



C.M.A.(MD)No.1345 of 2012

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 14.12.2023

PRONOUNCED ON : 08.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1345 of 2012

G.Chellapandi

... Appellant

Vs.

1.A.Sutha

2.The Divisional Manager,
United India Insurance Company
Limited,
Goodshed Street,
Madurai.

3.The Managing Director,
Tamilnadu State Transport Corporation
Limited,
Byepass Road,
Karaikudi.

... Respondents

(R1 set exparte before the Tribunal)



C.M.A.(MD)No.1345 of 2012

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PRAYER: Civil Miscellaneous Appeal filed under Order 173 of Motor Vehicles Act, 1988, against the Judgment and decree dated 05.03.2012 in M.C.O.P.No.821 of 2007 on the file of the Motor Accident Claim Tribunal, 4th Additional Sub Judge, Madurai.

For Appellant : Mr.R.Pon Karthikeyan
For R-2 : Mr.Rengananda Kumar
For R-3 : Mr.A.V.B.Krishnakanth

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant/petitioner in M.C.O.P.No.821 of 2007 on the file of the Motor Accident Claims Tribunal, Madurai, seeking to enhance the compensation awarded by the Tribunal on 05.03.2012.

2. For the sake of convenience, the parties are referred herein as per their rank before the Trial Court.



C.M.A.(MD)No.1345 of 2012

WEB COPY

3. The brief facts of the case in a nutshell are as follows:

(i) This is a case of injury. On 03.01.2007 at about 18.00 hours, the claimant was travelling in the 3rd respondent bus bearing Registration No. TN/63N 0946 which was driven by its driver in a rash and negligent manner. When the bus was crossing near Chinnaperumalpatti at Sivagangai to Thirupathur main road, the 1st respondent's van bearing Registration No. TN 31 T 8363 dashed the bus. As a result of which, the petitioner sustained multiple injuries all over the body and he also sustained fracture in his right hand. Immediately, he was taken to Government Hospital, at Sivagangai and was re-admitted at Government Hospital, Madurai as inpatient from 03.01.2007 to 06.04.2007. Thereafter, he took further treatment as out patient in Venkateswara Hospitals, Kovilpatti from 13.04.2007 to 04.08.2008. The claimant had filed M.C.O.P.No.821 of 2007, seeking compensation for the said accident and the third respondent had filed counter before the Tribunal as against the allegations stated in the claim petition. Three witnesses were examined and Ex.P1 to Ex.P12 were marked on the side of the petitioner. One witness was examined on the side of the 3rd respondent. After hearing the rival submissions of both the parties and on the basis of the oral and documentary evidence, the Tribunal



C.M.A.(MD)No.1345 of 2012

came to the conclusion that the accident occurred due to the rash and negligent driving on the part of the driver of the 1st respondent's van.

Thereafter, considering the age of the petitioner and the avocation of the petitioner, the Tribunal has fixed the monthly income of the petitioner at Rs.4,500/- (Rupees Four Thousand Five Hundred only) per month notionally and Rs.2,000/- (Rupees Two Thousand only) per percentage of partial disability.

(ii) The Tribunal had considered the evidence given by one Dr.Shanmugam who was examined as P.W-3. Ex.P-11 is the disability certificate issued by the said doctor for the fracture sustained in the right hand of the petitioner. The percentage of disability as stated by the said doctor is as follows:



C.M.A.(MD)No.1345 of 2012

WEB COPY

S.No.	Nature of Disability	Percentage of Disability
1.	Mal-united of fractured bones	6%
2.	Moderate pain existing on the right hand	6%
3.	Disablility for insensitive scar	4%
4.	Disability for Ankylosis on right hand	20%
5,	Ulna nuro paralysis	15%
6.	Reduce of fore arm muscle power	11%
	Total	62%

(iii) From the above, the percentage of total disability is arrived at 62%. However, considering the Ankylosis on right hand and ulna nuro paralysis of bones as one and the same, the Tribunal had reduced partial permanent disability by 15% and it was fixed totally at 47% partial permanent disability. In view of the above, the Tribunal has decided that the petitioner was entitled to get total compensation for the injuries sustained due to the accident, as follows:



C.M.A.(MD)No.1345 of 2012

S.No.	Description	Amount
1.	Loss of earning during treatment period	Rs. 10,000/-
2.	Transport to Hospital	Rs. 3,000/-
3.	Extra nourishment	Rs. 15,000/-
4.	Medical expenses (as per Ex.P5)	Rs. 5,587/-
5.	Pain and Suffering	Rs. 50,000/-
6.	For Partial Permanent disability	Rs. 94,000/- (2000*47)
	Total	Rs.1,77,587/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimant.

