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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CMA.No.3527 of 2017

K.Thangaraj

...Petitioner / Appellant

v.

1.P.Anandhan

2.National Insurance Co. Ltd.,
No.751, Mount Road,
Chennai - 600 002.
Branch Office: "Royall Towers"
No.185 / 1, Meyyanoor Road,
Salem - 636 004.

..Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in MCOP No.2052 of 2014 dated 21.03.2017 on the file of the Motor Accident Claims Tribunal / II Court of Small Causes Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R2 : Ms.R.Shree Vidhya

J U D G M E N T

The claimant in MCOP No.2052 / 2014 on the file of the II Court of Small Causes, Chennai / Motor Accidents Claims Tribunal, Chennai, is the appellant herein. On 08.04.2014 when the claimant was walking in GST Road, near Madurantakam Erikarai, Madurantakam, a Ford car bearing registration No.TN-53-X-4468, proceeding from south to north dashed against him and he suffered grievous injuries. At the time when the accident occurred, he was aged 54 years and was working as a labourer doing road work.

2.The 2nd respondent joined issues with the claim petitioner.



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3.The matter went to trial and during the course of trial, the first issue was with respect to the nature of the accident and whether the accident occurred owing to the rash and negligent riding of the driver of the Ford car. The Tribunal affirmed that particular finding. I would confirm that finding.

4.With respect to the compensation aspect, the Tribunal noted that the accident did occur and in that regard took note of Ex.P1, the copy of the First Information Report registered by G-1, Madhuranthagam Police Station, Kancheepuram District in Crime No.311 of 2014 under Sections 279 and 337 IPC., against the driver of the offending Ford car, and also took note of Ex.P2, discharge summary issued by the Government Hospital, Chengalpet, that the claimant was admitted on 08.04.2014 and had sustained a fracture of right Femur - Bone. Skin grafting was done and a plate was fixed. There was also comminuted fracture of left Tibula both bones. Exs.P3 and P5 were the medical treatment documents issued by the hospital. They were also noted by the Tribunal. Exs.P6, P7 and P8 related to medical bills and equipment bills. They were also noted by the Tribunal. The monthly income of the claimant was determined at Rs.6,500/-. The Tribunal adopted a multiplier of 11. The Tribunal did not disbelieve the evidence presented. By judgment dated 21.03.2017, the Tribunal granted a total compensation of Rs.6,56,400/- and the same was rounded off to Rs.6,57,000/-. The compensation breakup was as follows:

Heads	Amounts
Transportation, nourishment and miscellaneous expenditure	Rs.50,000/-
Medical Expenses	Rs.2,46,000/-
Attender Charges	Rs.20,000/-
Damages for pain suffering and Trauma	Rs.50,000/-
Loss of future earning capacity / power	Rs.2,57,400/-
Loss of earning during the period of treatment	Rs.13,000/-
Loss of amenities	Rs.20,000/-
Total	Rs.6,56,400/-

5.The issue now primarily agitated before this Court is with respect to the determination of the functional disability. I must note that the Tribunal did an elaborate exercise on that



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particular aspect and took note of the evidence of PW-2, the medical professional who opined that the claimant had suffered 45% disability with respect to the fracture suffered in the right leg and 40% disability with respect to the fracture suffered in the left leg and that a total 85 % disability had been suffered by the claimant. In this connection, Ex.P11, Disability Certificate were also issued.

6. Thereafter, as stated, the Tribunal examined the Manual for Doctors to evaluate permanent physical impairment based on Expert Group meeting on disability evaluation and National Seminar on Disability Evaluation and Dissemination under D.G.H.S., W.H.O., A.I.I.M.S., have clubbing disabilities and came to conclusion that total functional disability as 65%. Thereafter, the Tribunal thought it would only be appropriate that the functional disability is determined at 30%.

7. A more practical approach to determine this particular aspect would be to calculate the total disability with respect to each one of the legs, which is 85% and take 1/3rd of it, which would be 28% and rounded off 30%. So viewed from any angle the determination of 30% by the Tribunal can be said to be reasonable and need not be interfered with by this Court.

8. One aspect which can be interfered with, is with respect to income of the appellant. It was determined at Rs.6,500/- per month. He was aged about 54 years. Being a labourer in road, it would be natural that the minimum income can be reasonably determined at Rs.8,000/-. The age being 54 years, future income can be scaled down to 10% and if that is taken into account, the monthly income together with loss of future income would come to Rs.8,800/-. The multiplier to be adopted, would be 11 since the age was 54 years. Therefore, when the loss of income is calculated, it would be (Rs.8,800 x 12) = Rs.1,05,600/- for one year and adopting the multiplier of 11 and deducting 30%, it would be (Rs.1,05,600 x 11 x 30% = Rs.3,48,480/-). The other aspects in the order shall remain the same. The enhanced compensation breakup is as follows:

Heads	Amounts
Transportation, nourishment and miscellaneous expenditure	Rs.50,000/-
Medical Expenses	Rs.2,46,000/-
Attender Charges	Rs.20,000/-
Damages for pain suffering and Trauma	Rs.50,000/-



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Loss of future earning capacity / power	Rs.3,43,480/-
Loss of earning during the period of treatment	Rs.13,000/-
Loss of amenities	Rs.20,000/-
Total	Rs.7,47,480/-

9.The Civil Miscellaneous Appeal is partly allowed to that extent enhancing the compensation which had been determined as Rs.6,57,000/- to Rs.7,47,480/-. The Insurance company shall deposit the difference in compensation amount i.e., Rs.90,480/- with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the appellant is permitted to withdraw the same and Additional Court fees if any has to be paid. No order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:-

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

Copy to

The Section Officer
VR Section
High Court, Madras 104.

+1 CC to Mr.R.Ravichandran, Advocate sr 14882
+1 CC to Mr.K.Varadha Kamaraj, Advocate sr 14218

CMA.No.3527 of 2017

GSM(CO)
SP(03/06/2022)