



C.M.A.(MD)No.371 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.02.2024

Pronounced on : 30.04.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.371 of 2018

and

C.M.P.(MD)No.4822 of 2018

The Manager,
ICICI Lombard General Insurance Co. Ltd.,
ICICI Lombard House,
No.414, Veersavarkkar Marg,
Sidhi Vinaya Kovil,
Prabadevi,
Mumbai-400 025.

... Appellant

Vs.

1. Selin Pinegas

2. Sanjay Peerabur

... Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree dated 22.12.2017 in M.C.O.P.No.573 of 2015 on the file of the Motor Accident Claims Tribunal cum Special Sub Judge, Tirunelveli and allow the above Civil Miscellaneous Appeal.



C.M.A.(MD)No.371 of 2018

WEB COPY

For Appellant : Mr.V.Muthukamatchi

For Respondents : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.573 of 2015 dated 22.12.2017 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court for MCOP cases, Tirunelveli.

2. The appellant/insurer, who was made liable to pay compensation of Rs.10,35,382/- (Rupees Ten Lakhs Thirty Five Thousand Three Hundred and Eighty Two only) to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 07.01.2015, challenged the quantum of compensation awarded at, by the Tribunal.

3. The learned counsel appearing for the appellant/insurer would mainly contend that the Tribunal ought to have fixed 18% disability as per the disability certificate issued by the Medical Board instead of fixing



C.M.A. (MD) No. 371 of 2018

disability at 30%, that the disability certificate issued by the Medical Officer, who has not treated the first respondent/claimant, cannot be accepted, that since the first respondent/claimant did not prove that he lost his employment and deprived his ability to continue driving activity, the Tribunal ought not to have applied multiplier method, that awarding of Rs.5,05,440/- for loss of earnings cannot legally be sustained, that the Tribunal has erred in granting sum of Rs.1,00,000/- under the heads of loss of discomfort and the same is excessive, that the amounts awarded at various heads are also excessive and that therefore, the appellant/insurer was constrained to prefer the present appeal challenging the quantum of compensation awarded at, by the Tribunal.

4. The case of the first respondent/claimant is that in the accident, the first respondent/claimant sustained multiple fractures over the left forearm, left elbow, both bones right leg, pelvis in both hip, left frontal bone of walls orbit, left acetabulum and hemorrhage besides multiple injuries all over his body, that the first respondent/claimant, after the occurrence, was immediately taken to TVMC Hospital at Palayamkottai and after first aid treatment, he was taken to Thiraviam Hospital at



C.M.A. (MD) No. 371 of 2018

Nagercoil and was given inpatient treatment from 08.01.2015 to 17.01.2015, that the first respondent/claimant had undergone surgeries and that even after the discharge from the hospital, he has been taking treatment continuously.

5. It is the further case of the first respondent/claimant that due to multiple fractures, both the left and right leg movements were completely affected, that he is not able to stretch or fold his legs and also not able to walk without the help of others, that sitting and squatting are not possible, that his left hand movement was completely restricted and has become inactive, that due to the injuries, he has become permanently disabled, that the first respondent/claimant was working as a JCB driver before the accident and after the accident, he is not in a position to do his driver work and that therefore, the first respondent/claimant is entitled to claim compensation for his functional disability.

6. It is evident from Ex.P.2 and Ex.P.3-Discharge Summaries that the first respondent/claimant was admitted on 08.01.2015 at Thiraviam Orthopaedic Hospital, Nagercoil and was discharged on 17.01.2015 and



C.M.A. (MD) No. 371 of 2018

again he was admitted on 27.02.2015 and was discharged on 28.02.2015.

It is evident from Ex.P.2 that the first respondent/claimant at the time of admission was diagnosed to have fracture both bones right leg, monteggia fracture dislocation left elbow, fracture inferior pubic rami left side and head injury EDA.

7. The first respondent/claimant has summoned and examined two Doctors as P.W.2 and P.W.3 respectively. P.W.2 has issued the disability certificate under Ex.P.20 assessing partial permanent disability at 60.5%. Admittedly, P.W.2 has not treated the first respondent/claimant at no point of time and only after perusing the medical records and on examining him, he has issued the Ex.P.20-disability certificate. P.W.2, in his cross-examination, would say that bleeding injury got cured, fractures noticed in the face portion got united, that fractures in the right leg got united and that in case of further treatment, there is possibility for reducing the disability between 5 and 10%. P.W.3-Medical Officer is the member of Medical Board which issued the disability certificate under Ex.R.1. It is evident from Ex.R.1 that the Medical Board attached to Tirunelveli Medical College Hospital has assessed the disability at 18%. In cross-examination, P.W.3 would say,



C.M.A. (MD) No. 371 of 2018

□முளையில் ஏற்பட்டுள்ள இரத்த கசிவு ஏன் கருத்தில் எடுத்துக்கொள்ளவில்லை என்றால் அது தானாகவே குணமாகிவிடும் என்பதாலும் நோயாளி சுயநினைவுடனும் நல்ல நினைவுடனும் நரம்பியல் சம்பந்தமான பாதிப்புகள் இல்லாமல் இருந்ததால் தேவையில்லை என கருதி கருத்தில்கொள்ளப்படவில்லை. நோயாளிக்கு நெற்றியில் முறிவு காயம் இருந்தது என்றால் ஆவணங்களின் படி கிடையாது. அவருக்கு முக்கு எலும்பு முறிவு இருந்தது என்றால் ஆவணங்களின் படி கிடையாது. கண்ணுக்கு கீழ் உள்ள முக எலும்புகளில் முறிவு இருந்தது என்றால் ஆவணங்களின் படி கிடையாது. இடது தோள்பட்டையில் முறிவு இருந்தது என்றால் ஆவணங்களின் படி கிடையாது.□

