



C.M.A.No.630 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 31.01.2023	Pronounced on 06.03.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.630 of 2021

T.Kalaiarasan
S/o.Thirumoorthy
63, Old Veeranampalayam
Seenapuram Post
Thudupathi Via, Perundurai Taluk
Erode District.

... Appellant

Vs.

1.K.Sevlam
S/o.Kathirvel
Door No.1/181, Nadarperumampalayam
Sullipalayam
Perundurai Taluk, Erode district.

2.C.Perumal
S/o.Singaram
Door No.3/457, V.Kangotharipatti
Veppillai, Omalur Post, Salem District.

3.The Branch Manager
National Insurance Co. Ltd.,
1st Floor 403, B-10, Karthikeyan Complex
Mettur Main Road, Bhavani,
Bhavani Taluk, Erode District.

... Respondents



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Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 24.06.2020 in MCOP.No.224/2017 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Perundurai.

For Appellant : Mr.Mr.R.Nalliyappan
For Respondents : Mr.J.Chandran (for R3)
R1 & R2 – No appearance

J U D G M E N T

The Appeal has been filed to against the Judgment and Decree dated 24.06.2020 made in MCOP.No.224 of 2017, on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Perundurai.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed MCOP.No.224 of 2017, before the Motor Accident Claims Tribunal (Subordinate Judge), Perundurai, seeking compensation for the injuries sustained by him in a road traffic accident



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occurred on 01.10.2016. The Tribunal has awarded a sum of Rs.29,28,630/- with interest at the rate of 7.5% per annum. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.

6.The factum of the accident and manner of the accident are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court in this regard are hereby confirmed.

7.During the trial, on the side of the claim Petitioner, PW1 to PW3 were examined, Ex.P.1 to Ex.P.23 were marked and on the side of the Respondents, none was examined and no document was marked and Ex.C.1 also marked.

8.Heard the learned counsel for the claim Petitioner and learned counsel for the Insurance Company.

9.As per Ex.C1/Medical Certificate, the medical board assessed the permanent disability of the claim Petitioner at 84%, but the Tribunal fixed it at 60%. The Tribunal has fixed the notional income of the injured/claim Petitioner at Rs.9,000/- and considering nature of injuries sustained by the claim Petitioner



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treated the disability suffered by him as functional disability and applied the principles laid down by the Hon'ble Apex Court in the case of ***Rajkumar Vs. Ajaykumar & another*** reported in ***2010 (2) TNMAC 581 SC*** adopted multiplier method and by following the case of ***Erudhaya Priya Vs. State Express Transport Corporation Ltd.***, reported in ***2020 (2) TN MAC 303 (SC)*** awarded a sum of Rs.29,28,630/- and hence the Appeal.

10.Learned counsel for the 2nd Respondent would contend that at the time of the accident the injured does not wear helmet. After perusing the cross examination of PW1, on the date of the accident i.e., 01.10.2016, when the injured was riding his two wheeler bearing Reg. No.TN 56 B 4009, an omni van came from the opposite direction, hit against the claim Petitioner and caused injuries to the claim Petitioner. Admittedly, in the cross examination PW1 has admitted that he has not wearing helmet at the time of the accident and therefore, following the decision of this Court in the case of ***United India Insurance Company Vs. Ravikumar***, dated 27.06.2018, in ***CMA.No.1739 of 2016***, where the division bench fixed 10% as contributory negligence, for non-wearing of helmet. Accordingly, the finding rendered by the Tribunal fixing



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10% as contributory negligence is hereby confirmed.

