

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Judgment 04.02.2021	Date of Pronouncing Judgment 16.03.2021
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.1245 of 2015

Prakash

.. Appellant

Vs.

1.Vijayakumar

2.The New India Assurance Co. Ltd.,
Tarapore Towers Division,
Tarapore Towers, 3rd Floor,
No.826, Anna Salai, Chennai – 02.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree of the Motor Accidents Claims Tribunal (Additional District Judge-IV) at Ponneri made in M.C.O.P.No.336 of 2010 dated 12.03.2014.

For Appellant

: Mr. Terry
for Mr. R. Nithyanandam

For Respondents

: Mr. J. Chandran, for R2
R1 – Ex parte

J U D G M E N T

The award dated 12.03.2014, passed in M.C.O.P.No.336 of 2010 is under challenge. The claimant filed the present appeal seeking enhancement of compensation.

2. The brief facts leading to the filing of the appeal are as follows:-

(i) The appellant sustained injuries on 03.04.2010 as a result of an accident caused by a Tipper Lorry bearing Registration No.TN-20-AP-4777 owned by the first respondent and insured with the second respondent. The appellant preferred a claim before the Motor Accident Claims Tribunal in M.C.O.P.No.336 of 2010 seeking a compensation of Rs.10,00,000/-.

(ii) The Motor Accident Claims Tribunal, by its Award dated 12.03.2014 in M.C.O.P.No.336 of 2010 directed the respondents 1 and 2 jointly and severally to pay the appellant a sum of Rs.4,10,000/- together with interest at the rate of 7.5%, per annum from the date of claim till the date of realisation.

3. Aggrieved by the quantum of compensation awarded by the Tribunal, the appeal has been filed by the claimant seeking enhancement of compensation.

4. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent.

5. The factum of the accident and the manner of the accident and negligence on the part of the driver of the first respondent which was insured with the second respondent / New India Assurance Company Limited are not in dispute and hence, the finding rendered in this regard by the Motor Accident Claims Tribunal are hereby confirmed.

6. Based upon Exs.P.2 to P.4 discharge summary, P.W.2 had issued Ex.P.14 disability certificate by correlating with Exs.P.11, P.15 and P.16 X-ray. On perusal of the evidence of P.W.2 Doctor, coupled with the above said documentary evidence, it appears that the claim petitioner had

sustained commuted fracture over his right thigh for which iron rod, screw fixed by doing surgery. He was in the hospital for 24 days in three spells, as could be seen from the discharge summary Exs.P.2 to P.4.

7. After going through the evidence of the Doctor, who had assessed disability as 90% and on perusal of the disability certificate Ex.P14, I find the following injuries sustained by the claimant:

“1. Multiple # ® Femur. ILIL nail finished, Bone loss and wound injury shortening 1.1/2 “ ® Leg, Hip flexibility 60”, RER 50 Limb & Paning. For this injury 45% disability.

2. Multiple # ® Tibia cancellous Screw fixed and IL Nail Tibia, in siting and cannot flex knee upto 45 cannot walk and limbing with stick. For this injury 30% disability.

3. Eye Lower lid, Water flows from eyes, scar marks disjoymnt. For this injury 15% disability.”

8. Accordingly, I find that the percentage of disability fixed by the Tribunal as 80% is just and reasonable. The date of the accident is 03.11.2010 and though the Tribunal has taken Rs.2,000 per percentage of disability, this Court is inclined to enhance the same to Rs.3,000/- per

percentage of disability (80x3000) = 2,40,000/-. Transportation to hospital is enhanced to Rs.10,000/- from Rs.5,000/-. Extra Nourishment is enhanced to Rs.10,000/- from Rs.5,000/-. no amount was awarded towards loss of amenity. Therefore this Court is inclined to award Rs.10,000/- towards loss of amenity. Similarly, no amount was awarded towards Attendant Charges. Therefore, this Court is inclined to award Rs.15,000 towards Attendant Charges. Loss of Income for a period of three months is enhanced to Rs.30,000/- from Rs.10,000.

9. In the absence of any positive evidence to show that the claim petitioner who sustained disability, is unable to perform his job as earlier and in the absence of any positive evidence on medical side to show that he has lost his earning capacity the tribunal has rightly rejected the claim on the above head and the same is hereby confirmed.

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.4,10,000/- to Rs.5,45,000/- the details of which read as follows:

<i>Sl. No.</i>	<i>Heads</i>	<i>Tribunal Award</i>	<i>High Court</i>	<i>MODIFIED/ CONFIRMED</i>
1	Transport to Hospital	Rs.5,000/-	Rs.10,000/-	Modified
2	Extra Nourishment	Rs.5,000/-	Rs.10,000/-	Modified
3	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
4	Disability 80%	Rs.1,60,000/-	Rs.2,40,000/-	Modified
5	Medical Expenditure	Rs.1,80,000/-	Rs.1,80,000/-	Confirmed
6	Loss of Income	Rs.10,000/-	Rs.30,000/-	Modified
7	Loss of Amenity	NIL	Rs.10,000/-	Awarded
8	Attendant Charges	NIL	Rs.15,000/-	Awarded
	Total	Rs.4,10,000/-	Rs.5,45,000/-	

11. Accordingly, the modified compensation of Rs.5,45,000/- is to be paid to the appellant along with the interest from the date of accident. The second respondent / New India Assurance Company Ltd., is directed to deposit the modified award amount of Rs.5,45,000/- along with the interest, within a period of eight weeks, from the date of receipt of copy of the judgment and on such deposit, the appellant-claimant is permitted to withdraw the entire award amount by filing an appropriate application and the payments are to be made through RTGS. Thus, the award dated

12.03.2014, passed in M.C.O.P.No.336/2010, stands modified and
C.M.A.No.1245/2015 stands allowed in part.

16.03.2021

Index : yes/no
Internet : yes/no
Speaking Order/Non-Speaking Order
AT



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RMT.TEEKAA RAMAN.J,

AT

To
The Motor Accidents Claims Tribunal,
Additional District Judge-IV,
Ponneri.



Pre-delivery Order in

C.M.A.No.1245 of 2015

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16.03.2021