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C.M.A.No.1555 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1555 of 2024

P.Saravanan

... Appellant

..Vs..

1. Sathiyamoorthi & Co.,
Door No.40-D,
Surya Gardens, Trichy Road,
Namakkal.

2.The Manager,
The New India Assurance Company Limited,
Door No.9A-1, Vadakku Katchery Street,
Rasipuram - 637 408.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 30.06.2022 in M.C.O.P. 516 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court, Namakkal.

For Appellant : Mr.C.Thangaraju

R1 : *Ex parte*

For R2 : Mr.SP.Chockalingam



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JUDGMENT

The appellant is the claimant in M.C.O.P. 516 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal. He filed the said claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.50,00,000/- for the injuries sustained by him, in a road accident that took place on 12.05.2017.

2. The brief case of the appellant/claimant is as follows:

2.1. On 12.05.2017, the appellant / claimant was travelling in a bus bearing Registration Number TN-30-N-0516 on Namakkal - Mohanur Road. At about 12.40 p.m., a lorry bearing Registration Number TN-28-F-4703, belonging to the first respondent, overtook the bus very closely and crushed the protruded left hand of the claimant who was seated in the bus. The claimant was immediately rushed to C.M. Speciality Hospital, Namakkal, and after getting first Aid he got himself admitted in Kovai Ganga Hospital, Coimbatore. Subsequently, his left forearm was amputated.

2.2. According to the claimant, the rash and negligent driving



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of the driver of the lorry bearing Registration Number TN-28-F-4703 was the cause of the accident and that since the said lorry was insured with the second respondent, the New India Assurance Company Limited, Rasipuram, the owner of the lorry (first respondent) and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the owner of the lorry remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the lorry and awarded compensation of Rs.33,52,161/- to the appellant/claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 30.06.2022. The Tribunal also held that the liability of the owner of the lorry and the insurer are joint and several.

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section



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173 of Motor Vehicles Act, 1988.

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6. Heard Mr.C.Thangaraju, learned counsel for the appellant and Mr.SP.Chockalingam, learned counsel for the second respondent.

7. Mr.C.Thangaraju, learned counsel for the appellant contended that the claimant had completed Diploma in Civil Engineering and was actually working as a cleaner in a lorry earning a sum of Rs.15,000/- per month. However, the Tribunal fixed his notional monthly income as Rs.10,000/-. He also contended that the Tribunal awarded meagre amounts under the other heads and therefore, prayed for overall enhancement of compensation.

8. Per contra Mr.SP.Chockalingam, learned counsel appearing for the second respondent / the New India Assurance Company Limited contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed.

9. A perusal of the discharge summary (Ex.P7) shows that the



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claimant had sustained the following injuries :

Diagnosis

DEP.No.G/1460/2017.

Side swipe injury left upper limb with severely mangled, double level amputated (Middle third forearm and wrist) extremity with distal avasularity.

Operation Notes :

13.05.2017 : Left sided Below Elbow amputation

"Under ASP, under brachial plexus block with patient in supine position, parts prepared and draped. Mangled extremity removed through the fracture site after incising the skin of the posterior aspect. Median nerve ulnar nerve identified and transected with traction. Radial and ulnar anterior identified and ligated. Bones shortened for 2 cm till proximal 1/4th. All the crushed forearm muscles were excised. Degloved skin flap debrided. Thorough wound wash given with H₂O₂+ saline. Hemostasis achieved. Bone ends were covered with muscles using 2 -0 vicryl and posterior skin flap was used to close the stump using 3 -0 ethilon. Corrugated drain was placed. Dressing done, Stump slab applied."

Thus, it is seen that the left forearm of the claimant was amputated.

10. A perusal of the disability certificate (Ex.P18) issued by the



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C.M. Hospital, Namakkal, shows that the claimant had sustained total disability of 70%. The appellant/claimant is a cleaner in a lorry and suffered disability to the extent of 70%. Therefore, applying multiplier method is warranted as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343.***

11. In the absence of income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.10,000/-. It is pertinent to point out that the accident took place in the year 2017 and in the facts and circumstances, this Court is of the opinion that fixing notional monthly income of the claimant at Rs.12,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***, 40% is added towards future prospects of the claimant. The claimant was aged 22 years on the date of accident and the proper multiplier to be adopted in the instant case is 18 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.***

Calculation for loss of earning capacity



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Notional income - Rs.12,000/-
40% Future prospects - Rs.16,800/-
Loss of earning capacity - $16,800 \times 12 \times 18 \times 70/100$
= Rs.25,40,160/-

On account of the accident, the claimant would not have been in a position to attend to his work for six months. Hence, loss of income is calculated at Rs.72,000/- ($12,000 \times 6$). The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of earning capacity	21,16,800/-	25,40,160/-
2.	Pain and sufferings	2,50,000/-	2,50,000/-
3.	Loss of marital prospects and loss of amenities	1,00,000/-	1,00,000/-
4.	Extra nourishment	10,000/-	25,000/-
5.	Transportation charges	5,000/-	10,000/-
6.	Loss of income	5,000/-	72,000/-
7.	Attendant charges	5,000/-	10,000/-
8.	Medical expenses	8,60,360.50/-	8,60,360/-
TOTAL		Rs.33,52,160.50 rounded off to	Rs.38,67,520/-



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
		Rs.33,52,161/-	

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.33,52,161/- to Rs.38,67,520/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.33,52,161/- to Rs.38,67,520/-.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The first respondent and the second respondent, the New India Assurance Company Limited, Rasipuram, are jointly and severally directed to deposit the enhanced compensation amount i.e., Rs.38,67,520/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim



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petition till the date of deposit to the credit of M.C.O.P. 516 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Namakkal, within a period of four weeks from the date of receipt of a copy of this order.

- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law. The appellant /claimant is not entitled to claim any interest for the period of delay of 279 days in filing this appeal.

28.08.2024

Index : Yes/No
Internet : Yes/No
mtl

To

1. The Motor Accident Claims Tribunal, Additional District Judge,
Namakkal.

2.The Manager,
The New India Assurance Company Limited,
Door No.9A-1, Vadakku Katchery Street,
Rasipuram - 637 408.



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3. The Section Officer, VR Section, High Court, Madras.

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R. HEMALATHA, J.

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