedly both the hospitals are under the same management i.e. Vinayaga Mission. The appellant was brought for admission in Vinayaga Mission Hospital, Salem at 9.30 p.m. but refused to admit
- B himself as an in-patient. But immediately, the next morning he got his X-ray from VMKVM College and Hospital, which is admittedly a free hospital.

11. Relying upon the evidence of RW-1-Dr. Balaji attached to Vinayaga Mission Hospital, the tribunal did not accept the
- C version of PWs 1 and 2. RW-1 stated that as per the case sheet (Ex. X3), appellant sustained (1) 4cm x 2cm abrasion on the right jaw (2) abrasions also found on both the knees, there was no other injury except the above two. RW-1 further
- D stated that he advised claimant to admit as an inpatient but he was not so admitted. In Vinayaga Mission Hospital, Salem there was no free treatment. The Discharge Summary duly recorded on examination, appellant had swelling, tenderness and crepitus right side of chest and had rib fractures. The
- E Radiology report notes that appellant suffered fractures in 5<sup>th</sup> to 8<sup>th</sup> ribs. Appellant further required Rib Belt Support and Analgesics to relieve himself from pain. It appears that appellant discharged himself from VMKVM College and Hospital on 24.11.2009 and on the same day admitted himself in Maruthi Hospital, Namakkal and got himself discharged on 27.11.2009.
- F The claimant/appellant who is mere labourer was perhaps reluctant to get himself admitted in a paid hospital.

12. The primary evidence of PWs 1 and 2 and Radiology report ought not to have been discarded in the absence of any
- G cogent evidence led by the respondent stating that they are false. Thus, the appellant duly discharged his initial burden of proof and after that it was upon the respondents to lead further evidence. Dr. Balaji (RW-1) himself admitted in his re-examination that he did not check whether there was any injury
- H on the right ribs.

13. Dr. M. Sivakumar (PW-3) has examined the claimant and also perused the case history, wound certificate and Radiologist report of the claimant issued disability certificate (Ex.P11) opining that the permanent disability is 25%. Dr. Sivakumar opined that “.....fracture is malunited. He has pain and swelling (rt.) right chest wall. He has difficulty in breathing. He often gets respiratory infection. He can not do any hard work. He can not bend or lift any heavy weight. His daily activity is affected. ...”. Dr. Sivakumar (PW-3) assessed the disability at 25%, for which he has not only relied upon the case history and wound certificate but had also clinically and radiologically examined the claimant. In our view, tribunal and the High Court were not right in brushing aside the evidence of PW-3 and Ex.P6 (disability certificate). Tribunal and High Court have committed an error in holding that the claimant has sustained only simple injuries. In exercise of jurisdiction under Article 136 of the Constitution, though this Court would not normally re-appreciate the facts and evidence, however, when the courts below erred in ignoring material evidence, this Court can always re-appreciate the evidence in order to render justice to the parties.

14. The injured claimant is to be compensated for his permanent disability and also for loss of earning due to his inability, the whole idea is to put claimant in the same position as he was prior to the accident. In 2011 ACJ 1 (SC) (*Raj Kumar v. Ajay Kumar*), this Court considered the principles for awarding compensation in injury cases, and held as under:

“The provision of the Motor Vehicles Act, 1988 (‘the Act’, for short) makes it clear that the award must be just, which means that compensation should, to the extent possible, fully and adequately restore the claimant to the position prior to the accident. The object of awarding damages is to make good the loss suffered as a result of wrong done as far as money

A can do so, in a fair, reasonable and equitable manner. The court or tribunal shall have to assess the damages objectively and exclude from consideration any speculation or fancy, though some conjecture with reference to the nature of disability and its consequences is inevitable. A person is not only to be compensated for the physical injury, but also for the loss which he suffered as a result of such injury. This means that he is to be compensated for his inability to lead a full life, his inability to enjoy those normal amenities which he would have enjoyed but for the injuries and his inability to earn as much as he used to earn or could have earned...

D (5) The heads under which compensation is awarded in personal injury cases are the following:

Pecuniary damages (Special damages)

E (i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food and miscellaneous expenditure.

F (ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earnings during the period of treatment;

G (b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General damages)

H (iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage). A

(vi) Loss of expectation of life (shortening of normal longevity.)

In routine personal injury cases, compensation will be awarded only under heads. B

(i), (ii) (a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii) (b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life." C D

18. In 2012 ACJ 28 (*Govind Yadav v. New India Assurance Company Limited*), this Court held as under:-

"15. In our view, the principles laid down in *Arvind Kumar Mishra v. New India Assurance Co. Ltd.*, 2010 ACJ 2867 (SC) and *Raj Kumar v. Ajay Kumar*, 2011 ACJ 1 (SC), must be followed by all the tribunal and the High Courts in determining the quantum of compensation payable to the victims of accident, who are disabled either permanently or temporarily. If the victim of the accident suffers permanent disability, then efforts should always be made to award adequate compensation not only for the physical injury and treatment, but also for the loss of earnings and his inability to lead a normal life and enjoy amenities, which he would have enjoyed but for the disability caused due to the accident." E F G

15. We shall now consider the question as to what is just H

A and reasonable compensation to be awarded to the claimant. The claimant was a poultry labourer, he would have earned not less than Rs.4,500/- per month. Considering the nature of occupation of the claimant and the 25% disability, in our considered view, lumpsum compensation of Rs.2,00,000/-  
B towards loss of future earnings, on account of permanent disability, Rs.13,500/- (Rs.4,500 x 3) is awarded for the loss of earning during the period of treatment. Considering the nature of treatment and the medical bills (Exp.5), for which an amount of Rs.1,00,000/- is awarded towards medical  
C expenses; Rs.50,000/- is awarded towards pain and sufferings; Rs.10,000/- is awarded for transport charges and Rs.10,000/- is awarded for attendant charges; Rs.10,000/- is awarded towards extra nourishment and Rs.50,000/- is awarded towards loss of amenities.

D 16. The compensation of Rs.25,300/- awarded to the claimant is enhanced to Rs.4,43,500/- payable with interest at the rate of 9% from the date of the claim petition. The first respondent-insurance company is directed to deposit balance  
E compensation of Rs.4,18,200/- with interest within a period of four weeks from the receipt of the copy of this judgment. On such deposit, the same shall be disbursed to the claimant.

F 17. In the result, appeal is allowed in terms of the above directions. Parties are directed to bear their own costs.