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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.02.2022

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THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

C.M.A. No.3585 of 2021
and
CMP.No.20975 of 2021

The Branch Manager,
The New India Assurance Co. Ltd.,
Palamanar Micro Office,
Door No.11-48, M.B.T.Road, Palamanar 571 408,
Chittoor District, Andhra Pradesh 517 408.

...Appellant/2nd Respondent

vs.

1. Gangadharam @ Gangadhar ... 1st Respondent/Petitioner

2. Senthil Kumar ...2nd Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the judgment and decree made in MCOP.No.327 of 2019 on the file of the Motor Accidents Claims Tribunal (Special Subordinate Judge MACT) at Krishnagiri dated 18.06.2021.

For Appellant : Mr.M.Krishnamoorthy

For Respondents
for R1 : Mr.E.Kannadasan

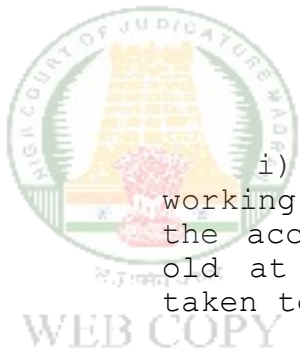
for R2 : Set ex-parte before the Tribunal.

J U D G M E N T

[Judgment of the Court was delivered by K.KALYANASUNDARAM, J]

The award of Rs.47,02,731/- passed by the Motor Accident Claims Tribunal (Special Subordinate Judge MACT) at Krishnagiri in MCOP.No.327 of 2019 is challenged by the Insurance Company in this appeal.

2. The facts in brief are as follows:



i) The first respondent Gangadharam @ Gangadhar, who is working as Home Guard in Andhra Pradesh, sustained injuries in the accident that had occurred on 27.12.2018. He was 35 years old at the time of the accident. After the accident, he was taken to a Hospital, where he underwent surgery.

ii) The Medical Board assessed his disability at 75% and the disability certificate was marked as Ex.C1. Based on evidence of the Doctor/PW3 and Ex.C1, the Tribunal by applying multiplier method assessed the Loss of Earning Capacity and awarded compensation of Rs.47,02,731/- along with interest at 7.5% per annum.

3. The learned counsel appearing for the appellant Mr.M.Krishnamoorthy would urge that in the cross-examination, PW1 himself has categorically admitted that he is continuing with the employment, hence, the multiplier method adopted by the Tribunal is liable to be set aside. It is also contended that the award of Rs.10,50,000/- towards Future Medical Expenses is without any evidence and that has to be set aside.

4. Per contra, the learned counsel appearing for the first respondent/claimant Mr.E.Kannadasan argued that, due to the injuries sustained by the claimant in the accident, his future promotion has been curtailed and it was proved through the evidence of PWs.1 and 2. Hence, there is nothing wrong on the part of the Tribunal in applying multiplier method and it has to be confirmed.

5. In the instant case, the only issue that arises for consideration is whether the multiplier method applied by the Tribunal is sustainable.

6. PWs.1 and 2 had clearly stated that the employment of the injured in the State of Andhra Pradesh and there is no dispute with regard to the same. PW2 admitted that in the post of Home Guard, there is no promotion and PW1 also admitted in his evidence that after the accident, he is continuing with the employment. In the light of the evidence of PW1, it has been proved that there is no loss of employment or reduction of income due to the injuries sustained by the claimant in the accident. Hence, as rightly pointed out by the learned counsel appearing for the appellant, the multiplier method cannot be applied in this case. The Medical Board, after verification of records, has issued Ex.C1 certificate to the effect that the injured sustained 75% disability and there is no reason to suspect the percentage of disability assessed by the Medical Board. Hence, by applying Rs.5,000/- per percentage of disability, we are awarding Rs.3,75,000/- [5,000 x 75] for the Loss of Earning Capacity. The Tribunal based on the Medical

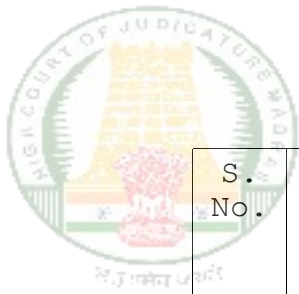


Bills, which were marked as Ex.P6, has awarded Rs.9,30,283/- towards Medical Expenses, and the same is confirmed. It is seen from the evidence of PW1 and PW3, the injured is still taking treatment. Hence considering the injuries suffered by the claimant, it would be proper to award Rs.4,00,000/- towards Future Medical Expenses. Therefore, the sum of Rs.10,50,000/- awarded by the Tribunal under such head is reduced to Rs.4,00,000/-.

7. In addition to that, this Court is of the view that the amounts awarded by the Tribunal under conventional heads are very meagre. Hence, this Court modifies the same and awards Rs.30,000/- towards transportation; Rs.40,000/- towards attender charges; Rs.1,00,000/- towards pain and sufferings; Rs.25,000/- towards extra nourishment; Rs.1,00,000/- towards Loss of Social Amenities; Rs.1,00,000/- towards Loss of Income during the period of treatment. In total, the claimant is entitled for a sum of Rs.21,00,283/-, which is rounded off to Rs.21,00,300/-. The claimant is not entitled for any interest for the amount of Rs.4,00,000/-, which is awarded towards Future Medical expenses, hence, the claimant is entitled for 7.5% interest for the amount of Rs.17,00,300/-, from the date of claim petition till the date of realisation.

8. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:

S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
1.	Loss of Earning Capacity	25,76,448	3,75,000
2.	Medical Expenses	9,30,283	9,30,283
3.	Transportation Expenses	10,000	30,000
4.	Extra Nourishment and Attender Charges	15,000	-
5.	Extra Nourishment		25,000
6.	Attender Charges		40,000
7.	Pain and Sufferings	60,000	1,00,000
8.	Social Amenities	60,000	1,00,000
9.	Damages to Clothes and Articles	1,000	-



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S. No.	Heads under which the compensation is awarded	Amounts awarded by the Tribunal in Rs.	Amounts awarded by this Court in Rs.
10.	Future Medical Expenses	10,50,000	4,00,000
11.	Loss of Income during the period of treatment	-	1,00,000
	Total	47,02,731	21,00,283 Rounded off to 21,00,300

9. The amount of Rs.47,02,731/- awarded by the Tribunal is reduced to 21,00,300/-. The claimant is entitled for 7.5% interest for the amount of Rs.17,00,300/- only, from the date of claim petition till the date of realisation. The appellant 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 eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount, less the amount already withdrawn, if any, together with accrued interest and costs.

10. With the above directions, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Special Subordinate Judge MACT,
Krishnagiri
2. The Section Officer,
V.R.Section, High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate, S.R.No.12842

C.M.A. No.3585 of 2021

GSM(CO)
SU(21/04/2022)