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Civil Miscellaneous Appeal No.2089 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.2089 of 2022

Sowndaram

... Appellant

Vs.

1. Thangamuthu
S/o.Dhandapani

2. M/s.National Insurance Co. Ltd.,
Divisional Office - I
L.R.N. Complex, Salem-7.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 20.06.2022 made in M.C.O.P.No.973 of 2019 on the file of the Motor Accident Claims Tribunal and Special Sub Court No1, Salem.

For Appellant : Mr.S.P.Yuaraj

For Respondents : Mr.S.Arunkumar, for R2

J U D G M E N T

The claimant, not being satisfied with quantum of compensation awarded by the Tribunal has filed this appeal against an award dated



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20.06.2022 made in M.C.O.P.No.973 of 2019 on the file of the Motor Accident Claims Tribunal and Special Sub Court No.1, Salem.

2. The case of claimant is that on 05.12.2018, she was standing near Senathipathipalayam Bus Stop and at about 10.30 a.m. the offending vehicle was driven in a rash and negligent manner and it dashed on the claimant. As a result, the claimant sustained the following injuries:

- "1. Traumatic anterior diaphragmatic hernia, pericardial tear splenic laceration with active bleeding.
2. Left Superior and inferiour pubic rami fracture with fracture pubis.
3. Fracture left sacrum zone II.
4. Bilateral multiple rib fractures with left lung hemothorax.
5. D2 to D9 & L1 to L5 spinous process fracture.
6. L1 to L5 transverse process fracture left side."

3. The claimant underwent treatment as inpatient for nearly 18 days and the Medical Board assessed permanent disability at 40%. It is



under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that accident had taken place only due to the rash and negligent driving of the offending vehicle viz., a two wheeler belonging to first respondent. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.5,72,309/- under various heads and this compensation was directed to be paid along with interest at the rate of 7.5% per annum.

5. The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal seeking for enhancement of compensation.

6. Heard Mr.S.P.Yuaraj, learned counsel on record for appellant and Mr.S.Arunkumar, learned counsel on record for second respondent / Insurance Company.



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7. This Court has carefully considered the submissions made on either side and materials available on records.

8. This Court has also carefully gone through the award passed by the Tribunal.

9. The injuries sustained by the claimant in this case are quite severe and it is evident from the injuries that have been extracted supra. The Discharge Summary which was marked as Ex.P7 shows that the claimant initially underwent operation on 05.12.2018 and the following has been noted in the Discharge Summary.

"Diagnosis : Traumatic anterior diaphragmatic hernia, pericardial tear splenic laceration with active bleeding.

Procedure : Diaphragmatic repair with mesh splenectomy

Findings:

1. Anterior diaphragm tear - 15cm with herniation



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of stomach, transverse colon & splenic flexure with spleen & proximal jejunum.

2. Peircaridal tear with visible heart (ventricle).

3. No myocardial injury. Liver normal.

4. Splenic laceration 1 x 1 cm near bilum with active spurt.

5. Hemothroax 500 ml.

6. Stomach fundus hematoma (+), jejuna / mesenteric, hematoma present, no bowel injury."

10. Thereafter, the claimant underwent another operation on 15.12.2018 and recording in the Discharge Summary is extracted hereunder.

"Diagnosis : Fracture left sacrum zone II.

Procedure : Left percutaneous iliosacral screw fixation.

Findings :

Anterior ring - left superior and inferior rami fracture + fracture pubis - undisplaced.



Left sacral fracture zone II."

11. The Medical Board which assessed the disability of the claimant found that claimant is suffering from 40% permanent disability.

