



C.M.A.(MD)No.1140 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 29.11.2022

Delivered On : 15.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1140 of 2009

S.Anandan

.. Appellant /claimant

Vs.

1.M/s.Pandian construction,
140, Alagar Kovil Street,
Madurai.

2.The Oriental Insurance Company Limited,
Saradha Shopping Complex Centre,
39/40, Workshop Road, Simmakkal,
Madurai – 51.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 08.01.2008, made in M.C.O.P.No. 1480 of 2003, on the file of the Motor Accident Claims Tribunal - III Additional Sub-Judge, Trichy.

For Appellant

: Ms.Irfana

for M/s.Ajmal Associates

For Respondents

: No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 08.01.2008, made in M.C.O.P.No. 1480 of 2003, on the file of the Motor Accident Claims Tribunal - III Additional Sub-Judge, Trichy.. The appellants herein are the claimants and the respondent herein are the respondent in the original M.C.O.P. Petition.

2.A brief substance of the petition, in M.C.O.P.No.1480 of 2003, is as follows:-

On 26.05.2002, at about 01.30 pm., when the petitioner was travelling in his two wheeler, a tipper lorry bearing Registration No.TN-1066 driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injury, he was taken to Maruthi Hospital, then, he was admitted in Sree Horse Hospital, again, he was shifted to Madurai Jawahar Hospital. He has undergone surgery and he took treatment as inpatient for a period of 50 days. Later, his leg was amputated, at that time, he took treatment as inpatient for a period of 35 days. The petitioner sustained permanent disability. Before the accident, he was doing business in hardware and electrical works and was earning Rs.20,000/- per month. After the accident, he could not continue the work and the petitioner claimed



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a sum of Rs.20,00,000/- as compensation.

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3. A Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 1480 of 2003, is as follows:

The first respondent's driver is not responsible for the accident. It was the petitioner, who drove the vehicle in a rash and negligent manner. The age, income and profession are all denied. The claim is excessive.

4. 2 witnesses were examined and 20 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.7,18,500/- as compensation.

5. Against the order, the claimant / appellant has filed this appeal on the following grounds:-

The Tribunal failed to consider the future prospects of the appellant in computing the income. The Tribunal failed to consider the age of the appellant. The Tribunal awarded Rs.4,000/- towards extra nourishment, Rs.18,000/- towards physiotherapy, which are very low. The Tribunal failed to consider that there was 70% disability, half of the left leg was amputated from the knee and there was



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fracture in the right leg and the disability for the right leg is 20%. The entire award is very low and prayed the same to be enhanced.

6. On the side of the appellant, it is stated that the Tribunal failed to apply multiplier method. The Tribunal awarded only Rs.2,000/- per percentage of disability. The appellant was 34 years and multiplier '16' ought to have been applied. The monthly income of the deceased has to be fixed at least Rs.15,000/- p.m.

7. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in **2022-Live law (SC)-734 (Mona Baghel V. Sajjan Singh Yadav)**, is cited, wherein, the monthly income was fixed as Rs.8,000/-

8. On the side of the appellant, another judgment of the Hon'ble Supreme Court reported in **2011-1-SCC-343 (Rajkumar V. Ajay Kumar)** is cited, wherein, the Hon'ble Apex Court has awarded compensation for the loss of earning during the period of treatment, loss of income on account of permanent disability, medical expenses, damages for pain and suffering, loss of amenities, loss of expectation of life, hospitalization, transportation, nutrition food and for miscellaneous expenditure. It is further stated the multiplier method ought to be adopted in computing the loss of income. The relevant paragraph reads as follows:-



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“21.... (a) In case of permanent total disablement the amount payable shall be arrived at by multiplying the annual loss of income by the Multiplier applicable to the age on the date of determining the compensation“

9. On the side of the appellant, it is stated that initially the appellant took treatment as inpatient for a period of 50 days and he undergone surgery and then another surgery was done and the left leg was amputated from the knee level, at that time, the appellant took treatment as inpatient for a period of 35 days.

10. A.I.R copy was marked as Ex.P2. Medical report from Shreehorse Hospital, was marked as Ex.P9. Medical report issued by Jawahar Hospital was marked as Ex.P10. X-Ray was marked as Ex.P19. P.W.2 has deposed that the appellant sustained 70% disablement, due to the amputation of the leg. For the fracture in the right leg thigh and pain, the Doctor fixed the disability as 20%.

11. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-F.I.R, Ex.P3-judgment of the criminal Court, the Tribunal has fixed the liability on the tipper lorry driver, which is reasonable. The policy was effective and the Tribunal fixed the liability on the respondent, which is reasonable.



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12. It is seen that the Tribunal has fixed the disability at 70% and awarded Rs.2,000/- per percentage. Considering the fact that there was amputation of right leg and that there was fracture in the left leg, it is decided that the appellant is entitled to claim compensation by applying multiplier method.

13. On the side of the appellant, it is stated that the monthly income of the appellant is Rs.20,000/-. It is stated that the appellant was doing business and the notice sent by the commercial tax office was marked as Ex.P13; Demand notice was marked as Ex.P14; Sale orders were marked as Exs.P15 to P18.

14. No income tax return was filed on the side of the appellant. The accident is of the year 2002. At that time, the notional income was only Rs.4,000/-. Considering the above said documents, it is decided that the notional income of the appellant is fixed as Rs.6,000/- per month. For 70% disability, the appellant is entitled to Rs.4,200/- (Rs.6,000/- X 70/100) per month. The age of the appellant at the time of accident was 34 years and hence, multiplier 16 is applicable. Hence, it is decided that the appellant is entitled to Rs.8,06,400/- (Rs. 4,200/- X 12 X 16) as loss of income.



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15. The Tribunal has awarded Rs.25,000/- towards pain and sufferings and the same is increased to Rs.30,000/-. The Tribunal awarded Rs.4,000/- towards extra nourishment. Considering the period of treatment and the nature of the injuries, it is decided that the appellant is entitled to Rs.20,000/- towards extra nourishment. The Tribunal awarded Rs.5,000/- towards transport expenses and the same is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.90,000/- towards loss of income. Since the loss of income was calculated by applying multiplier method, it is decided that the appellant is not entitled to compensation under this head. The Tribunal has awarded Rs.18,500/- towards physiotherapy charges and Rs.4,36,000/- towards medical bills, which are all reasonable. Considering the period of treatment and considering the nature of injury, it is decided that the appellant is entitled to Rs.25,000/- towards attender charges.

16.The total compensation is calculated as follows:-

Loss of income	:	Rs. 8,06,400/-
Medical Bills	:	Rs. 4,36,000/-
Pain and sufferings	:	Rs. 30,000/-
Extra nourishment	:	Rs. 20,000/-
Transport expenses	:	Rs. 10,000/-
Physiotherapy	:	Rs. 18,500/-
Attender charges	:	Rs. 25,000/-
Total compensation	:	Rs.13,45,900/-



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17. This Appeal is allowed. The compensation is enhanced from

Rs.7,18,500/- to Rs.13,45,900/-.

(i) The claimant / appellant is entitled to Rs.13,45,900/- as compensation.

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.13,45,900/- (less the amount if any already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the Insurance Company, the appellant / claimant is permitted to withdraw the entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

(iv) The appellant/claimant is **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

15.12.2022

Index : Yes/No

Internet : Yes/No

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To

- 1.The III Additional Sub-Judge,
Motor Accident Claims Tribunal,
Trichy.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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