



C.M.A.No.2551 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2022

C O R A M

THE HONOURABLE Ms.JUSTICE P.T.ASHA

C.M.A.No.2551 of 2014

K. Sellakumar

.. Appellant

-Vs.-

1. A. Madhankumar
2. Soundararaja Pandiyan
3. The New India Assurance Company Limited,
No.674, Periyakulam Road,
Theni – 625 531

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Award of the Motor Accident Claims Tribunal (Special Sub Court), Erode in M.C.O.P.No.160 of 2013 dated 11.03.2014.

For Appellant	: Mr.S.Kaithamalai Kumaran
For Respondents 1 & 2	: Served-No Appearance
For Respondent-3	: Mr.J.Chandran



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JUDGMENT

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Seeking enhancement of the compensation granted by the Motor Accident Claims Tribunal (Special Subordinate Court), Erode in M.C.O.P.No.160 of 2013, the petitioner has filed the above appeal.

2. The parties are referred to in the same ranking as before the Tribunal. The facts in brief, which are necessary for considering the case of the petitioner, are as follows:

The petitioner on 06.05.2012, at about 12.00 noon was riding his two wheeler bearing Registration No.TN-33-AQ-3704 on the Chithode to Erode Road. At that time, a lorry bearing Registration No.TAL-4293 hit the petitioner, as a result of which, the petitioner had sustained injuries all over the body. The accident had occurred only on account of the rash and negligent driving by the first respondent, who was driving the second respondent's lorry. The third respondent is the insurer of the offending vehicle. The petitioner had claimed a compensation of a sum of Rs.20,00,000/-. He would state that on account of the accident, he had suffered grievous injuries.



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3. The first and second respondents remained *ex-parte* and it was the third respondent-Insurance Company which had filed its counter. The Insurance Company had countered the claim petition by contending that the petitioner had also contributed to the accident, by suddenly crossing to the left side. Therefore, the liability has to be fastened on the first respondent-driver. They had further contended that the petition is bad for non-joinder of the owner and the insurer of the two wheeler. The insurance Company has further contended that the petitioner has driven the vehicle on the ill-fated day without a proper driving licence, which is clear from a perusal of the motor vehicles inspector's report. They had also put the petitioner to strict proof of his age, income and occupation.

4. The Tribunal below on considering the evidence on record had come to the conclusion that the accident had occurred only on account of the rash and negligent driving of the first respondent. Though the third respondent through witnesses R.W1 and R.W2 had attempted to contradict the statement regarding the negligence on the part of the lorry driver, they had not succeeded in dislodging the same. As regards the quantum of



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compensation, the Tribunal has awarded a total sum of Rs.6,42,207/- as compensation. Challenging the same, the petitioner is before this Court.

5. The learned counsel appearing for the petitioner would submit that the Tribunal has committed a grave error in calculating compensation under the head of disability by not adopting a multiplier method. He would submit that the injuries sustained by the petitioner would clearly show that the accident has resulted in a partial permanent disability, which has affected his earning capacity. He would draw the attention of the Court to Ex.P4-wound certificate and Ex.P15-Discharge summary to show that the petitioner was an inpatient for over 2 months and had suffered injuries to his abdomen, crush injury to left forearm and fracture on his hip. Therefore, he would submit that the Tribunal ought to have calculated the compensation by adopting a multiplier method particularly when under Ex.P22-Disability Certificate, the Tribunal has assessed the disability at 65%. He would further submit that though Ex.P14-Medical Bills had been filed to prove the medical expenses, the Tribunal has failed to give credit to the sum of Rs.1,17,400/-, and therefore, this omission has to be rectified. That apart,



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though the petitioner had been an inpatient for over 2 months, the Tribunal had not granted any compensation under the head of attender charges.

6. Per contra, Mr. J.Chandran, learned counsel for the third respondent-Insurance Company would submit that the compensation has been rightly arrived at by the Tribunal. The injuries sustained are only partial permanent ones, which has in no way hindered the day-today activities of the petitioner. Therefore, the adoption of the percentage method is correct. He would therefore submit that the Award does not require any modification.

