



CMA.No.1613 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1613 of 2015

Vinoth @ Raju Devankar

Appellant

Vs

1. Mallika
2. P.Sekar

3. United India Insurance Company Limited
Chennai-2

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 01.10.2009, made in MCOP.No.92 of 2005, by the Subordinate Judge (MACT) Ponneri.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.M.J.Vijayaraghavan-R3

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 01.10.2009, made in MCOP.No.92 of 2005, by the Subordinate Judge (MACT) Ponneri.
2. The Appellant has filed the claim petition before the Tribunal, seeking a compensation of Rs.20,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 12.05.2004. The Respondents 1 and 2 remained exparte. The claim petition was resisted, on various grounds, by the 3rd Respondent/ Insurance Company, by filing a



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counter. On the side of the claimant, PW.1 to PW.3 were examined and Ex.P1 to Ex.P26 were marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle, the Tribunal has awarded a total compensation of Rs.8,35,000/-, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Transportation Expenses	1000.00
2	Extra Nourishment	2000.00
3	Medical Expenses	657000.00
4	Pain and Suffering	8000.00
5	Disability	65000.00
6	Loss of Future Earnings Due To The Disability	102000.00
Total Compensation		835000.00

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel on either side, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the negligence aspect and the dispute is only with regard to the quantum of compensation, the finding of the Tribunal with respect to the negligence aspect is confirmed and also, it is not necessary to narrate the entire facts in detail in respect of the accident.
6. According to the learned counsel for the Appellant, the injured claimant was aged 22 years old at the time of the accident and he was a College Student. He suffered fracture of Grade III on both bone left leg lower with extensive soft tissue loss both sides and his left leg shortened by two inches and the



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same leg foot is claw toes and hence, considering the nature of injuries, his age and education and medical records, the Tribunal ought to have applied multiplier method while arriving at the compensation towards disability and the compensation awarded under the other heads are also on the lower side.

7. According to the learned counsel for the 3rd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
8. The claimant was aged 22 years old at the time of the accident and he was a College Student. As per Ex.P2 accident register, Ex.P3 discharge summary and Ex.P4 discharge summary and Ex.P25 wound certificate and other medical records, the claimant suffered fracture on both bone of left leg lower with extensive soft tissue loss on both sides and severe infection and his left leg shortened by two inches. The evidence of PW.3 Doctor who examined the claimant runs to that effect and as per Ex.P25 wound certificate, the claimant suffered 70% disability.
9. While computing the compensation for the disability suffered by the claimant, it is the functional disability resulting in loss of earning capacity, which is the criteria in assessing compensation. The loss of earning capacity is commensurate to the injuries suffered and the loss of earning capacity as a result thereof. Hence, considering the deformities suffered by the claimant, which is also evident from the medical evidence and that of PW.3 Doctor and taking into account the fact that the claimant was a College Student, the functional disability in respect of the whole body suffered by him is to be assessed.



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10. In the instant case, in view of the disabilities suffered by the claimant, he would be finding it very difficult to do his normal avocations, which requires manual work. Although the claimant cannot do his normal avocations, as he is in a position to earn by performing other works, which is suitable to his physical condition after the accident, the functional disability could be assessed at 40%. in respect of the whole body.

11. The compensation of Rs.65,000/- awarded under the head of disability is set aside. Instead, the compensation towards loss of earnings due to the disability can be arrived at by adopting multiplier method and taking the percentage of functional disability. After completing the college education, the claimant would have earned not less than Rs.5000/- p.m. The proper multiplier is 18. Thus, the compensation towards loss of earnings due to the disability would come to Rs.4,32,000/= (Rs.5000 x 12 x 18 x 40/100).

12. Considering the nature of injuries and the period of treatment, Rs.1,000/- towards transportation expenses, Rs.2,000/- towards extra nourishment, Rs.8000/- towards pain and sufferings awarded by the Tribunal, are enhanced to Rs.5,000/-, Rs.10,000/- and Rs.20,000/- respectively. The compensation under the head of medical expenses is retained. A further sum of Rs.11,000/- towards attendants charges is awarded. In all, the claimant is entitled to a total compensation of Rs.11,35,000/- with interest 7.5% p.a. from the date of the claim petition till the date of realisation.

13. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.11,35,000/-, (Rupees



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eleven lakhs thirty five thousand only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Transportation Expenses	5000.00
2	Extra Nourishment	10000.00
3	Medical Expenses	657000.00
4	Pain and Suffering	20000.00
5	Attendants Charges	11000.00
6	Loss of Future Earnings Due To The Disability	432000.00
Total Compensation		1135000.00

The 3rd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also deducting interest for the period of delay in filing the appeal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same, by filing proper application and by paying proper court fee for the enhanced compensation. The claimant is not entitled interest for the period of delay in filing the appeal. No costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

To

1. The Subordinate Judge (MACT) Ponneri.
2. The Record Keeper, VR Section, High Court, Madras



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A.A.NAKKIRAN, J.

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