In the Disability Certificate it has been noted as follows:

'மேற்படி விபத்தில், மனுதாரருக்கு குடலிறக்கம் ஏற்பட்டுள்ளதாகவும், மண்ணீரல் சிதைந்த காயமும், இடது பக்க SPR IPR Pubis எலும்பு முறிவும், முதுகு தண்டில் L1 முதல் L5 எலும்புகள் முறிவும், L1 முதல் L5 வரை உள்ள பகுதிகளில் எலும்புகள் முறிவும் ஏற்பட்டுள்ளதாகவும், அதனால் அவருக்கு குத்த வைப்பதிலும், குறுக்கு கால் போட்டு அமருவதிலும் சிரமமும், படிக்கட்டுகளில் ஏறுவதிலும், சரிவான பகுதிகளில் நடப்பதிலும் சிரமமும், வயிறு மற்றும் இருப்பில் வலி ஏற்பட்டுள்ளதாகவும், கனமான பொருட்களை தூக்கும் போது முதுகில் வலி ஏற்பட்டுள்ளதாகவும், மனுதாரருக்கு மருத்துவமனையில் 40% நிரந்தர இயலாமை இருப்பதாக ஊனச்சான்றிதழில் குறிப்பிடப்பட்டு உள்ளது.'

12. The Tribunal has chosen to adopt per percentage method and has fixed Rs.5,000/- per percentage. In the considered view of this Court, the gravity of the injuries that have been sustained by the claimant is quite serious and the claimant has suffered functional disability and



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therefore, the Tribunal ought to have adopted multiplier method. This Court is inclined to fix the functional disability and loss of earning capacity of the claimant at 30%.

13. The Tribunal has fixed the age of the claimant at 70 years based on the medical record. However, it is evident from the Aadhar Card which was marked as Ex.P9 that the age of the claimant was 62 years. Hence, this Court fixes the age of the claimant at 62 years.

14. The accident had taken place in the year 2018 and avocation of the claimant is milk vendor and agriculturist. Therefore, this Court can safely fix the notional monthly income at Rs.10,000/-. In view of the above, the total compensation under the head of disability can be fixed at Rs.2,52,000/- (Rs.10,000/- x 12 x 7 x 30%).

15. The Tribunal has given a sum of Rs.30,000/- towards pain and suffering. Considering the gravity of the injuries sustained by the claimant, this Court is inclined to increase the same to Rs.1 Lakh.



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16. The claimant has undergone treatment as inpatient for nearly 18 days and she underwent two operations. Therefore, this Court is inclined to fix extra nourishment at Rs.25,000/- and attendant charges at Rs.25,000/-. This Court is also inclined to increase the transport charges to Rs.6,000/-.

17. Considering the nature of the injuries sustained by the claimant, she has to undergo regular treatment and she will be incurring future medical expenses also, this Court is inclined to fix the same at Rs.20,000/- towards future medical expenses.

18. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability 40% (Income taken as Rs.10,000/- 10,000/- x 12 x 7 x 30%)	Rs.2,52,000/-
2.	Medical Expenses	Rs.3,04,309/-
3.	Pain and Sufferings	Rs.1,00,000/-
4.	Transportation	Rs. 10,000/-
5.	Extra Nourishment	Rs. 25,000/-
6.	Attendant Charges	Rs. 25,000/-
7.	Damages to Clothes	Rs. 1,000/-
8.	Future Medical Expenses	Rs. 20,000/-
	Total	7,37,309/-



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19. The compensation fixed by the Tribunal at Rs.5,72,309/- is enhanced to Rs.7,37,309/-, which is rounded off to Rs.7,38,000/-. This amount shall be paid along with interest at the rate of 7.5% per annum.

20. It is brought to the notice of this Court that whatever compensation was fixed by the Tribunal, has already been deposited by the Insurance Company. Therefore, the enhanced compensation of a sum of Rs.1,65,691/- (Rs.7,38,000/- - Rs.5,72,309/-) shall be deposited with interest at the rate of 7.5% per annum within a period of four weeks from the date of receipt of a copy of this order.

21. If any deficit Court fee is to be paid, the same shall also be paid by the claimant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remain unaltered.

In the result, this Civil Miscellaneous Appeal is allowed in the above terms. There shall be no order as to costs.

26.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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N.ANAND VENKATESH, J.

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To

The Motor Accident Claims Tribunal,
Special Sub Court-1,
Salem.

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