



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.04.2021

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THE HON'BLE MR.JUSTICE C.SARAVANAN

C.M.A.No.3233 of 2019

P.Durairaj

... Appellant/ Petitioner

Vs.

1.D.Karthikeyan

2.The New India Assurance Company Ltd,

Represented by its Divisional Office,

D.No.133/31-1, Sedukrishna Trade Centre, 2nd Floor,

Trichy Main Road, Gugai,

Salem - 636 004.

... Respondents/ Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 25.09.2018 made in M.C.O.P.No.277 of 2015, on the file of the Motor Accidents Claims Tribunal, (Chief Judicial Magistrate Court), Salem.

For Appellant : Mr.K.Varadha Kamaraj

For Respondents: Mr.J.Chandran for R2

No appearance for R1

JUDGMENT

The claimant is the appellant in this appeal. The claimant has filed this appeal for enhancement of compensation awarded by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate Court), Salem vide its judgment and decree dated 25.09.2018 in M.C.O.P.No.277 of 2015.

2.In this appeal, the claimant has sought for enhancement of compensation awarded in the impugned judgment and decree passed by the Tribunal. The Tribunal has awarded a sum of Rs.16,81,000/- as compensation by adopting a notional income of Rs.6,500/- as the monthly income of the claimant on the ground that there are no other documents to establish that the claimant was earning a sum of Rs.20,000/- per month. The Tribunal has awarded a sum of Rs.16,81,000/- under the following heads:-



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Loss of Income	Rs.10,53,000
Medical Expenses	Rs. 3,38,000
Pain and sufferings	Rs. 1,00,000
Loss of Amenities and Loss of Marriage Prospectus	Rs. 1,00,000
Transport Expenses	Rs. 20,000
Attender charges	Rs. 25,000
Nutrition and other expenses	Rs. 20,000
Loss of artificial leg	Rs. 25,000
Total	Rs.16,81,000

3.I have heard the learned counsel for the appellant and the respondent. Due to the accident and injury, there was the amputation of the left leg below knee.

4.The Tribunal has considered 75% disability based on Exs.X1 and X2 and has awarded a sum of Rs.16,81,000/- has detailed above. In my view, the adoption of notional income of Rs.6,500/- for determining a loss of income appears to be very low. It is inspired from the decision of the Hon'ble Supreme Court in Syed Sadiq Vs. United India Insurance Co. Ltd., (2014) 2 SCC 735. In my view, it would be fair to conclude that the appellant/claimant would have earned a sum of Rs.12,500 per month. Even otherwise, he was having a yarn godown and was purportedly having income as a yarn merchant and collection agent. Even if the appellant has not filed any documents to substantiate his income of Rs.20,000/- per month, considering the fact that the accident is of the year 2015, it can be safely assumed that notional income of the appellant would have been at least Rs.12,500/- per month for the purpose of determination of just compensation. The Tribunal has ought to have arrived at the functional disability while awarding compensation to the appellant based on the injury.

5.The amputation of left leg below the knee certainly compromised the quality of life. Though the Tribunal has considered 75% disability based on Exs.X1 and X2, it would be fair to conclude that the functional disability of 50%. As there is an amputation of one of the legs below the knee.

6.Under these circumstances, the compensation awarded by the Tribunal is partly enhanced as follows:-



Loss of Income	Rs.18,90,000
Monthly Notional Income	
Rs. 12,500	
+ Future Prospectus 40%	Rs. 5,000

Rs. 17,500	
Annual loss of income	
(17,500 x 12)	Rs.
2,10,000	
Multiplier	X 18
Rs.37,80,000	

x Functional Disability	Rs.18,90,000
50%	
Medical Expenses	Rs. 3,38,000
Pain and sufferings	Rs. 50,000
Loss of Amenities	Rs. 1,00,000
Loss of Marriage Prospectus	Rs. 1,00,000
Transport Expenses	Rs. 20,000
Attender charges	Rs. 25,000
Nutrition and other expenses	Rs. 20,000
Towards artificial leg	Rs. 25,000
Total	Rs.25,68,000/-

7.The 2nd respondent/Insurance Company is therefore directed to deposit the enhanced amount of compensation of Rs.25,68,000/- together with interest at 7.5% per annum from the date of numbering of the claim petition till the date of such deposit, less any amount already deposited by it, within a period of eight weeks from the date of receipt of a copy of this Judgment.

8.On such deposit being made by the 2nd respondent/Insurance Company, the appellant/claimant is permitted to withdraw his share together with interest accrued thereon, less any amount already withdrawn in the same proportion as was ordered by the Tribunal.



9.This Civil Miscellaneous Appeal stands Partly Allowed with the above observations. No costs.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To:

- 1.The New India Assurance Company Ltd,
Represented by its Divisional Office,
D.No.133/31-1,
Sedukrishna Trade Centre, 2nd Floor,
Trichy Main Road, Gugai,
Salem - 636 004.
- 2.The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate Court), Salem.
- 3.The V.R.Section,
Madras High Court, Madras.

+1 cc to Mr.J.Chandran, Advocate Sr.NO.25100

+1 cc to Mr.K.Varadhakamaraj, Advocate Sr.NO. 24567

C.M.A.No.3233 of 2019

SSV(CO)

A.SK(12.11.2021)