IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.Nos.1780 and 1084 of 2022
and C.M.P.Nos.7929 and 15912 of 2022

C.M.A.No.1780 of 2022

Kaliyavaradhan ... Appellant

Vs.

1.Abdul Razak
2.The Manager,
Reliance General Insurance Co.Ltd,
Reliance House, 6th Floor,
No.6, Haddows Road , Nungambakkam
Chennai – 600 006. …Respondents

Prayer in C.M.A.No.1780 of 2022: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and enhance the compensation in M.C.O.P.No.194 of 2019 dated 07.01.2022 on the file of the Motor Accidents Claims Tribunal/Principal Sub Judge, Puducherry.

For Appellant : Mrs.RamyaV.Rao
For R1 : Notice Served
For R2 : Mrs.C.Bhuvanasundari

C.M.A.No.1084 of 2022

The Manager,
M/s.Reliance General Ins.Co.Ltd.
Reliance House, 6th floor, 6, Haddows Road,
Nungambakkam, Chennai – 600 006. ... Appellant

Vs.

1.Mr.Kaliyavaradhan
2.Mr.Abdul Razak …Respondents

Prayer in C.M.A.No.1084 of 2022: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgement dated 7th January 2022 passed in M.C.O.P.No.194 of 2019 by the Motor Accident Claims Tribunal, District Court at Puducherry.

For Appellant : Mrs.C.Bhuvanasundari
For R1 : Mrs.Ramya V.Rao
For R2 : Notice Served

COMMON JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

These Civil Miscellaneous Appeals are filed against the award passed in

M.C.O.P.No.194 of 2019 dated 07.01.2022 by the Principal Sub Judge, Puducherry (Motor Accident Claims Tribunal), Puducherry.

2.C.M.A.No.1084 of 2022 has been preferred by the Insurance Company challenging the finding as regards the negligence of the driver of the offending vehicle and the quantum amount awarded by the Tribunal. C.M.A.No.1780 of 2022 has been filed by the claimants for enhancement of compensation awarded by the Tribunal.

3. Both the appeals arise out of same accident and same award and hence, disposed of by this common judgment. The parties are referred to as per their ranks in the claim petition, for the sake of convenience.

4.The Appellant in C.M.A.No.1780 of 2022 filed claim petition seeking a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation for the injuries suffered by him in the accident that took place on 31.03.2018. The Tribunal, considering the pleadings oral and documentary evidence, found that the accident occurred due to the rash and negligent driving by the first respondent, driver of the lorry bearing Registration No.KA.17 B 5683. The Tribunal also held that the Second Respondent Insurance Company, being the insurer of the lorry (Appellant in C.M.A.No.1084 of 2022) is liable to pay the compensation to the claimants. The Tribunal awarded a total compensation of Rs.33,83,000/- (Rupees Thirty Three Lakhs Eighty Three Thousand only) under the following heads:

Loss of earning capacity	Rs.28,35,000/-
Pain and Sufferings	Rs. 1,20,000/-
Medical expenses	Rs. 10,000/-
Future Medical expenses	Rs. 2,50,000/-
Rich and nutritious food	Rs. 20,000/-
Attender charges	Rs. 38,000/-
Transport expenses	Rs. 10,000/-
Loss of Comfort and Basic amenities	Rs. 1,00,000/-
Total	**Rs.33,83,000/-**

5. Challenging the said award, both the Insurance Company as well as the claimant have filed the present Appeals.

6. Heard the learned counsel appearing for both sides and perused the records.

7. It is the case of the claimant that while he was driving his Heavy Goods Vehicle bearing Registration No.TN 25 AE 5310 loaded with furniture from Bangaluru to Karaikal at a moderate speed on the extreme left side of the Krishnagiri – Mathur Road, near Sri Balaji Tiles Factory situated near Pillakottai, the driver of the Medium Goods Vehicle bearing Registration No.KA 17 B 5683, drove the same from Mathur to Krishnagiri at a great speed in a rash and negligent manner and without making horn, dashed against the Heavy Goods Vehicle driven by the claimant and caused the accident. In the accident, the claimant was thrown out of the vehicle and sustained injuries. To prove his contention, the claimant examined himself as P.W.1 and marked FIR, which was registered against the driver of the Medium Goods Vehicle belonging to 1st respondent as Ex.P1. On the other hand, it is the case of the 2nd respondent-Insurance Company that accident occurred only due to rash and negligent driving of the Heavy Goods Vehicle by the claimant. In any event, it is Head on Collusion and negligence must be fixed on the claimant and 1st respondent at the ratio of 75 : 25. To prove their case, the 2nd respondent did

not examine the driver of the Medium Goods Vehicle or any eyewitness. The 2nd respondent – Insurance Company also failed to prove that in any event the claimant also contributed to the accident. The Tribunal considering the evidence of claimant as P.W.1, Ex.P1 / FIR, Ex.P14 / Final Report and in the absence of any contra evidence, accepted the case of the claimant and held that accident occurred only due to negligent driving by the driver of the Medium Goods Vehicle belonging to 1st respondent and fastened the liability on the 2nd respondent – Insurance Company. There is no error in the said finding of the Tribunal fixing negligence on the driver of the Medium Goods Vehicle belonging to 1st respondent and liability on the 2nd respondent-Insurance Company.

