



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 01.12.2020

Pronounced on: 07.12.2020

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Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

C.M.A.No.2876 of 2015

B.Annadurai,
S/o. Balusamy.

... Appellant/ Petitioner

/versus/

1. M.Thanikachalam,
2. M/s.Selvam Broilers (P) Ltd.,
No.10, Co-operative Colony,
Gandhi Nagar,
Mohanur Road,
Namakkal.
3. United India Insurance Co. Ltd.,
Divisional Office,
No.2, Dr.Sankaran Road,
Namakkal,
Namakkal District.

... Respondents/ Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, against the judgment and award of the Motor Accident claims Tribunal (Sub-Court), Perundurai, Erode District in M.C.O.P.no.119 of 2009 dated 16.08.2010.

For Appellant : Mr.S.Kaithamalai Kumaran

For R3 : Mrs.I.Malar,
For R1 & R2 : ex parte

J U D G M E N T

(The case has been heard through video conference)

This Appeal is filed by the claimant for enhancement of compensation.

2. The facts of the case is that, the claimant herein, on 01.05.2008 at about 7.00 a.m., while riding his moped bearing registration No.TN-33-H-4692 on Perundurai to Erode Main Road near Thindal Vidhya Nagar Petrol Bank, after giving signal to enter the Petrol Bank, he turned left. The driver of the van



bearing registration No.TN-28-H-0648 without noticing his signal coming behind in high speed dashed against the moped. The claimant sustained severe injury on his head and all over his body. He was treated at Government Hospital, Erode and immediately shifted to C.M.C Hospital, Coimbatore. He was treated as inpatient from 01.05.2008 to 16.07.2008. Surgery was conducted after opening his skull bone since brain got damaged in the accident. Alleging that, due to the injury, he has lost his poor memory, vision and limp movements, claim petition was filed seeking compensation of Rs.8,00,000/-.

3. The claim was based on the following facts.

(i). The accident due to the negligence of the van driver.

(ii). The claimant was 24 years at the time of accident. He was earning Rs.6,000/- as agriculturist and milk vendor.

(iii). Due to the accident injury, he became 100% crippled and unable to move and earn.

4. The claim petition was resisted by the Insurance Company on the ground that neither the claimant nor the driver of the offending vehicle had valid license. The accident occurred due to the negligence of the claimant, who has suddenly turned towards the Petrol bank, without noticing the vehicle coming behind him.

5. Before the Tribunal, 2 witness and 11 Exhibits were placed for consideration.

6. The Tribunal, on considering the F.I.R marked as Ex.P.1, Observation mahazer Ex.P.2, rough sketch Ex.P.3, MVI report Ex.P.4, charge sheet Ex.P.6 and judgment convicting the van driver for rash and negligent driving Ex.P.7, held that, the accident occurred due to negligence of the van driver and therefore, the Insurance Company is liable to pay the compensation.

7. Regarding the quantum of compensation, the Tribunal has fixed the age of the claimant as 25 years based on the medical records marked as Ex.P.8, Ex.P.9 and Ex.P.13. Since there was no documentary evidence to prove his earning, the Tribunal has fixed the monthly income of the claimant at Rs.3,000/-. P.W.2 Doctor had deposed that the injury has caused 100% disability to the claimant due to the depressed fracture on right parietal temporal bone and also displaced fracture on the right parietal bone.



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8. The Tribunal has fixed 75% permanent disability and applied multiplier 17 to arrive at a compensation of Rs.4,59,000/- for the loss of earning power and Rs.35,000/- under other non conventional heads.

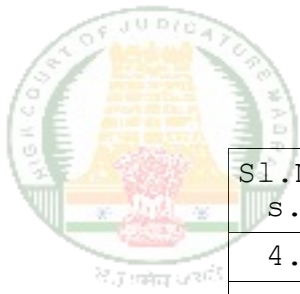
9. In the appeal, for enhancement of compensation, the Learned Counsel for the appellant submit that the victim sustained injury at his prime age of 25 and lost his future. The Tribunal had fixed 75% disability without properly appreciating Ex.P.10 disability certificate. The notional income of Rs.3,000/- is very low and it should have been Rs.200/- per day. No attender charges not granted in spite of the fact that the claimant is living in a vegetative state.

10. The Learned Counsel for the respondent would submit that the tribunal on proper assessment of the evidence placed before the Court, the Tribunal had fixed permanent disability as 75% and applied multiplier method for fair compensation. As far as the notional income fixed at Rs.3,000/-, the Learned Counsel for the respondent would submit that the future prospects of the accident victim can be taken note by this Court and loss of income under this head shall be appropriately fixed.

11. Heard the Learned Counsel for the appellant and the Learned Counsel for the respondent.

12. The Disability certificate Ex.P.10 indicates the pathetic state of the claimant. The scope of earning has substantially reduced due to the nature of injury. Very little faculty available for him which is only sufficient for his survival. The injury has curtail his hip movement, eye vision and had caused slurred speech. Hence, assessment of 80% as permanent disability will be appropriate. To the income of the claimant Rs.3,000 future prospects of Rs.1,200/- is added and fixed at Rs.4,200/- Therefore, the award of the Tribunal is modified as below:-

Sl.No s.	Compensation under various heads	Award passed by this Court
1.	Notional Income of the claimant [Rs.4,200 x 18 x 12 x 80/100]	Rs.7,25,760/-
2.	Extra nourishment	Rs.10,000/-
3.	Damage to articles	Rs.1,000/-



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Sl.No s.	Compensation under various heads	Award passed by this Court
4.	Medical expenses	Rs.5,000/-
5.	Attender charges	Rs.25,000/-
6.	Loss of amenities	Rs.25,000/-
7.	Pain and sufferings	Rs.10,000/-
	Total	Rs.8,01,760/-

13. The award of the Tribunal is modified and enhanced from Rs.4,94,000/- to Rs.8,01,760/-. The Insurance Company is directed to deposit the amount in the M.C.O.P. account with 7.5% from the date of filing the petition till the date of realization, (excluding the delay period of 480 days in filing the appeal), within a period of 8 weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdrawn the same on filing proper application.

14. Accordingly, the Civil Miscellaneous Appeal is Allowed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

bsm

To:-

1.The Motor Accident claims Tribunal (Sub-Court), Perundurai,
Erode District.

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.S.Kaithamalai Kumaran, Advocate SR.No. 39862

C.M.A.No.2876 of 2015

rld (CO)
A.SK(01.09.2021)