



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2021

WEB COPY

C O R A M

THE HON'BLE MR. JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2060 of 2018

M.Shanmugam

...Appellant/Petitioner

Vs

1.Gunasekaran

2.J.Radhamani

3.The Oriental Insurance Company Limited,
No.59, Raja Street, Gobichettipalayam,
Erode District.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 31.03.2015 made in M.C.O.P.No.25 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.SP.Yuaraj

For Respondents: Mr.J.Chandran for R3

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 31.03.2015 made in M.C.O.P.No.25 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gobichettipalayam.

2.The appellant is the claimant in M.C.O.P.No.25 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gobichettipalayam. He filed the above said claim petition, claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.01.2008.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by 1st respondent - driver of the Minidor Auto and directed the 3rd respondent-Insurer of the Minidor Auto



4. Not being satisfied with the amounts awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

6. The learned counsel for the appellant-claimant submitted that the Tribunal awarded a sum of Rs.4,00,000/- for permanent disability. The Doctor has assessed 85% disability for the appellant-claimant and issued certificate which was marked as Ex.P13. However, the Tribunal has taken only 50% disability. The right hand of the appellant, below his wrist was completely amputated. The appellant was a mason and after amputation he is not able to perform his avocation as mason. Therefore, the counsel for the appellant prayed to consider functional disability as 100%. The Tribunal has awarded a sum of Rs.45,000/- towards partial loss of earning for the period of 10 months. The Tribunal ought to have applied multiplier method while awarding compensation. The accident is of the year 2008. Therefore, he submitted that a sum of Rs.6,500/- may be considered as notional income by adding 40% towards future prospect. With regard to all other heads, the learned counsel fairly submitted that award passed by the Tribunal may be confirmed.

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function. Therefore, he raised a doubt about the avocation of the appellant.

8.The learned counsel further submitted that award passed by the Tribunal is just and fair. The Tribunal considered appellant's avocation as mason and awarded a sum of Rs.4,00,000/- towards permanent disability. Thus the same would suffice to meet disability suffered by the appellant. Therefore, he prayed to confirm the award passed by the Tribunal.

9.Heard the learned counsel for the appellant as well as the 3rd respondent and perused the materials available on record.

10.In the present case, the appellant was admitted in the hospital on 27.01.2008 to 22.02.2008. On perusal of Ex.P13, the disability certificate, the Doctor has assessed 85% disability for the appellant. The right hand of the appellant, below his wrist was amputated. As contended by the learned counsel for the appellant being a mason the appellant could not continue his avocation due to the disability suffered by him. On the other hand, the learned counsel for the 3rd respondent disputed the avocation of the appellant as mason for the reason that the appellant was travelled in the Minidor Auto for collecting vessels from the marriage function. Therefore, he contended that the appellant cannot be a mason and the compensation awarded by the Tribunal would suffice to meet out the disability suffered by the appellant.

11.However, when the person's below the wrist was amputated, he/she cannot work as a mason or even as a cook it would be difficult to work with such disability. Therefore, in future the appellant cannot continue his avocation either as mason or as a cook. He can perform only to some extent but not with 100% efficiency. At any cost, the appellant's avocation will get affected due to the disability sustained by him.

12.In view of the nature of the injury and amputation, this Court is of the view that this is a fit case to apply multiplier. However, the Court below has not applied multiplier and awarded lump sum compensation of Rs.4,00,000/- towards functional disability of the claimant. The age of the claimant is 22. For the present case, the multiplier applicable is 18. As held by Hon'ble Supreme Court in the case of Sarla Verma & others vs. Delhi Transport Corporation & another reported in 2009 (2) TNMAC 1 SC, 40% future prospect needs to be added with the notional income to award compensation towards loss of earnings. The accident occurred in the year 2008. The Hon'ble Supreme Court in the case of Syed Sadiq vs. Divisional Manager, United India Insurance reported in 2014 1 TNMAC 459 (SC) awarded a sum of Rs.6,500/- for the vegetable vendor for the accident



occurred in the year 2008. Therefore, this Court is inclined to fix the notional income of the claimant as Rs.6,500/- by adding 40% towards future prospect for the purpose of awarding compensation towards loss of income. As far as the percentage of disability is concerned, Doctor assessed disability 85%. However, the Court below taken 50% and awarded Rs.8,000/- per percentage. Since this Court already decided to apply multiplier method, it would be appropriate to take functional disability of the injured claimant as 30%. Therefore, the amount awarded by the Tribunal towards permanent disability is re-determined as follows:

$$\text{Rs.6,500/-} + \text{Rs.2,600 (40\% of Rs.6,500/-)} \times 12 \times 18 = \text{Rs.19,65,600/} \times 30\% \text{ disability} = \text{Rs.5,89,680/-}$$

13.With regard to the all other heads, the compensation awarded by the Tribunal stands confirmed. Hence, the amount awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Permanent Disability/Loss of Earning Power	4,00,000	5,89,680
2.	Partial loss of earning	45,000	45,000
3.	Transportation	5,000	5,000
4.	Extra Nourishment	18,000	18,000
5.	Attender charges	18,000	18,000
6.	Medical Expenses	1,06,165	1,06,165
7.	Pain and Sufferings	50,000	50,000
8.	Mental Agony and Shock	5,000	5,000
	Total	6,47,165	8,36,845

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.6,47,165/- is hereby enhanced to Rs.8,36,845/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant shall pay necessary Court fee, if any, on the enhanced compensation. The 3rd respondent/Insurance Company is directed to deposit the enhanced award amount along with interest and costs now determined by



this Court, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the 2nd respondent - owner of the Minidor Auto. On such deposit, the appellant is permitted to withdraw the entire award amount, along with interest and costs, less the amount if any, already withdrawn. The Tribunal is directed to transfer the entire award amount to the appellant by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained for the claimant or application made by the appellant for withdrawal, whichever is later. No costs.

Sd/-

Assistant Registrar (Audit)

//True copy//

Sub Assistant Registrar

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To:

The Subordinate Judge,
The Motor Accident Claims Tribunal,
Gobichettipalayam.

Copy To

The Section Officer,
VR Section, High Court, Madras.

+1cc to Mr.SP.Yuvaraj, Advocate SR.No.26208

C.M.A.No.2060 of 2018

KV(CO)
GMY(29/10/2021)