4. The learned Counsel appearing for the appellant has submitted that the Tribunal has reduced the permanent disability from 62% to 47% without any rational basis without any expert opinion. The Tribunal ought not have calculated Ankylosis on right hand and ulno nuro paralysis of bones were the same. That apart, the learned Tribunal ought to have fixed the compensation at Rs.3,000/- (Rupees Three Thousand only) per percentage of permanent disability. On that basis, the claimant sought enhancement of compensation.



C.M.A.(MD)No.1345 of 2012

WEB COPY

5. Per contra, the learned Counsel appearing for the 2nd respondent has submitted that the accident happened in the year 2007 and hence, the compensation awarded by the Tribunal need not be enhanced. However, for seeking an appropriate clarification from the medical experts whether the Ankylosis on right hand and ulno nuro paralysis of bones are the same or not. Hence, he sought time on 07.12.2023. Accordingly, this case was adjourned to 14.12.2023.

6. On 14.12.2023, the learned Counsel appearing for the claimant further submitted that the medical literature with respect to ulno nuro paralysis runs all the way from shoulder to little finger and manages the muscles that allow to make fine movements with the fingers. The same has been explained in the circulated literature placed before this Court with appropriate supporting medical documents.

7. Per contra, the learned Counsel appearing for the 2nd respondent further submitted that Ankylosis is the result of the ulno nuro paralysis.



C.M.A.(MD)No.1345 of 2012

Hence, the observation of the learned Tribunal is reasonable and the same is need not be interfered.

8. The medical conditions suffered by the claimant would reveal that the Ankylosis and the ulno nuro paralysis are not one and the same. Hence, the learned Tribunal is not correct in considering that both medical condition of the Ankylosis and the ulno nuro paralysis are one and the same and reducing the partial permanent disability from 62% to 48%. In view of the same, I am inclined to enhance the partial permanent disability from 48% to 62%. That apart, the learned Counsel for the appellant has relied upon the judgment of this Court in C.M.A.(MD)No.392 of 2012 dated 10.02.2022. In the similar case, percentage of partial permanent disability has been increased to Rs.3,000/- (Rupees Three Thousand only). By following the said Judgment, the partial permanent disability is hereby enhanced from Rs.2,000/- per percentage to Rs.3,000/- per percentage.



C.M.A.(MD)No.1345 of 2012

9. Considering all the above circumstances, the award passed by the Tribunal is modified as follows:

S. No.	Description	Amount awarded by the Tribunal Rs.	Amount awarded by this Court Rs.	Award confirmed or enhanced
1.	Loss of earning during treatment period	Rs. 10,000/-	Rs. 10,000/-	confirmed
2.	Transport to Hospital	Rs. 3,000/-	Rs. 3,000/-	confirmed
3.	Extra nourishment	Rs. 15,000/-	Rs. 15,000/-	confirmed
4.	Medical expenses (as per Ex.P5)	Rs. 5,587/-	Rs. 5,587/-	confirmed
5.	Pain and Suffering	Rs. 50,000/-	Rs. 50,000/-	confirmed
6.	For Partial Permanent disability	Rs. 94,000/-	Rs.1,86,000/-	enhanced
	Total	Rs.1,77,587/-	Rs.2,69,587/-	Enhanced

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,77,587/- (Rupees One Lakh Seventy Seven Thousand Five Hundred and Eighty Seven only) is hereby enhanced to Rs.2,69,587/- (Rupees Two Lakhs Sixty Nine Thousand Five Hundred and Eighty Seven only).



C.M.A.(MD)No.1345 of 2012

11. The second respondent/ Insurance Company is directed to deposit the enhanced compensation amount with accrued interest and costs to the credit of M.C.O.P.No.821 of 2007 on the file of the Motor Accident Claim Tribunal, 4th Additional Sub Judge, Madurai, within a period of eight weeks (8) from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the said amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. No costs. Consequently, connected miscellaneous petition is closed.

08.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Sml



C.M.A.(MD)No.1345 of 2012

To

The Motor Accident Claim Tribunal,
4th Additional Sub Judge,
Madurai.

Copy to

The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)No.1345 of 2012

L.VICTORIA GOWRI, J.,

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C.M.A.(MD)No.1345 of 2012

08.01.2024