



C.M.A.No.694 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.06.2022

CORAM

THE HONOURABLE MS. JUSTICE **P.T. ASHA**

C.M.A.No.694 of 2016

Thulasi ... Appellant

Vs

1.L.Selvaraj

2.New India Assurance Company Limited,
No.45, Moore Street,
Chennai – 600 001.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.06.2009 passed in M.A.C.T.O.P.No.3970 of 2006 on the file of the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant : Mr.F.Terry Chella Raja

For R2 : Mr.M.Krishnamoorthy



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JUDGEMENT

This appeal has been filed by the claimant in M.C.O.P.No.3970 of 2006 seeking an enhancement of the award passed in his favour.

2. The brief facts, which have culminated in the filing of this appeal are as follows:

2.1 The appellant herein is employed as a Mason earning a sum of Rs.250/- per day. On 06.09.2006, at about 10.00 hours, while the appellant was repairing his two wheeler bearing registration number TN 22 AM 6347, a tipper lorry bearing registration number TN 04 B 2243 driven by its driver in a rash and negligent manner dashed the appellant. The appellant along with another person had sustained injuries by the reason of the accident. Therefore, he had sought a compensation of a sum of Rs.3,00,000/-.



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2.2 The first respondent/owner of the tipper lorry remained absent and so, set *ex parte*.

2.3 The second respondent/insurance company, in which, the tipper lorry was insured, filed their counter statement denying the accident and also the quantum of compensation demanded by the appellant.

2.4 The tribunal below on considering the evidence held that the driver of the tipper lorry was responsible for the accident, as he had driven the vehicle in a rash and negligent manner. The tribunal has thereafter fixed the compensation at a sum of Rs.1,81,000/-. After adopting the disability assessed by Dr.J.R.R.Thiagarajan (PW3) and considering the fact that the disability has not affected the future prospects of the appellant, the tribunal has calculated the loss on a percentage basis.

2.5 However, aggrieved by the award passed by the tribunal, the appellant is before this Court.



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3. Mr.F.Terry Chella Raj, learned counsel for the appellant would submit that the tribunal has failed to appreciate the fact that the appellant had sustained a fracture not only to his femur as well as to his right knee, apart from sustaining multiple injuries over body. The tribunal ought to have taken note of the fact that the appellant was employed as Mason and therefore, by the reason of those injuries, his chances of carrying on the work as before has been largely impaired. Therefore, the compensation ought to be enhanced.

4. *Per contra*, Mr.M.Krishnamoorthy, learned counsel for the second respondent/insurance company would submit that no evidence has been let in to show that the injuries had impacted the future prospects of the appellant. Even the disability certificate issued by Dr.J.R.R.Thiagarajan (PW3), which has been marked as Ex-P8, does not show that the future activities of the appellant has been compromised. Therefore, the award requires no reconsideration.



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5. Heard Mr.F.Terry Chella Raj, learned counsel for the appellant and Mr.M.Krishnamoorthy, learned counsel for the second respondent.

6. The appellant is aggrieved by the fact that the tribunal has not considered the nature of injuries sustained by him and its impact on his future prospects.

7. Admittedly, the appellant has sustained a fracture to his femur and also to the knee of his right leg. This, to some extent, would constrict the activities of the appellant at least for some period of time. The tribunal was right in adopting the percentage method for assessing the loss. However, the tribunal should have adopted a sum of Rs.2,000/- per percentage of disability, when calculating under the head of permanent disability. Except for this head, the award is otherwise in order and it requires no reconsideration.

8. Consequently, the modified award would be as follows:



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Heading	Amount awarded by the tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
Loss of earning	15,000/-	15,000/-
Transport to hospital	5,000/-	5,000/-
Extra nourishment	20,000/-	20,000/-
Loss of future earning	1,000/-	1,000/-
Medical expenses	5,000/-	5,000/-
Loss of amenities	20,000/-	20,000/-
Loss of expectation of life	5,000/-	5,000/-
Pain and suffering	40,000/-	40,000/-
Permanent disability	70,000/-	1,40,000/-
Total	1,81,000/-	2,51,000/-

9. The appellant shall pay the Court fee for the enhanced compensation amount, if required. The second respondent/insurance company shall deposit the enhanced award amount together with interest at 7.5% within eight weeks from the date of receipt of a copy of this order. The appellant shall show proof of payment of the Court fee and only on such proof, he shall be permitted to withdraw the amounts deposited. The petitioner shall not be entitled to the interest for a period of 1406 days as per the order dated 21.03.2016 passed in M.P.No.1 of 2015 in C.M.A.No.SR66972 of 2013.



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In the result, this civil miscellaneous appeal is allowed. No costs.

17.06.2022

nsd

To

The III Judge,
Motor Accidents Claims Tribunal,
(III Small Causes Court),
Chennai.

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P.T.ASHA, J.

nsd

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