



C.M.A.No.674 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **03.03.2022**

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THE HONOURABLE MS. JUSTICE P.T.ASHA

C.M.A. No.674 of 2020

Gopi

...Appellant/Petitioner

Vs

1.S.Suresh

2.The National Insurance Company Ltd.,
rep.by its Manager
Divisional Office-X
Hero Honda Vertical 101-106
B.M.C. House,
Cannaught Place,
New Delhi.

... Respondents/ Respondents.

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, To allow the CMA by setting aside the Judgment and Decree made in MCOP No. 910/2014 dt. 02/08/2019 on the file of the MACT the Special District Judge Dharmapuri.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.J.Michael Visuvasan [R2]
No appearance [R1]



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JUDGEMENT

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The claimant has filed the above appeal aggrieved by the award passed by the Tribunal below. The main grievance of the appellant is that though the claimant has suffered a disability of 22% the Motor Accident Claims Tribunal (Principal District Court, Dharmapuri) has not calculated the loss on account of the disability as per the multiplier method but has adopted the percentage method.

2. The learned counsel appearing for the appellant would argue that the claimant had suffered loss of teeth and he is engaged in the business of selling Sarees, the loss of teeth has caused him a functional disability as he had unable to speak as before. He would further submit that the amounts awarded under the head of Medical Expenses and loss of income is very low and no amounts have been awarded under the head of future medical expenses. He would therefore seek to have the award revisited.



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3. Per contra, the learned counsel Mr. J.Michael Visuvasan, appearing on behalf of the Insurance Company would submit that the award is very reasonable, the claimant/appellant has not proved that he is doing business in the sale of Sarees. The appellant had claimed that not only does he sell Sarees by going from place to place but he is also a partner in a cloth store but no proof has been let in to substantiate the same. Therefore the Tribunal below has taken a notional income. Further the injuries sustained by the claimant does not in any way hinder his functional abilities, therefore, the Tribunal has rightly quantified the loss as per the percentage method instead of the multiplier method. The notional income has been fixed at a sum of Rs.3,000/- and compensation under the loss on account of disability has been awarded at a sum of Rs.66,000/-. He would therefore pray that the Tribunal below be pleased to confirm the award.

4. Heard the learned counsels on either side.



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5. As rightly pointed out by the learned counsel for the respondent the appellant has not suffered a functional disability as there is no proof let in by the claimant/appellant to show that the injury was such that he has not resumed his work. That apart, a perusal of the discharge summary Ex.P.4, would show that there is a loss of a few teeth which by itself will not affect the speech of the claimants, therefore, the arguments of the learned counsel for the claimant has to be rejected.

6. Taking into account the fact that this disability is not a functional disability, the Tribunal has rightly calculated the loss at a sum of Rs.66,000/-. However, it is seen that the claimant has taken treatment originally from the Government Headquarters Hospital at Krishnagiri. Later at St. John's Hospital Bangalore, Victoria Hospital Bangalore and C.M.C. Hospital Vellore, all of this would have involved a considerable travel therefore, a further a sum of Rs.15,000/- is awarded under the head of Transport charges. The Tribunal has fixed a notional income of 6,500/- per month to calculate loss of income, the said amount can be enhanced to a sum of Rs.10,000/- therefore, further a sum of



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Rs.14,000/- has to be awarded under the head of loss of income.

It is seen that no amounts have been awarded under the head of future medical expenses towards this a sum of Rs.15,000/- will be added. the compensation is therefore reworked as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Compensation for future loss of income	66,000/-	66,000/-	Confirmed
2.	Pain and suffering	50,000/-	50,000/-	Confirmed
3.	Extra nourishment expenses	20,000/-	20,000/-	Confirmed
4.	Attainder Charges	10,000/-	10,000/-	Confirmed
5.	Medical Expenses	25,000/-	25,000/-	Confirmed
6.	Transport charges	20,000/-	35,000/-	Enhanced
7.	Loss of income	26,000/-	40,000/-	Enhanced
8.	Loss of amenities	50,000/-	50,000/-	Confirmed
9.	Future Medical Expenses	-	15,000/-	Granted
	TOTAL	2,67,000/-	3,11,000/- rounded of to Rs.3,15,000/-	Enhanced by Rs.48,000/-

7. Therefore, the Civil Miscellaneous Appeal is allowed and the compensation of Rs.**2,67,000/-** awarded by the Tribunal is hereby enhanced to a sum of Rs.**3,15,000/-**



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together with interest @ 7.5 % per annum from the date of petition till the date of deposit. In all other aspects the award of the Tribunal is confirmed. The Insurance Company is directed to deposit the said amount (Rs.**3,15,000/-**) to the credit of M.C.O.P.No.910 of 2014 together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn. No costs.

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Index : Yes/No
Internet : Yes/No
Speaking / Non-Speaking
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To

1. MACT the Special District Judge, Dharmapuri.
2. The Section Office, V.R. Section,
High Court, Madras.



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P.T. ASHA, J,

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