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C.M.A.No.490 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.09.2023

PRONOUNCED ON : 20.10.2023

CORAM:

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**C.M.A.No.490 of 2020
and
C.M.P.No.2833 of 2020
and
C.M.P.No.20867 of 2023**

The New India Assurance Company Limited,
No.7, B.K.Building, Ramalinga Mudali Street,
Gugai, Salem – 636 006. Appellant

vs.

1. P. Nedunchezian (Died)

2.P. Ramesh
(R2 set exparte before the Tribunal)

3.Mini

4.Thangamani ... Respondents
(R3 and R4 are the legal heirs of the deceased
R1-P.Nedunchezian, vide Order dated 14.03.2023
made in CMP.Nos.6409, 6410 and 6413 of 2022
made in CMA.No.490 of 2020).

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the



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Motor Vehicles Act, 1988 against the Award and Decree dated 26.08.2019 passed in M.C.O.P.No.350 of 2016 on the file of the Motor Accident Claims Tribunal / Special Sub Court No.2, Salem.

For Appellant : Mr.R.Sivakumar

For R3 & R4 : Mr.J.Franklin, Advocate

JUDGMENT

(Judgment was delivered by **R.KALAIMATHI, J.,**)

This Civil Miscellaneous Appeal is focused against the judgment and decree passed in M.C.O.P.No.350 of 2016 dated 26.08.2019 on the file of the Motor Accidents Claim Tribunal / Special Sub Court No.2, Salem.

2. Claim petition was filed under Section 166 of Motor Vehicles Act R/W Rule (3) 1 of T.N.M.A.C.T. Rules, claiming compensation of Rs.85,00,000/- for the injuries sustained by the 1st respondent / Claimant in a road accident that occurred on 06.11.2015.

3. The learned Tribunal, after hearing the arguments of both sides and upon consideration of oral and documentary evidence, has passed an award for an amount of Rs.39,28,741/- with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation fastening liability on the appellant / 2nd respondent Insurance Company to



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pay the compensation.

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4. During the pendency of Civil Miscellaneous Appeal, pursuant to the death of 1st respondent/Claimant, his legal heirs namely the 3rd and 4th respondents have been brought on record, as per the order of this Court dated 14.03.2023 made in C.M.P.Nos.6409, 6410 and 6413 of 2022.

5. At Trial, on the claimant's side, the injured P.Neduncheian was examined as P.W.1. Ex.P.1 to Ex.P.31 were marked. The Accident Register Copy was marked as Ex.P7. On the side of the respondent, neither any witness was examined nor document was marked. Disability Certificate issued by the Medical Board is Ex.C1

6. The learned counsel appearing for the appellant / Insurance company Mr.R.Sivakumar would strenuously argue that the disability which was assessed by the Medical Board at 63% was taken by the Tribunal for the purpose of calculating loss of earning power which is incorrect, as it was not assessed for the whole body. Without any proof of income, the Tribunal fixed the monthly income of the first respondent as Rs.10,000/-.



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He further argued that for assessing the loss of income, the Tribunal has invoked the multiplier method which is not acceptable. He would further contend that the amounts ordered for pain and suffering and loss of amenities are highly excessive, as well as for the future medical expenses and for medical expenses. He would further contend that the amounts awarded towards Transport expenses and Extra nourishment are also on the higher side and sought for reduction of the Award.

7. The learned counsel appearing for the respondent would vehemently contend that the deceased at the relevant point of time was aged about 50 years. That on 06.11.2015 at about 12.30 p.m., when he was proceeding in the two wheeler bearing Registration No.TN-27-K-0426 along the five road - Salem junction main road near AVR roundtana signal, a bus bearing Registration No.TN-54-A-5006 came in a rash and negligent manner hit on the two wheeler. Due to the said impact, he sustained grievous injuries. It is further argued that the injured was running a Tourist Travels and was earning a sum of Rs.50,000/- per month. He suffered degloving injury on the whole of the right thigh, Perineum, Penis, Scrotum with right iliac fracture.



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WEB COPY 8. According to the claimant, he was under treatment at Coimbatore Ganga Hospital for about two months and thereafter he took treatment thrice for a long period and undergone surgeries. He suffered disability at 63%. The Tribunal has taken as such the disability assessed by the Medical Board and adopted multiplier method for calculating loss of earning power. The injured person was in the hospital as an in-patient for months together and he was attended by the attender even for his natural calls. Considering the injuries sustained by him, the Tribunal has granted reasonable compensation under various heads. Therefore, the compensation awarded by the Tribunal does not need to be interfered with and prayed to confirm the same.

9. Heard the arguments of the learned counsels for both sides and perused the materials on record.

10. It is the evidence of P.W.1, that on 06.11.2015 while he was travelling in a two wheeler, a bus bearing Registration No.TN-54-A-5006 came in a rash and negligent manner and hit against him and eventually he



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sustained very grievous injuries. A perusal of medical records indicate the fact that he sustained degloving injury below his hip including the right thigh, Perineum, Penis, Scrotum with right Iliac fracture with bilateral, superior and inferior Pubic Rami fracture. Months together he was in Coimbatore Ganga Hospital as an in-patient and he also underwent many surgeries.

