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C.M.A.No.1957 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1957 of 2013

V.Veeraraghavan

... Appellant

vs.

1. C.K.Vijaya Kumar

2. The New India Assurance Co. Ltd.,
Motor Third Party Cell
No.46, Moore Street, "Regina Mansion",
Chennai – 600 001

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the compensation of Rs.3,47,500/- as awarded by the lower Court to Rs.12,00,000/-.

For Appellant : Mr.R.Kalai Arasan

For Respondents : Mr.K.Vinod for R2

R1-Not ready in notice



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JUDGMENT

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Not being satisfied with the award passed by the II Judge, Small Causes Court, Motor Accident Claims Tribunal, Chennai, in the Judgment and decree passed in M.C.O.P.No.1864 of 2001 dated 16.11.2012, this Civil Miscellaneous Appeal is filed by the claimant herein for enhancement of compensation.

2. The claim petition was filed by the claimant under Section 163(A) and 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T. Rules claiming a compensation of Rs.12,00,000/- for the injuries sustained by him in a road accident that occurred on 31.08.2000.

3. The Tribunal, after hearing the arguments of both sides and upon considering the oral and documentary evidence, has passed the award for an amount of Rs.3,47,500/- with interest at 7.5% per annum from the date of numbering of the petition, i.e.11.06.2001 till the date of deposit.

4. Reiterating the grounds of appeal, the learned counsel appearing for the appellant would strenuously argue that the injured, who was 20 years old, suffered Grade -III B, compound comminuted fracture both bone



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left leg and he was given treatment as inpatient for 173 days. He would further contend that the monthly salary of the claimant which was fixed by the Tribunal at Rs.4,500/- per month, is very less. The Doctor assessed the disability of the the appellant as 75% . But, the Tribunal has fixed the disability at 25% which is on the lower side. The amount awarded for pain and sufferings undergone, loss of amenities, attendant charges are also insufficient.

5. To strengthen his arguments, the learned counsel for the petitioner referred to the judgment of the Hon'ble Supreme Court in the case of **Syed Sadiq, etc. Vs. Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)**, wherein the monthly income of an injured Vegetable Vendor, aged 24 years, was fixed as Rs.6,500/- for the accident occurred in the year 2008.

6. Per contra, the learned counsel for the 2nd respondent/insurance company would vehemently argue that the award was passed in the year 2012. The accident occurred in the year 2000. The doctor who treated the injured was not examined. The disability has to be assessed only for the whole body. No document was marked to show that the appellant was running a meat shop. Therefore, he cannot claim that his employment is



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affected as he can employ some other person in his place. The notional income fixed by the Tribunal, for the accident occurred in the year 2000, at Rs.4,500/- is on the higher side in the given circumstances. If at all the appellant is not able to do any work, then alone, multiplier can be invoked. Considering the date of accident and the nature of injury, the award passed by the Tribunal appears to be reasonable.

7. Heard the rival contentions put forth by the learned counsels of both sides and perused the entire materials on record.

8. It is the evidence of the appellant/P.W.1 that on 31.08.2000, at 15.15 hours, while he was standing near the center median-G.S.T. Road, near Hotel Sahar, Guindy, Chennai, a lorry bearing Reg. No.TN-09-D3966 which came from East to West, hit him and eventually, he sustained grievous injuries, which is not in dispute.

9. It is the evidence of P.W.1 that he was a proprietor of a Pork stall and was earning Rs.10,000/- per month. To substantiate the said claim, no document was filed. Therefore, the Tribunal has fixed the notional income at **Rs.4,500/- per month** and it is taken as such as notional income.



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10. As regards the future prospects, the Hon'ble Supreme Court has standardized the details of future prospects for various age group of persons, to be added with income in ***National Insurance Co. Ltd. Vs. Pranay Sethi [reported in (2017) 2 TN MAC 609 (SC)]***, wherein, it has been held that for the persons who are below 40 years and are self employed or on a fixed salary, 40% of the income to be added as future prospects while computing the monthly income.

11. As per the medical records, the age of the claimant was 25 years at the time of accident. As stated above, the notional income of the appellant is taken at Rs.4,500/- per month and it is worked out as **Rs.6,300/-** (i.e. Rs.4,500/- +40%=Rs.6,300/-).

12. It is seen from Ex.P.2, discharge summary issued by the Government Hospital, Chennai that the appellant, on account of the injuries sustained in the accident, was admitted in the above said hospital on 31.08.2000 and he had taken treatment for 173 days. He suffered Grade -III B, compound comminuted fracture both bone left leg, for which, he had undergone surgeries on 31.08.2000, 07.11.2000 and 09.01.2001 in which, external fixation and skin grafting were done.



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13. It is the evidence of the doctor/P.W.2 that he assessed the disability of the appellant/claimant as 75%. He has also stated that there is total contraction of left ankle and the appellant is suffering from equines deformity and his left heel is not touching the ground while standing and only front portion of the leg is touching the ground. His left leg below knee is totally deformed, he can walk only with support of stick, at the time of walking he is severely limping, he cannot stand continuously for more than 5 minutes, he cannot squat or sit cross-legged and he cannot do any manual work.

14. Due to the fractures suffered, the appellant now would definitely find difficult to walk, sit and lift objects. It is pertinent to note that he is unable to do any manual work.

