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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

C.M.A. No.2242 of 2021

Gnanaprakasam

...Appellant/Petitioner

Vs.

1. Shankar

2. The TATA AIG General Insurance Co. Ltd.,
Third Party Cell,
No.403 L, Samson Towers, 2nd Floor,
Pantheon Road, Egmore,
Chennai 8.

... Respondents/Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, against the judgment and decree dated 22.12.2020 made in MCOP.No.4638 of 2014 on the file of Motor Accident Claims Tribunal/ II Small Causes Court, Chennai.

For Appellant : Mr.K.Varadhakamaraj

For R2 : Mr.K.Vinod

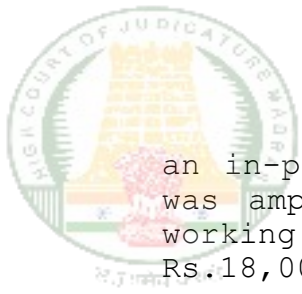
J U D G M E N T

[R.HEMALATHA, J]

Challenging the award and decree passed by the Motor Accident Claims Tribunal / II Small Causes Court, Chennai, and seeking for enhancement of compensation, the present appeal has been filed by the claimant.

2. The facts of the case in nutshell is as follows:

On 08.01.2013 at about 5.00 hours, the claimant was travelling in a Mahendra Maxi Truck bearing Registration No.TN-21-AM-1698 owned by the first respondent on N.H.S Road. When the Truck was nearing Old Nagabhyrava College, Undallapalli Village, the driver of the Truck drove the vehicle in a rash and negligent manner, as a result of which, the Truck toppled and the claimant sustained grievous injuries. He took treatment as



an in-patient in Government Stanley Hospital and his right hand was amputated. The contention of the claimant is that he was working as a Cleaner-cum-Sales Executive earning a sum of Rs.18,000/- per month. He laid a claim petition seeking compensation of Rs.60,54,000/-, which was restricted to Rs.30,00,000/-.

3. According to the appellant/claimant, the rash and negligent driving of the driver of the first respondent was the cause of the accident. and that since, the first respondent has insured his vehicle with the second respondent insurance company, both the respondents are jointly and severally liable to pay compensation. The first respondent remained absent before the Tribunal. The second respondent filed a counter denying all the allegations of the appellant/claimant.

4. The II Small Causes Court, Chennai, after analysing the entire evidence on record, awarded a sum of Rs.14,29,850/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. Aggrieved over the quantum of compensation awarded by the II Small Causes Court, Chennai, the appellant/claimant has filed the present appeal seeking for enhancement of the compensation.

5. Mr. K. Varadhakamaraj, learned counsel appearing for the appellant contended that the claimant was hospitalised for 37 days as an in-patient and that his right hand was amputated above elbow level. His further contention is that since the claimant has suffered 85% of disablement at the age of 35 years, his earning capacity got drastically reduced. According to him, the claimant was not adequately compensated.

6. Per contra, Mr. K. Vinod, learned counsel appearing for the Insurance Company contended that the Tribunal, after considering the oral and documentary evidence, has rightly awarded a sum of Rs.14,29,850/- towards compensation and there is no need to interfere with the same.

7. The claimant had marked the discharge summary issued by the Government Stanley Hospital, Chennai, out patient slip issued by a hospital in K.K. Nagar, photos with CD and a disability certificate issued by the Department of Rehabilitation, Chengalpattu Medical College Hospital, as Ex.P2 to Ex.P5. It is seen from the above records that the petitioner was hospitalised for about 37 days and also underwent a surgery on 09.01.2013. His right hand above elbow level was amputated. The disability certificate issued by the Regional Medical Board, Government Kilpauk Medical College, Hospital, Chennai (Ex.C1) shows that the claimant sustained partial permanent disability of 85%.



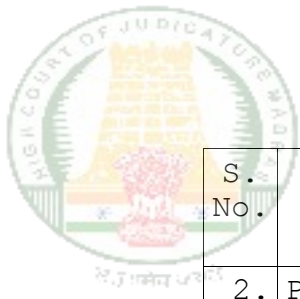
8. The amputation of the claimant's right hand, who was working as a cleaner-cum-sales executive, would definitely impair the earning capacity of the claimant. Therefore, the Tribunal rightly took into consideration the disability certificate (Ex.C1) issued by the Regional Medical Board, Government Kilpauk Medical College, Hospital, Chennai.

9. It is seen from the records that the Tribunal had fixed the monthly income of the claimant only at Rs.8,000/-, though he had specifically contended that he was working as a Cleaner-cum-Sales Executive. The accident took place in the year 2013 and considering the facts and circumstances of the case, this Court is of the opinion that fixing the monthly income of the claimant at Rs.10,000/- per month would meet the ends of justice. As per the decision of the Supreme Court of India in National Insurance Co. vs Pranay sethi and others reported in 2017 (2) TNMAC 601 (SC), 40% should be added towards future prospects of the claimant. If 40% is added towards future prospects, the total income would be Rs.14,000/- [10,000 + 4,000]. The claimant was aged 35 years on the date of the accident and hence, the proper multiplier is 16 as per the decision rendered in Sarlavarma and others vs. Delhi Transport Corporation and another reported in (2009) 6 SCC 121. As already observed Ex.C1 certificate shows that the claimant suffered a partial permanent disability of 85%. Hence, the Pecuniary Loss is arrived at Rs.22,84,800/- [14,000 x 12 x 16 x 85/100]. Apart from that the following amounts are awarded to the claimant :

S.No.	Head	Amount granted by this court
1.	Pain and sufferings	Rs.1,00,000/-
2.	Transportation	Rs.20,000/-
3.	Hospitalisation for 37 days and further treatment at home for two months (10,000 x 3)	Rs.30,000/-
Total		Rs.1,50,000/-

In total, the claimant is entitled to Rs.25,54,800/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization. Thus, the compensation payable to the claimant under various heads is shown hereunder :

S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Pecuniary Loss	13,05,600	22,84,800



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S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
2.	Pain and Sufferings	40,000	1,00,000
3.	Transportation	5,000	20,000
4.	Extra Nourishment	20,000	20,000
5.	Attender Charges	9,250	30,000
6.	Loss of Future Prospects	50,000	-
7.	Loss of Amenities	-	1,00,000
	Total	14,29,850	25,54,800

10. In view of the above modifications, the Civil Miscellaneous Appeal is partly allowed. The Insurance Company is directed to deposit the above modified award amount with accrued 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. On such deposit being made, the appellant/claimant is permitted to withdraw the same, less the amount already withdrawn, together with interest and costs. The claimant shall pay necessary Court fee, if any on the enhanced compensation. There shall be no order as to costs.

Sd/-
Assistant Registrar(CS-VII)

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Sub Assistant Registrar

pvs/mtl

To

1. The II Judge, Motor Accident Claims Tribunal,
Small Causes Court, Chennai

Copy to:

The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.K.Varadhakamaraj, Advocate, S.R.No.11133

+1cc to Mr.K.Vinod, Advocate, S.R.No.11134

C.M.A. No.2242 of 2021

SRA(CO)
SU(25/04/2022)