8. The claimant has filed C.M.P.No.15912 of 2022 under Order 41 Rule 27 C.P.C., to permit him to file certain Loan Receipts issued by Shriram Transport Finance Co. Ltd as additional documents. The learned counsel for the Insurance Company has no serious objection for allowing the said petition. In view of the same, the said C.M.P.No.15912 of 2022 for receiving the additional documents is allowed and marked as Ex.P.18.

9.The submission of the learned counsel for the claimant is that the claimant was paying an Equated Monthly Installment of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) towards the loan taken by him for the purchase of lorry to Shriram Transport Finance Co. Ltd. The learned counsel further submitted that since he was paying Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) as Equated Monthly Installment, his earning should have been definitely high and the Court shall infer that his income was higher than Rs.18,000/- (Rupees Eighteen Thousand only) fixed by the Tribunal.

10. The learned counsel for the Insurance Company contented that the claimant had not established his monthly income and the notional income fixed by the Tribunal at Rs.18,000/- (Rupees Eighteen Thousand only) is on the higher side. Admittedly, before the Tribunal the claimant had not produced any evidence to establish his claim that he was earning Rs.30,000/- (Rupees Thirty Thousand only) per month. The claimant filed the copy of the RC Book to show that he was the owner of the lorry. However, we cannot infer the income

from the said document. The learned counsel for the claimant relied upon the Judgment of the Honourable Apex Court in ***Gurpreet Kaur and others vs. United India Insurance company limited*** reported in ***2022 Live Law (SC) 821***. The Honourable Apex court in that case held that where the deceased was paying an EMI of Rs.11,550/-(Rupees Eleven Thousand Five Hundred and Fifty only) the income assessed at Rs.25,000/- (Rupees Twenty Five Thousand only) per month by the Tribunal was in accordance with law. The learned counsel therefore, contended that since the Equated Monthly Installment paid by the Appellant was Rs.12,500/- (Rupees Twelve Thousand Five Hundred only), the claimant's income has to be fixed at a higher rate at Rs.30,000/- (Rupees Thirty Thousand only) per month. We find from the documents filed by the claimant that six receipts have been filed by the claimant by way of additional evidence. The receipts indicate the following payments to Shriram Transport Finance Co. Ltd (a) Rs.12350/- on 20.04.2016 (b) Rs.12500/- on 20.05.2017 (c) Rs.12500/- on 19.06.2017 (d) Rs.12400/- on 20.11.2017 (e) Rs.13000/- on 20.10.2017 (f) Rs.15000/- on 16.02.2018. The receipts do not indicate that they are Equated Monthly Installments. The amounts paid are different each months. Further, the claimant has not filed any Bank statement or any statement of account issued by the Shriram Transport Finance Company Limited to suggest that a sum of Rs.12,500/- (Rupees Twelve Thousand Five Hundred only) was paid as Equated Monthly Installments. We cannot definitely conclude that the receipts filed by the claimant indicate that they were the Equated Monthly Installments. Further even assuming that he had paid Rs.12,500/- as Equated Montly Installment, the same is towards repayment of loan taken for his business and his earnings have to be considered after deducting the said expenses. In the absence of any clear evidence showing the net income earned by the claimant, we are of the view that the Tribunal ought not to have fixed Rs.18,000/- (Rupees Eighteen Thousand only) as notional income. We are of the considered opinion that the notional income can be fixed at Rs.15,000/- (Rupees Fifteen Thousand only).

