



C.M.A.No.3152 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 01.02.2023	Pronounced on 06.03.2023
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CORAM

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.3152 of 2017

G.Gandhi
S/o.Ganesan
No.5, Pillaiar Koil Street
Poonamallee
Chennai 56

... Appellant

Vs.

1.M.Munuswamy
Pattaraikazhani Post, Vitilapuram Road,
Tirukalikundram Taluk

2.United India Insurance Co. Ltd.,
C-1, 1st Main Road, Anna Nagar East,
Chennai 102.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 10.02.2010 made in MCOP.No.918 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (I Fast Track Court), Poonamallee.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.S.Arunkumar (for R2)



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J U D G M E N T

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The Appeal has been filed against the Judgment and Decree dated 10.02.2010 made in MCOP.No.918 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (I Fast Track Court), Poonamallee.

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.918 of 2007 on the file of the Motor Accident Claims Tribunal, Additional District and Sessions Judge, (I Fast Track Court), Poonamallee, seeking compensation for the injuries sustained by him in a road traffic accident occurred on 10.07.2006. The Tribunal has awarded a sum of Rs.1,11,300/- with interest at the rate of 7.5%. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.

4.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the



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2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

5.During the trial, on the side of the claim Petitioner, PW1 & PW2 were examined, Ex.P.1 to Ex.P.8 were marked and on the side of the Respondents, none was examined and no document was marked.

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

7.By order dated 08.11.2017 made in CMP.No.15391 of 2017, the delay of 1664 days in filing the above Appeal was ordered on condition that the Petitioner is not entitled for interest for the delay period.

8.On the date of the accident, i.e, 10.07.2006, the deceased was aged about 32 years and was worked as an auto driver and it was claimed that he earned Rs.400/- per day and was working 26 days in a month. To substantiate



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the claim of the Petitioner, he has examined PW2/Dr.Subramani. PW2 in his oral evidence stated that he issued Ex.P.6/disability certificate and fixed the permanent disability at 75%. The trial Court accepted the same and fixed compensation for disability at Rs.75,000/-. The same is under challenge.

9.Learned counsel for the claim Petitioner would contend that due to the injuries sustained by him in the accident, he was suffered by fracture in the right side leg of femur and tibia. PW2/Doctor in the cross examination has stated that due to the injuries sustained by him in the accident, his fibula bone was removed and his muscular power reduced to 20%. In his cross examination he deposed as follows:

“வலது தொடையில் பியூமர் எலும்பும், வலது காலில் பெட்டல்லா என்ற எலும்பும் அறுவை சிகிச்சைக்கு பிறகு அகற்றப்பட்டுவிட்டது. செங்கல்பட்டு மருத்துவமனையில் முதல் உதவி சிகிச்சை அளிக்கப்பட்டு, சென்னை அரசு மருத்துவமனையில் சிகிச்சை அளிக்கப்பட்டுள்ளது. தொடை எலும்பு அடைவெளியுடன் கூட உள்ளது. ஊன்றுகோல் துணையுடன் சிறப்பு காலனி அளிந்து மெதுவாக நடக்கிறார். அடிக்கடி காயத்தை சுத்தம் செய்து மருந்து மாத்திரைகள் எடுத்துக்கொள்கிறார். அவரால் அன்றாட வேலையை செய்ய முடியும். அதிலும்



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சிறு நீர் போன்றவற்றை உட்கார்ந்து கழிக்க இயலாது.”

Accordingly, the Doctor fixed the disability at 75% and the same was accepted.

10.Learned counsel for the Petitioner would contend that since the claim Petitioner was worked as driver, due to the fracture in the right leg, he could not had drive and the same resulted in loss of earning capacity. The permanent disability suffered by the claim Petitioner has to be treated as functional disability. After going through the records, oral evidence of Doctor and Ex.P.3, Ex.P.5 & Ex.P.6, I am inclined to fix the whole body disability at 50% and monthly income at Rs.9,000/-.

11.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 32 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 16 and the loss of earning power suffered by the claim Petitioner is re-assessed as follows:



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Rs.9,000/- + 40% 9000 = Rs.12,600/-

Rs.12,600/- x 12 x 16 x 50 / 100 = Rs.12,09,600/-

The Tribunal awarded a sum of Rs.5,000/- towards transportation and as per Ex.P.4/Medical bills, sum of Rs.6,200/- towards medical expenses. The same are hereby confirmed. The Tribunal awarded a sum of Rs.5,000/- towards extra nourishment, the same is enhanced to Rs.15,000/-. The Tribunal awarded a sum of Rs.5,000/- towards pain sufferings, the same is enhanced to Rs.10,000/-. A sum of Rs.15,000/- is also awarded towards loss of amenities.

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earning power	1209600
2	Transportation	5000
3	Extra nourishment	15000
4	Medical expenses	6200
5	Pain and sufferings	10000
6	Loss of amenities	15000
	Total	1260800

The Tribunal has awarded interest at the rate of 7.5 % per annum. The same is hereby confirmed.

12.In total, the claim Petitioner is entitled to a sum of Rs.12,60,800/- (Rupees twelve lakh sixty thousand and eight hundred only).



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13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from Rs.1,11,300/- to Rs.12,60,800/- to the extent indicated above, with 7.5% interest per annum (excluding the default period of 1664 days). 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 only after the receipt of Court fee.



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

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To
The Additional District and Sessions Judge,
I Fast Track Court,
Motor Accident Claims Tribunal,
Poonamallee.



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RMT.TEEKAA RAMAN.J,

sai

Pre-delivery Judgment made in

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Dated: 06.03.2023