8. In further cross-examination, P.W.3 would deny the suggestion made by the first respondent/claimant's side that he had not taken into account the effects of head injury, face injury and left wrist injury. The Tribunal, by considering the evidence of P.W.2 and P.W.3 and other medical records and taking note of the disability fixed at 60.5% by P.W.2 and 18% by the Medical Board, has fixed the disability at 30%, but the Tribunal has not assigned any valid or acceptable reasons for rejecting the disability certificate issued by the Medical Board and for partially accepting the disability certificate issued by P.W.2 and as rightly



C.M.A. (MD) No. 371 of 2018

WEB COPY

contended by the learned counsel appearing for the appellant/insurer, the same cannot be sustained. Consequently, this Court accepts the finding of the Medical Board and fixed the disability at 18%.

9. Admittedly, the first respondent/claimant was a JCB driver at the time of accident and was aged 23 years. As already pointed out, the first respondent/claimant has suffered bone injuries on his right leg and left hand apart from other injuries. Considering the nature of the injuries and the consequent disability sustained and taking note of the job of the first respondent/claimant, the decision of the Tribunal in applying the multiplier method for computing compensation cannot be found fault with.

10. Though the first respondent/claimant has alleged that he was earning Rs.12,000/- per month, he has not produced any iota of evidence to prove the same. The Tribunal, taking note of the age and the avocation and the period of accident, has fixed the monthly income of the first respondent/claimant at Rs.7,800/-. Since the first respondent/claimant was aged 23 years at the time of accident, the Tribunal has rightly applied multiplier 18. Hence, the loss of earnings would come to Rs.3,03,264/-



C.M.A. (MD) No. 371 of 2018

{Rs.7800 x 18% x 18 x 12}

WEB COPY

11. The Tribunal has awarded Rs.50,000/- for pain and suffering, Rs.10,000/- for extra nourishment, Rs.6,000/- for attendant charges, Rs.20,000/- for transport expenses, Rs.1,00,000/- for loss of discomfort and Rs.5,000/- for loss of income during the treatment period. Considering the nature of the injuries, period of treatment and other attending circumstances, awarding of Rs.10,000/- for extra nourishment, Rs.6,000/- for attendant charges and Rs.5,000/- for loss of income for treatment period is on lesser side and as such, this Court awards Rs.25,000/- for extra nourishment, Rs.10,000/- for attendant charges and Rs.23,400/- {Rs.7,800/- x 3 months} for loss of income for three months period.

12. The Tribunal, taking note of the medical bills under Ex.P.6 to Ex.P.13, has awarded Rs.1,65,000/-, Rs.9,500/-, Rs.70,000/-, Rs.2,897/-, Rs.6,745/-, Rs.6,798/-, Rs.9,700/- and Rs.68,302/-. The appellant/insurer has not raised any specific objection with regard to the amount awarded for the medical expenses.

13. Considering the above, the first respondent/claimant is entitled



C.M.A. (MD) No. 371 of 2018

to get total compensation of Rs.8,70,606/- (Rupees Eight Lakhs Seventy Thousand Six Hundred and Six only). Accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Loss of earnings	5,05,440	3,03,264	Reduced
2.	Pain and suffering	50,000	50,000	Confirmed
3.	Extra nourishment	10,000	25,000	Enhanced
4.	Attendant charges	6,000	10,000	Enhanced
5.	Transport expenses	20,000	20,000	Confirmed
6.	Loss of discomfort	1,00,000	1,00,000	Confirmed
7.	Loss of income for treatment period	5,000	23,400	Enhanced
8.	Medical expenses	3,38,942	3,38,942	Confirmed
	Total	10,35,382	8,70,606	Reduced by Rs.1,64,776/-

14. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.



C.M.A. (MD) No. 371 of 2018

WEB COPY

15. In the result, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.10,35,382/- (Rupees Ten Lakhs Thirty Five Thousand Three Hundred and Eighty Two only) is reduced to **Rs.8,70,606/- (Rupees Eight Lakhs Seventy Thousand Six Hundred and Six only)**. The appellant is directed to deposit the modified amount with interest at 7.5% per annum and costs from the date of claim petition till the date of deposit, excluding the default period, if any, to the credit of M.C.O.P.No.573 of 2015 on the file of Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, after deducting the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent is permitted to withdraw the amount along with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited by the appellant, the balance amount shall be withdrawn by them. Parties are directed to bear their own costs. Consequently, connected Miscellaneous Petition is closed.

30.04.2024

NCC : Yes/No
Index : Yes/No



C.M.A. (MD) No. 371 of 2018

Internet: Yes/No

csn

WEB COPY

To:

1. The Motor Accident Claims Tribunal/
Special Subordinate Court, Tirunelveli.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.371 of 2018

K.MURALI SHANKAR,J.

csn

**Pre-Delivery Order made in
C.M.A.(MD)No.371 of 2018
and
C.M.P.(MD)No.4822 of 2018**

Dated : 30.04.2024