11. It is the case of the claimant that he was Owner cum Driver of the Heavy Goods Vehicle bearing Registration No.TN 25 AE 5310. In the accident he sustained injuries. Due to the injuries sustained by the claimant in the

accident, his right leg above knee was amputated and he could not drive the Heavy Goods Vehicle and has lost 100% earning capacity. To prove the same, the claimant marked Ex.P15 / disability certificate issued by the Indira Gandhi Government General Hospital and Post Graduate Institute, Puducherry, Ex.P2 / wound certificate and Exs.P3 and P4 / discharge summaries. The Medical Board after examining the claimant, certified that claimant suffered 80% disability. The Tribunal, taking into consideration, the judgment in ***Sri Anthony @ Anthony Swamy Vs. The Managing Director, K.S.R.T.C.***, wherein the Hon'ble Apex Court fixed 75% disability for calculating loss of earning capacity for a person who suffered amputation of left leg, held that the claimant herein can do some other work and fixed 75% of disability as functional disability for calculating loss of earning capacity. Relying upon the judgement of the Honourable Apex Court in (a) ***Sri Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Co.Ltd.*** reported in ***2020 (1) TN MAC 231(SC)*** (b) ***Raj Kumar vs. Ajay Kumar and another*** reported in ***(2011) 1 SCC 343,*** the learned counsel for the claimant submitted that the claimant who was working as a driver of heavy motor vehicle had suffered injuries on his right leg, as a result of which his right leg was amputated. He is permanently incapacitated to pursue his avocation as a driver and he is entitled to compensation for 100% disability. The relevant portions of judgments relied up by the learned counsel for claimant reads as follows:

(a) ***Sri Chanappa Nagappa Muchalagoda vs. Divisional Manager, New India Insurance Co.Ltd.*** reported in ***2020 (1) TN MAC 231 (SC).***

"9....It is admitted position that the Appellant can no longer pursue his vocation as a Driver of heavy Vehicles. The Medical evidence on record has corroborated his inability to stand for a long period of time, or even fold his legs. As a consequence, the Appellant has got permanently incapacitated to pursue his vocation as a Driver."

(b) ***Raj Kumar vs. Ajay Kumar and another*** *reported in* ***(2011) 1 SCC 343.***

"14.For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual

loss of earning capacity may virtually be hundred per cent.”

12.The above judgments relied on by the learned counsel for the claimant are squarely applicable to the facts of the instant case. It is an admitted fact that the claimant has established that his right leg was amputated. The reason given by the Tribunal for fixing the disability of the claimant at 75% is not correct, especially when there is no contra evidence of the report of the Medical Board. The claimant is Owner cum Driver of the Heavy Goods Vehicle. In view of the amputation, the claimant cannot continue his work as Driver and hence he is entitled to compensation for 100% disability. Thus, the amount awarded by the Tribunal towards loss of dependency is modified to Rs.31,50,000/- (Rs.15,000 + 3750 (25% x15000) x12x 14).

13. In view of the fact that the compensation has been granted to the claimant by adopting multiplier method for 100% disability, the claimant is not entitled to compensation for loss of comfort and basic amenities. Hence, the amount awarded by the Tribunal tat Rs.1,00,000/- towards loss of comfort and basic amenities is liable to be set aside and it is hereby set aside. The

compensation awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is enhanced 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.	Loss of earning capacity	28,35,000	31,50,000	Enhanced
2.	Pain and sufferings	1,20,000	1,20,000	Confirmed
3.	Medical expenses	10,000	10,000	Confirmed
4.	Future medical expenses	2,50,000	2,50,000	Confirmed
5.	Rich and nutritious food	20,000	20,000	Confirmed
6.	Attender charges	38,000	38,000	Confirmed
7.	Transport expenses	10,000	10,000	Confirmed
8.	Loss of comfort and basic amenities	1,00,000	-	Set aside
	Total	**33,83,000**	**35,98,000**	**Enhanced by Rs.2,15,000/-**

14. With the above modification, C.M.A.No.1084 of 2022 filed by the Second Respondent / Insurance Company is partly allowed with respect to loss of comfort and basic amenities and C.M.A.No.1780 of 2022 filed by the claimant is partly allowed. The compensation awarded by the Tribunal at Rs.33,83,000/- is hereby enhanced to Rs.35,98,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent-Insurance Company is directed to deposit the award amount, now awarded by this Court together with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.194 of 2019, on the file of the Motor Accident Claims Tribunal, Principal Sub Court, Puducherry. On such deposit, the claimant is permitted to withdraw the award amount, now awarded by this Court, together with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. Consequently, the C.M.P.No.15912 of 2022 is allowed and C.M.P.No.7929 of 2022 is closed. No costs.

[V.M.V.,J] **[S.M.,J]**

18.10.2022

Internet : Yes
Index : Yes/No
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To
1.The Principal Sub Judge
Motor Accidents Claims Tribunal
Puducherry.

2.The Section Officer
VR Section
High Court
Madras.

V.M.VELUMANI, J.

and

SUNDER MOHAN, J.

dk

C.M.A.Nos.1780 and 1084 of 2022
and C.M.P.Nos.7929 and 15912 of 2022

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