



C.M.A.(MD)No.566 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 12.10.2022

Delivered On : .03.11.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.566 of 2018

K.Kuppusamy

.. Appellant /claimant

Vs.

1.V.S.Elangovan

2.The Manager,

SBI General Insurance Co.Ltd.,

Arivagam Complex 2nd Floor, Plot No.22,

Indira Gandhi Chathukkam,

New Railway Line, Mudaliar Pet,

100 Feet Road, Pondicherry-605 004.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.1081 of 2016, dated 22.11.2017, on the file of the Motor Accident Claims Tribunal – Special District Judge, Thanjavur, for enhancement of compensation.

For Appellant

: Mr.T.J.Ebenezer Charles

for Mr.T.Senthil Kumar

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.B.Vijaykarthikeyan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount passed in M.C.O.P.No.1081 of 2016, dated 22.11.2017, on the file of the Motor Accident Claims Tribunal – Special District Judge, Thanjavur. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No. 1081 of 2016, is as follows:-

On 31.07.2016, at about 6.30 pm, when the petitioner was proceeding in a two wheeler bearing Registration No.TN-45-AX-4668, an Omni van bearing Registration No. PY-01-Y-0222 came from the opposite direction in a rash and negligent manner, dashed against the two wheeler. The petitioner sustained injuries. He was given first aid in the Government Hospital, Kumbakonam and then he was admitted in Sugam Hospital, Kumbakonam, later, he was admitted in Meenakshi Mission Hospital, Thanjavur, as inpatient. The petitioner was disabled and he claimed a sum of Rs.50,00,000/- as compensation.



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WEB COPY 3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No. 1081 of 2016, is as follows:

The accident has happened only due to the rash and negligent driving of the petitioner himself. The van driver was not responsible for the accident. It was the petitioner, who suddenly and unexpectedly crossed the road, without observing the traffic and the petitioner himself has invited the accident. The second respondent is not liable to pay compensation.

4. On the side of the claimant, 3 witnesses were examined and 21 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.11,22,120/- as compensation to be paid by the respondent.

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

The award is very meagre and the percentage of the disability fixed by the Tribunal is very low. The Tribunal failed to award any amount for future treatment.



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6. On the side of the appellant, it is stated that the claimant was referred to Medical Board by this Court and the report was received from the Board. The claimant lost his eye sight. The Tribunal fixed the disability at 20%, whereas, the Medical Board has fixed disability at 57%. The Tribunal has fixed the notional income as Rs.6,500/-, but, the claimant was working as a L.I.C. Agent and he was earning Rs.25,000/- per month and the Bank statements were filed to prove the income.

7. On the side of the respondents, it is stated that the income fixed by the Tribunal is reasonable. The petitioner was only L.I.C agent and his income cannot be a stable one. Bank statement was not sufficient enough to prove the income.

8. On the basis of Ex.P1 - copy of F.I.R and on the basis of the oral evidence, the Tribunal has fixed the liability on the respondents, which is reasonable. It is seen that P.W.2-Dr.Senthamaraikkannan has given a disability certificate, fixing the disability at 40%. P.W.3-Dr.Jeyakaranpandian has given a disability certificate - Ex.P19, wherein, he fixed the disability at 30%. The Tribunal has come to a conclusion that the loss of earning capacity is only 15%.



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9. Ex.P2 is the discharge summary, it is seen that the appellant has undergone surgery on 03.08.2016 and he was inpatient from 01.08.2016 till 07.09.2016. The petitioner sustained head injury and multiple fractures in the facial bones. The Tribunal fixed the functional disability at 20%. The appellant was referred to the Medical Board by this Court and the Medical Board fixed the disability as 57%. Hence, the disability is fixed as 57%.

10. The Tribunal has fixed the notional monthly income as Rs.6,500/-. On the side of the appellant, it is stated that the income was Rs.25,000/- per month. Bank statements are not sufficient enough to prove the income. The appellant is only a L.I.C agent, his income can not be a standard one. Hence, it is decided that the notional income fixed by the Tribunal is reasonable. The age of the claimant is 57 years and hence, the claimant is entitled to 10% future prospects. Including the future prospects the notional income is calculated as Rs.7,150/- per month. The appellant is having 57% disability and hence, the loss of income is calculated as Rs. 4,075.50/- ($\text{Rs.7,150/-} \times 57/100 = \text{Rs.4,075.50/-}$ per month. For the age of the appellant, multiplier '9' is applicable. Hence, it is decided that the appellant is entitled to Rs.4,40,154/- ($\text{Rs.4,075.50} \times 12 \times 9 = \text{Rs.4,40,154/-}$) as loss of income.

11. The Tribunal has fixed the medical expenses as Rs.7,42,680/- and Rs.25,000/- towards transport expenses, Rs.25,000/- towards extra nourishment,



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Rs.25,000/- towards attender charges and Rs.50,000/- towards pain and sufferings,

which are all reasonable.

12. On the side of the appellant, it is stated that the appellant has to be awarded compensation for future medical expenses. It is decided that the appellant is entitled to **Rs.1,00,000/-** towards future medical expenses.

13. The total compensation is calculated as follows:-

Loss of income	:	Rs.4,40,154/-
Medical expenses	:	Rs.7,42,680/-
Transport expenses	:	Rs. 25,000/-
Extra nourishment	:	Rs. 25,000/-
Attender charges	:	Rs. 25,000/-
Pain and sufferings	:	Rs. 50,000/-
Future medical expenses	:	Rs.1,00,000/-
Total compensation	:	Rs.14,07,834/-

14. Hence, this Appeal is partly allowed. The compensation is enhanced from Rs.11,22,120/- to Rs.14,07,834/-.

(i) The claimant / appellant is entitled to Rs.14,07,834/- as compensation.



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(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.14,07,834/- (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 with accrued 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.

03.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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R. THARANI, J.

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To

- 1.The Special District Judge,
Motor Accident Claims Tribunal
Thanjavur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.566 of 2018

03.11.2022