



C.M.A.No.1208 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.02.2023

PRONOUNCED ON : 31.03.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

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1. C.Sathyamoorthy(Died)

2. Devi. ... Appellants
[2nd Appellant brought on record as LR
of the deceased sole appellant viz.,
C.Sathyamoorthy vide Court Order
dated 2/3/22 made in M.P.Nos.1 to 3/15
in C.M.A.No.1208/13 (JNBJ).]

vs.

1.A.Mariyappan

2. IFFCO-TOKIO General Insurance Company Ltd.,
Thulasi Chambers,
3rd Floor, TVS Samy Road,
R.S.Puram, Coimbatore. ... Respondents
(The 1st Respondent is already
set exparte before the trial Court,
hence notice may be dispense with).

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 08.07.2010 made in M.C.O.P.No.355 of 2008 on the file of MACT/FTC No.2 at Gobichettipalayam, Erode District to set aside the same and to enhance the award.



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For Appellants : Mr.Ma.P.Thangavel

For Respondents : Mrs.R.Rathna Thara [R2]

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JUDGMENT

This appeal is preferred by the appellant for enhancement of compensation of the award dated 08.07.2010 passed by the Motor Accident Claims Tribunal / Fast Track Court No.2 at Gobichettipalayam, Erode District.

2. The appellant is the claimant in the M.C.O.P.No.355 of 2008 on the file of Motor Accident Claims Tribunal / Fast Track Court, No.2 at Gobichettipalayam, Erode District. The claim petition is filed by him under Section 166 of the Motor Vehicles Act claiming compensation for a sum of Rs.6,00,000/- for the injuries sustained by him in the accident that took place on 13.05.2007. The Tribunal, upon consideration of the oral and documentary evidence and after hearing both sides arguments, has held that the accident occurred due to the rash and negligent driving of the driver of Mini Van belonging to the 1st respondent, insured with the 2nd respondent and they were made liable to pay a sum of Rs.78,300/- as compensation to the 1st appellant herein.

3. The learned counsel for the appellant would strenuously contend



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that the disability certificate was issued by the Medical Board and the disability suffered by the appellant was assessed as 80%. But, the Tribunal reduced the disability to 65% which is totally unwarranted and the multiplier method should have been adopted. No amount was awarded for Transport Charges, Extra Nourishment, Damage to Clothes Loss of amenities and attender charges. The amounts awarded under the head of pain and sufferings was very meagre and prayed for enhancement.

4. Per contra, the learned counsel for the 2nd
respondent/Insurance Company would vehemently argue that the accident took place in the year 2007 and the award passed by the Tribunal is reasonable one. He would further submit that the disability fixed by the Medical Board is on the higher side. Hence, the Tribunal has correctly taken the disability as 65%. It was also contended that the proof for employment of the 1st appellant was not filed and therefore, prayed for dismissal of the present appeal.

5. Heard the rival contentions put forth by the learned counsels of both sides and perused the entire material records.

6. During the pendency of the appeal, it appears that as the



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appellant passed away, his wife has been impleaded as 2nd appellant as per orders of this Court in M.P.Nos.1 to 3 of 2015.

7. It is seen from the medical records that the deceased suffered fracture of right second rib and fracture of D4, D7 and D8 due to the accident occurred on 13.05.2007 and suffered from Paraplegia and he was permanently bed ridden. His bladder was catheterised. It is the evidence of PW3-Dr.Thambiraj, that after examining the petitioner, he found that the petitioner has suffered 80% permanent disability and it is difficult for the injured to do any work. The Tribunal has assessed the disability as 65%. The 1st appellant was said to be doing work in a banian company and was earning Rs.6,000/- p.m., and after the accident, he could not do any work as done before. The 1st appellant was 19 years old at the time of accident. The learned counsel for the appellant relied upon the judgment of the Hon'ble Supreme Court rendered in **Civil Appeal No.799 - 800 / 2021 in Karthick Subramanian v. Sarath Babu and another**, wherein, the Hon'ble Supreme Court has held that as the appellant suffered injuries in the accident resulting in 40% permanent disability, multiplier method was invoked. The total amount of Rs.21,60,000/- was awarded as compensation after adding future prospects.



8. In the present case, the claimant at the age of 19 years suffered fracture of D4, D7 and D8. The impact would have been very severe and that the injured was suffering from paraplegia.