11. Ex.P.2, Ex.P.5, Ex.P.6, Ex.P.8 and Ex.P.17 are the treatment records of the injured issued by various hospitals. It is seen from Ex.P.2 – Discharge Summary, that on 09.11.2015 skin grafting was done. He was with external fixator over for about six weeks. The following treatment was given on 09.11.2015,

Using catgut sutures the two testis were sutured together by including only the albuginea.

The spermatic cords were sutured together.

The testicles were anchored posteriorly to the perineal soft tissue.

SSG was harvested from the left thigh.

The SSG was meshed 1:1 using a mesher and the grafts were draped around the penis and scrotum.



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The graft was anchored with staples and 4-0 catgut.

A pouch was done for the scrotum by draping the graft around the testes.

The hanging posterior skin was fixed to the underlying muscles.

The antero-medical aspect of right thigh was grafted.

The anterior, medial, lateral and posterior raw areas need grafting cover later.

Thereafter, on 13.11.2015 and on 02.12.2015, debridement of raw areas over the right thigh were done.

12. One could definitely understand after reading the above said details, the sufferings undergone by the injured. The Medical Board assessed the disability at 63%. The injured suffered degloving injury below right hip besides iliac and Pubic Rami fracture. In **Rajkumar Vs. Ajaykumar reported in 2010 (2) TN MAC 581**, wherein the Hon'ble Apex Court has held that “*the permanent disability may result in different percentage of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors*”. The injured sustained the fractures over the hip besides degloving injury as mentioned supra. Therefore, it would not have been possible for



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him to either attend to his personal work or attend to his official work.

(running travels). The nature of injuries, fractures suffered by him amply demonstrates the impact of fractures and injuries on him. He was bound to suffer loss of earning power. The only outcome would be loss of income, as it would not have been possible for him to attend his travel work. Therefore, we are of the view that the assessment made by the Medical Board at 63% has to be taken as such for the purpose of invoking multiplier method.

13. According to the injured, he was running a Tourist Travels and earning a sum of Rs.50,000/- per month and no documents were filed to compute his income. Ex.P.25 and Ex.P.29 – Bank statements of the injured. Ex.P.21 to Ex.P.23 are copies of travel permits. The date of accident is 06.11.2015. Relying upon the above said details, his income is fixed at Rs.15,000/- per month. As per the Aadhar card Ex.P.28 he was aged about 54 years at the relevant point of time. As per the law laid down by the Hon'ble Supreme Court in National Insurance Company Limited Vs Pranay Sethi and Others reported in 2017(2) TNMAC 609 (SC), he is entitled for 10% future prospectus while calculating the monthly income.



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The loss of earning power is calculated as follows,

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Age of the injured = 54 years
Notional income fixed = Rs.15,000/- p.m.
Future Prospectus = 10%
= 15,000/- + 10%
= 16,500/-
Annual Income = 16,500/- x 12 = 1,98,000/-
Multiplier to be adopted = 11
= 16,500/- x 12 x 11 x 63%
For Loss of earning power = Rs.13,72,140/-

14. The amounts granted under various heads are modified as follows. The other amounts awarded by the Tribunal appears to be reasonable and it need not to be interfered with. Thus, the compensation awarded by the Tribunal is reworked and are tabulated hereunder:

S.No	Heads	Tribunal	High Court	Award confirmed or enhanced or granted
1.	For loss of earning power	Rs.9,14,760/-	Rs.13,72,140/-	Enhanced
2.	For pain and suffering	Rs.3,00,000/-	Rs.2,00,000/-	Reduced
3.	For loss of amenities	Rs.4,00,000/-	Rs.2,00,000/-	Reduced
4.	For Medical expenses	Rs.10,66,153/-	Rs.10,66,153/-	Confirmed
5.	For Future medical expenses	Rs.3,00,000/-	Rs.1,50,000/-	Reduced
6	For Transport expenses	Rs.1,47,828/-	Rs.1,47,828/-	Confirmed
7	For extra nourishment	Rs.2,00,000/-	Rs.1,00,000/-	Reduced
8	For attender charges	Rs.5,99,000/-	Rs.3,00,000/-	Reduced
9.	For Damages to cloth	Rs.1,000/-	Rs.1,000/-	Confirmed



Total	Rs.39,28,741/-	Rs.35,37,121/- Rounded of to Rs.35,37,000/-	Reduced by Rs.3,91,620/-
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15. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal at **Rs.39,28,741/-** is hereby reduced to **Rs.35,37,000/-**.

(iii) The Appellant / Insurance Company is directed to deposit the modified compensation amount i.e., **Rs.35,37,000/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.350 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub-Court No.2, Salem, within a period of eight weeks from the date of receipt of copy of this Judgment.

(iv) On such deposit being made, the 3rd and 4th respondents are at liberty to withdraw the amount. Consequently, the connected Miscellaneous Petitions are closed.

[R.S.M., J] [R.K.M., J]



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Neutral Citation : Yes / No
Speaking / Non-speaking order

drl

To:

1. The Motor Accident Claims Tribunal,
Special Sub Court No.2, Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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R.SUBRAMANIAN, J.,
AND
R.KALAIMATHI, J.,

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Pre-delivery Judgment in



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