

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	02.03.2021
Date of Judgment	09.06.2021

WEB COPY

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLIC.M.A(MD)No.350 of 2017

T.M.Senthil @ Senthilkumar (Unconscious)
represented by his wife Amirthavalli @
Chithra : Appellant/Petitioner

Vs.

1.S.Sathiyapriya
2.The Manager,
National Insurance Company Limited,
Branch Office,
No.11, Jerome Building, 1st Floor,
Fort Station Road, Trichy.

3.L.Murugaiah : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Additional Sub Court), Karur, in MCOP No.148 of 2012, dated 17.02.2014.

For Appellant	: Mr.N.Sudhagar Nagaraj
For 1 st Respondent	: No appearance
For 2 nd Respondent	: Mr.D.Sivaraman
For 3 rd Respondent	: Dispensed with

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal (Additional Sub Court), Karur, in MCOP No.148 of 2012, dated 17.02.2014.

2.The short facts of the case is that on 09.06.2011 at about 6.00 am, in Karur to Trichy NH 67 Main road near Mayanur Fenner Mill, the driver of the Lorry TN-01-B-6327 drove it in a rash and negligent manner and dashed against a Maruthi Swift Car TN-47-T-5585. In the accident, the driver of the Car as well as the owner of the Car, who was travelling in the Car, sustained multiple grievous injuries. The driver of the Car, the claimant herein was immediately taken to Appollo Loga Hospital, Karur and there, he was taking treatment between 09.06.2011 and 22.07.2011 and subsequently, he was taking treatment as inpatient at KMCH Hospital, Coimbatore. The



injured claimant filed a claim petition seeking compensation of Rs.24,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimant has stated that he was 33 years at the time of accident and he was working as Driver in a private concern namely M/s.Kangaroo Implex, Weaving House, Unit I, Karur, thereby he was earning Rs.6,000/- per month.

4.In the counter filed by the 2nd respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

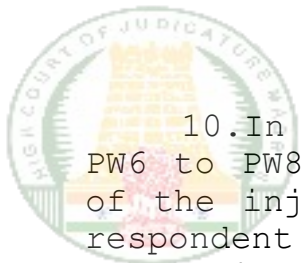
5.Before the tribunal, on the side of the claimant, 9 witnesses were examined and marked 38 documents. On the side of the 2nd respondent Insurance Company, 1 witness was examined and 1 document was marked. Besides, Exs.X1 to X7 were marked through the witness.

6.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.9,92,000/- together with interest @ 7.5% p.a.

7.Heard both sides and perused the materials available on record.

8.The dispute is in respect of quantum. The learned counsel appearing for the appellant/claimant argued that the condition of the appellant/claimant is in very pathetic and the Doctor has analyzed all the medical certificate of the claimant and certified that the disability of the claimant is 45% and issued Disability Certificate (Ex.P8) and PW8 deposed that the claimant is affected from Heaache, Giddiness, lack of memory and concentration and fits and Ataxia, Tracheostomy mark seen and the claimant has been coma stage from the date of accident and before the accident, the claimant was hale and healthy and he was working as Driver in the Kangaroo Implex, Karur and he was getting salary from the above company at Rs.6,000/- per month and he was also getting bonus from the above said Company, but however, the tribunal has failed to consider Ex.P29 Driving Licence and Ex.P30 Salary Certificate of the claimant and at that time of accident, the claimant was a self employed and earned Rs.6,000/- per month and the tribunal has failed to consider the functional disability of the claimant was 100% and the tribunal has not applied the multiplier method and the claimant is entitled to future prospects in addition to his salary since he was unconscious from the date of accident and prays that the Civil Miscellaneous Appeal has to be allowed.

9.On the other hand, it is argued on the side of the 2nd respondent Insurance Company that the compensation awarded by the tribunal is correct and prays for dismissal of the Civil Miscellaneous Appeal.



10. In this case, to prove the health condition of the injured, PW6 to PW8 were examined. PW8/Doctor has determined the disability of the injured as 45%. There is no denial on the side of the 2nd respondent Insurance Company that the injured claimant was in unconscious from the date of accident. The tribunal fixed the monthly income of the injured at Rs.4,500/-. PW2 the wife of the injured deposed that at the time of accident, her husband was working as Driver and earned Rs.6,000/- per month. To prove the monthly income and the avocation of the injured, Ex.P30 was produced.

11. The learned counsel appearing for the appellant/claimant submitted that the appellant/claimant has been in coma stage from the date of accident and hence, future prospects has to be added in addition to his salary, while calculating the loss of income. For that, the learned counsel appearing for the appellant/claimant submitted the ruling reported in 2015(2) TN MAC 211 (SC) (Rajan Vs. Soly Sebastian and others). But in this case, PW8 Doctor determined the disability of the appellant/claimant as 45%. Considering the disability of the appellant/claimant, it is not necessary to add future prospects in addition to the salary of the appellant/claimant.

12. From Ex.P30, it reveals that at the time of accident, the appellant/claimant was working as Driver in Kangaroo Implex Weaving House, Unit-I, Karur and earned Rs.6,000/- per month. But the tribunal fixed the monthly salary as Rs.4,500/-, which is not correct. The appellant/claimant as a Driver will definitely earn Rs.6,000/- per month. Hence, the monthly salary of the appellant/claimant is fixed at Rs.6,000/-. Further, the appellant/claimant had permanent disability. Hence, this court finds that for arriving loss of income of the injured, multiplier method can be adopted. It is to be noted that at the time of accident, the deceased was 33 years. Hence, the proper multiplier is 16. By calculating so, the loss of income of the injured is calculated at Rs.5,18,400/- (Rs.6,000/- x 16 x 12 x 45/100). In respect of medical and transportation charges, the award of Rs.5,18,400/- is confirmed. Further, the tribunal has not awarded any amount towards future medical expenses. Hence, considering the health condition of the appellant/injured, this court awards Rs.2,00,000/- towards future medical expenses and Rs.50,000/- attender charges during treatment period. In respects of other heads, the award of the tribunal is re-calculated as under:-

Nature of Head	Award of the tribunal (Rs.)	Award of this Court (Rs.)
Loss of income	4,13,100/-	5,18,400/-
Medical and transportation charges	5,09,700/-	5,09,700/-
Extra nourishment	20,000/-	20,000/-



Attender charges during treatment	-	50,000/-
Pain and sufferings	25,000/-	50,000/-
Future Loss of Amenities	25,000/-	50,000/-
Future medical expenses	-	2,00,000/-
Total	9,92,800/-	13,98,100/-

13. In the result, this Civil Miscellaneous Appeal is partly allowed. The award of the tribunal is enhanced to Rs.13,98,100/- from Rs.9,92,800/-. The 2nd respondent Insurance Company is directed to deposit the modified amount together with interest at the rate of 7.5% p.a, from the date of petition till the date of realization, less the amount already deposited. On such compliance, the appellant/claimant is entitled to withdraw the modified amount with accrued interest and costs without filing any formal petition before the tribunal. No costs.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

er

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Motor Accident Claims Tribunal/
The Additional Sub Court, Karur.

2. The Record Keeper, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-19056[F] dated 09/06/2021)

CMA (MD) No.350 of 2017
09.06.2021