



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.10.2020

Pronounced on : 09.12.2020

WEB COPY

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

C.M.A(MD) No.37 of 2020

P.Vairamuthu

...Appellant/Petitioner

Vs.

1.R.Karunanithi

2.The Branch Manager,
Sriram General Insurance Company Ltd,
No.5, Ramachandhira Street,
Saravana Nagar, Cheevaram, Perungudi,
Chennai.

3.E.Jeevankumar

4.Branch Manager,
The New India Assurance Company Ltd,
No:1449, Thenkasi Road,
Rajapalayam,
Virudhunagar District

... Respondents/Respondents

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the Order and Decree made in M.C.O.P.No:102 of 2019, (Old MCOP.No.47 of 2017) dated 26.11.2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar District at Srivilliputhur.

For Petitioner : Mr.M.Thirunavukkarasu

For Respondents : Mr.V.Sakthivel for R2
Mr.D.Malaichamy for R4
No appearance for R1 and R3

ORDER

The claimant, who is said to have been suffered 50% disability in a road accident that took place on 19.11.2016 has come forward with this appeal seeking enhancement of compensation awarded to him.



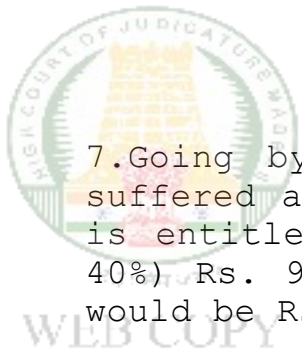
2.The brief facts are that on 19.11.2016 the claimant was travelling as a passenger in a car, which met with an accident when a lorry bearing Registration No.TN 01 K 0239 collided with it. In that accident, the claimant suffered cervical spinal injury. Based on Ex.X1 report of the medical board, the Tribunal has determined the disability at 50% and awarded a sum of Rs.5,85,807/-. Out of this, the compensation awarded for disability per se was calculated at Rs.3,500/- per percentage. Aggrieved by this process of assessment of compensation, the claimant has preferred this appeal.

3. The learned counsel for the appellant/claimant would contend that the appellant/claimant was manufacturing and vending sweets and savouries, that he was barely 39 years old when the accident took place, that due to spinal injury his motor activities are considerably lost and that the Tribunal ought to have adopted multiplier method and reckoned the disability as a functional disability rather than an ordinary disability.

4.Opposing the same, the learned counsel for the Insurance Company argued that the very fact that claimant examined himself in the open Court itself would testify to the fact that he had not suffered any functional disability. In Ex.X1 there is no mentioning that the claimant has indeed suffered any functional disability.

5.Heard Mr.D.Malaichamy, learned counsel for the fourth respondent.

6. Admittedly, the victim of the accident, the appellant herein has suffered a spinal injury. And, he is into some ordinary business. Has he then suffered any functional disability because it has not been specified thus? Functional disability cannot be straight jacketed to mean that it must be a visible and an obvious disability which should directly impact the earning prospects of the accident-victim. Even any sustained difficulty to sit or concentrate in an activity can be termed functional disability. It has to be decided on the basis of the extent of damage an accident-victim's efficiency to earn has suffered due to the injuries. If his efficiency substantially remains the same as it was before the accident then there may not be any functional disability. In all other cases there will be functional disability, though its percentage may vary. See **Rajkumar Vs Ajay Kumar** [(2011) 1 SCC 343: (2011) ACJ 1]. Assessment of functional disability may not be done the way a student does a titration in a chemistry lab. The Court may have to summon life's experience and pragmatism, yet without straying into a mode of excessive benevolence, and evaluate it.



7.Going by the evidence, this court holds that the victim has suffered a reasonable 40% functional disability. Accordingly, he is entitled to receive at Rs.12,000 p.m. (Rs.12,000 x 12 x 16 x 40%) Rs. 9,21,600/- . Therefore, the compensation amount payable would be Rs. 13,32,407/-.

8.In conclusion this Civil Miscellaneous Appeal is allowed, and the compensation payable is enhanced from Rs. Rs.5,85,800 to Rs.13,32,407 and to this extent the award of the tribunal would stand modified. As to the rest it is confirmed. The second respondent herein is directed to deposit the entire Award amount with all accrued interest within a period of 8 weeks from the date of receipt of a copy of this order. Upon which, the claimant would be entitled to withdraw the entire amount forthwith. No costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Tsg-2/rmk

To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Virudhunagar District at Srivilliputhur.

2.The Section Officer,
V.R.Section-2 copies
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Mr.D.Malaichamy , Advocate SR.No.25060

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09.12.2020

KM (05.02.2021) 3P 5C