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11.As per Ex.P.4/wound certificate, the claim Petitioner suffered from the following:

- “1.Swelling over the neck/ ® supra clavicular region. CT- showed R transverse process fracture of C5C6 vertebrae with ® para vertebra haematoma from base of skull to D4 vertebra. Angio-(R) Vertebral artery transaction.*
- 2.Chest injury – CT showed inner chest wall haematoma @ upper chest with fracture ® clavicle and scapula. Fracture posterior aspect of R 1st and 2nd ribs ® haemothorax.*
- 3.Swelling, deformity (L) wrist. X rays – Fractured distal radius (L)*
- 4.Faciomaxillary injury – Lacerations upper lip lower lip/chin with dento alveolar fracture Maxilla.*
- 5.Lacerated wound over anterolateral aspect of (R) knee.*
- 6.Head injury ® parietal scalp haematoma. CT-Thin subarachnoid haemorrhage ® parietal region.”*

The injured was referred to Medical Board. The Medical Board as per Ex.C1 assessed the partial permanent disability at 84%. The Tribunal has also examined PW3/Doctor, who deposed in support of Ex.C1 and hence this Court is of the considered view that the permanent disability suffered by the claim Petitioner shall be fixed at 84%. As per Ex.P.18/driving license, the injured has transport license and also has necessary endorsement to drive the goods vehicle and hence, I find that for the accident of the year 2015, the notional income



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fixed by the Tribunal at Rs.9,000/- per month is just and proper and the same is hereby confirmed.

12.As per the judgment of the Hon'ble Supreme Court in the case of ***Erudhaya Priya Vs. State Express Transport Corporation Ltd.***, reported in ***2020 (2) TN MAC 303 (SC)*** 40% has to be added towards future prospects. At the time of the accident, the claim Petitioner is said to be 23 years and therefore, as per the judgment of the Hon'ble Supreme Court in ***Sarla Verma & Others .Vs. Delhi Transport Corporation & another***, reported in ***2009 (2) TNMAC 1 (SC)***, right multiplier is 18 and the loss of earning power suffered by the claim Petitioner re-assessed as follows:

$$\text{Rs.9,000/-} + 40\% \text{ 9000} = \text{Rs.12,600/-}$$

$$\text{Rs.12,600/-} \times 12 \times 18 \times 84 / 100 = \text{Rs.22,86,144/-}$$

Since the Tribunal has adopted multiplier method along with future prospects, awarding of Rs.3,000/- per percentage for the disability is not sustainable in law and accordingly, a sum of Rs.2,52,000/- awarded by the Tribunal towards disability is deleted. The amount awarded towards, transportation, pain and sufferings, nutrition and extra nourishment, medical bills, attender charges &



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loss of amenities are just and proper and the same are hereby confirmed.

13. Pending Appeal, the claim Petitioner has filed CMP.No.4664 of 2023 to permit the claim Petitioner to produce additional medical bills to the value of Rs.1,50,144/- in the above Civil Miscellaneous Appeal. The said Medical bills have been issued to the claim Petitioner after the date of award, by the same hospital for further treatment taken by him. Accordingly, the said Petition was ordered on 31.01.2023 and hence the claim Petitioner is entitled to receive the said amount under the head of future medical expenses.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earning power	2286144
2	Transportation	25000
3	Pain and sufferings	100000
4	Nutrition and extra nourishment	50000
5	Medical expenses	1079068
6	Attender charges	75000
7	Loss of amenities	40000
8	Future medical expenses	150144
	Total	3805356
	90% of compensation	3424820

The Tribunal has awarded interest at the rate of 7.5 % per annum. The same is hereby confirmed. In total, the claim Petitioner is entitled to a sum of



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Rs.34,24,820/- (Rupees thirty four lakh twenty four thousand eight hundred and twenty only).

14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.29,28,630/- to Rs.34,24,820/- to the extent indicated above, with 7.5% interest per annum. No Costs.

(ii) the Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree



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only after the receipt of Court fee.

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06.03.2023

Index : Yes/No
Neutral citation : Yes/No
Speaking Order/Non-Speaking Order

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To
The Subordinate Judge,
Motor Accident Claims Tribunal,
Perundurai.



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RMT.TEEKAA RAMAN.J,

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Pre-delivery Judgment made in

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Dated: 06.03.2023