9. In Google, it is given that paraplegia is a type of paralysis that affects ability to move the lower half of the body. The affected person will have difficulties in moving legs, feet and stomach muscles. Paraplegia is normally caused by injury to the spinal cord or brain that stop signals from reaching the lower body. When the brain is unable to send the signals to the lower body, it results in paralysis. Due to Paraplegia the following conditions may be caused:

Cerebral Palsy, cancer, nerve condition multiple sylelosis/spinal tumours, brain tumours.

10. The effects of Paraplegia generally as follows:

Injury between spinal nerves T1 and T6: This causes complete paraplegia. Hips and legs are paralyzed and have no feeling at all, as are the abdominal muscles. This also causes loss of bladder and bowel control. Injury at this level can cause problems with coughing and deep breathing.

T7-T12: Complete paraplegia like above, but chest muscles



are not affected.

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L1 to L2: Complete paraplegia like above, but chest and abdominal muscles are not affected. You still need a wheelchair for mobility, and you may not have bowel and bladder control.

L3 to S5: Incomplete paraplegia becomes more common the farther down the spine an injury occurs. At this level, you can usually walk with or without braces or a walker. However, bowel movements and bladder function may be affected.

11. It is the evidence of the 1st appellant coupled with medical evidence that he suffered fracture of D4, D7 and D8 besides compression of the same. Therefore, in case of fracture of D4, D7 and D8, the person is bound to have complete paraplegia.

12. It is relevant to refer to the observations made by the Apex Court in Rajkumar Vs. Ajaykumar reported in [2011 (1) SCC 343], it has been observed that total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident.

13. Therefore, as per the medical records and the medical evidence,



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it is pellucid that the 1st appellant has suffered disability to the tune of 70% and due to paraplegia, he would not be in a position to do any work as he did before. To meet the ends of justice, this Court deems fit to invoke multiplier method, though it was highly resisted by the learned counsel for the Insurance Company.

14. The disability is assessed as 70% for the purpose of calculating loss of income. For the persons of age group between 15 to 25 multiplier to be adopted, as per **Smt.Sarla Verma & Others v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC) is 18**. This Court deems fit to fix the 1st claimant's income at Rs.5,000/- p.m., As per the law laid down by the Hon'ble Supreme Court in **National Insurance Co. Ltd., V.Pranay Sethi and others** reported in **2017 (2) TN MAC 609 (SC)**, for the persons below 40 years of age, 40% to be added as future prospects in case of persons who are self-employed or on fixed salary. The loss of income is calculated by adding 40% future prospects.

15. The following formula emerges in respect of loss of income as follows:

Age of the deceased : 19 years

Income of the deceased fixed: Rs.5,000/-



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After adding 40%

Future Prospects

Disability Assessed

: Rs.5,000/- + 40% = Rs.7,000/-

: 70%

Loss of Income

: Rs.7,000/-X18X70/100X12

Rs.10,58,400/-.

Under the head of Transport Expenses, Extra Nourishment, Damage to Clothes and Attender Charges, considering the age and injury sustained by the 1st appellant an amount of Rs.20,000/-, Rs.10,000/-, Rs.2,000/- and Rs.10,000/- are hereby awarded respectively. Towards Medical Expenses and pain and sufferings, the amounts granted by the Tribunal appears to be reasonable and therefore, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Loss of Income	Rs. 65,000/-	Rs. 10,58,400/-	Enhanced
2	For Medical Expenses	Rs. 3,300/-	Rs. 3,300/-	Confirmed
3	For Pain and Suffering	Rs. 10,000/-	Rs. 10,000/-	Confirmed
4	For Transport Expenses	NIL	Rs. 20,000/-	Granted



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
5	For Extra Nourishment	NIL	Rs. 10,000/-	Granted
6	For Damage to Clothes	NIL	Rs. 2,000/-	Granted
7	For Attender Charges	NIL	Rs. 10,000/-	Granted
	Total	Rs. 78,300/-	Rs.11,13,700/-	

16. Thus, the compensation awarded by the Tribunal is enhanced from Rs.78,300/- to Rs.11,13,700/- which would carry interest at the rate of 7.5% per annum from the date of petition till realisation.

17. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.78,300/- to Rs.11,13,700/-.

(iii) The 2nd Respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.11,13,700/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.355 of 2008 on the file of MACT/FTC No.2 at



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Gobichettipalayam, Erode District, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the 2nd appellant / claimant is at liberty to withdraw the same (less the amount if any, already withdrawn) by making necessary cheque application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

31.03.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
MACT/FTC No.2 at Gobichettipalayam,
Erode District.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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Pre-delivery Judgment in
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