7. Heard the learned counsels on either side and perused the materials available on record.

8. A perusal of Ex.P4-Wound certificate would indicate that the petitioner had been admitted on 06.05.2012 at C.K.Hospital. He has been discharged from the said hospital only on 05.07.2012. The petitioner has sustained the following injuries:



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1. *Anterior abdomen – open injury with prolapse intestines*
2. *Multiple tyre marks over anterior abd wall and back with contusion and hematoma.*
3. *Swelling, deformity, tenderness over left hand crush injury left forearm and wrist.*
4. *Deformity left side hip.*

It is seen that the he has undergone the following procedures:

1. *Wound Debridement \ Excision of Devitalised tissue, laparotomy, lavage closure.*
2. *Flap cover anterior abdominal wall with teflon Double layers mesh with excision Necrotic tissues.*
3. *Split skin graft to raw area pelvic region left fore arm and hand.*
4. *Right pedicled radial artery flap with skin graft.*
5. *Flap division with SSG to right fore arm.*
K-Wire fixation 4th MC and PP Little finger left hand

A perusal of Ex.P22-Disability Certificate would indicate that there has been a malunion of the hip bones which had got fractured in the accident, as a result of which, the petitioner is finding it very difficult to walk and climb the stairs. That apart, he has undergone a radial artery flap skin graft teflon procedure, under which process, skin from thigh was removed for the grafting purpose and the Doctor has assessed the disability at 65%. The



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nature of the injuries, the procedures undergone and the disability certificate issued by P.W3-Doctor would clearly indicate that the injuries sustained by the petitioner has definitely reduced his earning capacity and there is a slight functional disability as well. Therefore, the Tribunal ought to have calculated compensation under the head of loss of earning capacity by adopting the multiplier method. Although P.W3-Doctor has assessed the disability at 65%, this Court fixes the functional disability is fixed at 30%. Therefore, the compensation under the head of disability would be Rs.3,24,000/- [5,000 x 12 x 18 x 30%]. From a perusal of Ex.P14-Medical Bills, it is also seen that a sum of Rs.1,17,400/- has been omitted by the Tribunal. The Tribunal has rejected the bills constituting the above amount on the ground that the same relates to consultant fee receipts, which has to be necessarily taken into account. Therefore, the amount under the head of medical expenses is enhanced from a sum of Rs.3,59,707/- to a sum of Rs.4,77,107/-. Considering the fact that the compensation for disability granted under the multiplier method, the amount under the head of loss of income and loss of earning capacity is set aside. The petitioner has been an inpatient for over 2 months but no amounts under the head of attender



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charges has been given. Therefore, a sum of Rs.15,000/- is granted under this head. Therefore, the total compensation is enhanced to a sum of Rs.9,12,107/-. Accordingly, the Compensation awarded by the Tribunal is reworked as below:

<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Loss of Income	31,500	-
Disability	1,30,000	3,24,000
Pain and Suffering	75,000	75,000
Extra Nourishment	10,000	10,000
Damages for clothes	1,000	1,000
Transport Expenses	10,000	10,000
Medical Expenses	3,59,707	4,77,107
Attender Charges	-	15,000
Loss of earning Power	25,000	-
Total	6,42,207	9,12,107

9. The appeal is allowed and the Award of the Tribunal is modified, enhancing the compensation amount from **Rs.6,42,207/-** to **Rs.9,12,107/-**. The third respondent-Insurance Company is directed to deposit the said amount to the credit of M.C.O.P.No.160 of 2013 along with interest at the rate of 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



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already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the award amount, along with accrued interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

20.10.2022

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To

1. The Motor Accident Claims Tribunal, (Special Sub Court), Erode
2. The Section Officer, V.R.Section, High Court of Madras, Chennai.



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P.T.ASHA, J.,

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