

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:07.10.2020

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.928 of 2015

S.Selvam

... Appellant

/versus/

1.Kwono Yong,
No.10, Chamiers Road,
Nandanam,
Chennai – 35.

3.The New India Assurance Co.Ltd.,
No.45,Moore Street,
Chennai – 1.

... Respondents

Prayer: This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act to enhance the award against the judgment and decree dated 31.10.2014 and made in M.A.C.T.O.P.No.1477 of 2012 on the file of the Motor Accident Claims Tribunal and III Court of Small Causes, Chennai.

For Appellant
For R1
For R2

: M/s.M.Malar
: No appearance
: Mrs.R.Sreevidhya

J U D G M E N T

(The case has been heard through video conference)

Not being satisfied with the award of the Tribunal, this appeal is filed by the claimant for enhancement of compensation.

2.On 10.01.2012, while the claimant was driving a tractor bearing Reg.No.TN-22-BJ-9302 at Gandhi Nagar, Canal Bank Main Road Junction, a car bearing Reg.No.TN-21-H-0393 rash and negligently hit the tractor in which the claimant sustained injuries. The Tribunal has applied the structured formula prescribed under Section 163A of the Motor Vehicles Act and taking note of the disability certificate given by the Dr.Thiagarajan (PW-2), has converted the disability to whole body disability and has awarded Rs.87,000/- as compensation. In the appeal, the learned counsel appearing for the appellant would submit that while the Doctor has assessed the disability as 55%, the Tribunal has fixed it as 30% and thereafter, the disability is converted to whole body and applied 1/3rd and has awarded only Rs.72,000/- for disability.

3.The learned counsel appearing for the Insurance Company would submit

that the disability certificate given by Doctor PW-2 is not based on the actual injury and he was not the doctor, who treated the claimant. He has exaggerated the disability. The Tribunal has rightly assessed the functional disability as 10% and applied structured formula.

4. Section 163A is applicable in case of death and permanent disability caused due to scheduled injuries. Only in those cases, structured formula has to be applied by the Tribunal. When there is no requirement to apply the structured formula, The Tribunal cannot resort to the multiplier method. On considering the nature of the injury as found in the disability certificate Ex.P4, which is malunited fracture, fibrosis left hip joint, flexion left thigh, structured formula not applicable. This Court assesses the disability as 40%. The accident has occurred on 10.01.2012. Hence, for a percentage of disability Rs.3000/- is fixed and a sum of Rs.1,20,000/- ($3000 \times 40\%$) is awarded for disability. In addition to that, the claimant being the driver by profession, for loss of income during the treatment period a sum of Rs.12,000/- (6000×2) is awarded. A sum of Rs.10,000/- for pain and suffering is awarded. For medical expenses and attender charges a sum of Rs.5,000/- is awarded. As a result, the award of the Tribunal Rs.87,000/- is

enhanced to Rs.1,47,000/- with interest at the rate of 7.5% from the date of petition till the date of realisation.

5.The break up details of the enhanced award passed by this Court as below:

<i>Sl. No.</i>	<i>Particulars</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Enhanced award passed by this Court (Rs.)</i>	<i>Enhanced/ confirmed/ reduced</i>
1.	Loss of income	10,000-00	12,000-00	Enhanced
2.	Pain and suffering	10,000-00	10,000-00	Confirmed
3.	Disability	72,000-00 (40000x18x10%)	1,20,000-00 (3000x40)	Enhanced
4.	Medical expenses and attender charges	-----	5,000-00	Awarded
Total		87,000-00	1,47,000-00	Enhanced

6.In the result, ***this Civil Miscellaneous Appeal is partly allowed.*** No order as to costs. The enhanced award of Rs.1,47,000/- shall be deposited by the insurance company with interest at the rate of 7.5% p.a. from the date of petition, till the date of realisation within a period of 12 weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, on proper application.

07.10.2020

Index: Yes/No

*Speaking order/non speaking order
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To

The Motor Accident Claims Tribunal,
III Court of Small Causes, Chennai.



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Dr.G.JAYACHANDRAN.J.,

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