15. Thus, on account of the accident, the appellant/claimant suffered Grade -III B, compound comminuted fracture both bone left leg. The doctor has assessed the disability as 75% which is partial permanent. The evidence of the appellant himself gives a clear picture about the difficulties that he has been facing after the accident. P.W.2/Dr.K.J.Mathiazhagan has spoken about the injuries and the difficulties in detail. Therefore, it is made clear that the appellant cannot earn for his living as he did before.



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This is a case where a 25 year old person has met with an accident, due to which, he is not in a position to work and severely limping. Therefore, no doubt that he would find it difficult to stand, walk and lift the objects. So, relying upon the said observations, the disability for the whole body is taken as 30%.

16. In injury cases, under what circumstances the multiplier method has to be adopted, has been discussed by the Hon'ble Apex in **Arvind Kumar Mishra Vs. New India Assurance Company Limited and Another** reported in **(2010) 10 SCC 254** wherein, the appellant, at the time of accident, was a final year Engineering (Mechanical) student in a reputed college. He was remarkably a brilliant student having passed all his semester examinations in distinction. Due to such accident, he suffered grievous injuries and remained in Coma for about 2 months. His studies got interrupted as he was moving to different hospitals for surgery and other treatments. For many months, his condition remained serious. His right hand was amputated and even seriously affected. These multiple injuries led to 70% permanent disablement. He rendered incapacitate, and his career in the line of Mechanical Engineering got dashed for ever. He is now in a physical condition that he requires domestic help throughout his life. He has been deprived of pecuniary benefits which he could have



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reasonably acquired had he not suffered permanent disablement to the extent of 70% in the accident and the Hon'ble Supreme Court granted compensation by invoking multiplier method.

17. As regards the quantum, the Hon'ble Supreme Court in **Herdeo Kaur and Others Vs. Rajasthan State Transport Corporation** reported in (1992) 2 SCC 567, has held that in the determination of the quantum of compensation, the Court must be liberal and not niggardly in as much as in a free country, law must value life and limb on a generous scale.

18. To summarize the material facts of the case that the appellant who was a mutton meat seller by profession and 25 years old at the time of accident, sustained Grade -III B, compound comminuted fracture both bone left leg in a road accident that had taken place on 31.08.2000 while he was standing near the center median for crossing the road. A lorry as mentioned supra which came from east to west, hit him and due to the impact, he suffered the above said fracture. He was taken to Government General Hospital, Chennai and for about 5 ½ months, he was treated as inpatient and the claim petition was filed only in the year 2001.



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19. It is made clear through the evidence of appellant as well as Doctor that it would be extremely difficult for the claimant to do any manual work as he did before.

20. It is also relevant to refer to the observations made by the Hon'ble Supreme Court in ***Rajkumar Vs. Ajaykumar and another reported in (2011) 1 SCC 343*** wherein, it has been held that disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder like of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident.



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The permanent disabilities that may arise from motor accident injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the persons with disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

21. Therefore, based upon the observations made by the Hon'ble Apex Court in the above mentioned cases and the impact and the effects of fracture suffered by the appellant, this Court is of the considered view that invoking of multiplier method for calculating loss of dependency which was done by the Tribunal cannot be found fault with.

22. As per the medical record/discharge summary/Ex.P.2, his age is fixed at 25 years. But no proof for date of birth was filed by the appellant herein. As per the law laid down by the Hon'ble Apex Court in the **Sarla Verma & Others Vs. Delhi Transport Corporation** reported in **2009 (2) TN MAC 1 (SC)**, the proper multiplicand to be applied for the age group of persons between 21 to 25 years is 18. Therefore for arriving at the loss of income, the following formula emerges i.e. $\text{Rs.6,300/-} \times 12 \times 18 \times 30\% = \text{Rs.4,08,240/-}$.



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23. Keeping into consideration the nature of disability and the period of treatment given, age and avocation, an amount of **Rs.10,000/- each** is granted for extra nourishment and for transportation in addition to the amount already granted **(in total Rs.20,000/-)**. For medical expenses, a amount of **Rs.15,000/-** is granted in addition to the amount already granted by the Tribunal. For proper appreciation of nature of injuries suffered by the appellant, photo copy of his leg which is marked as Ex.P.5 is enclosed with this judgment.

24. The appellant is not in a position even to directly walk like a ordinary person. Therefore, for loss of amenities, an amount of **Rs.15,000/-** is granted in addition to the amount already granted and for pain and sufferings, an amount of **Rs.10,000/-** is granted in addition to the amount already granted. Multiplier method is invoked for calculating loss of earning capacity. Therefore, the amount of **Rs.54,000/- granted by the Tribunal for loss of income during treatment period is set aside.**

25. As regards the other heads, the amount awarded by the Tribunal appears to be reasonable and hence, the same need not be interfered with. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:



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Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of income for 12 months	Rs.54,000/-	----	Set aside
2	Transportation	Rs.5,000/-	Rs.15,000/-	Enhanced
3.	Extra Nourishment	Rs.5,000/-	Rs.15,000/-	Enhanced
4	Damage to clothes	Rs.500/-	Rs.500/-	Confirmed
5	Medical expenses	Rs.5,000/-	Rs.20,000/-	Enhanced
5	Attender Charges	Rs.5,000/-	Rs.5,000/-	
6	Loss of amenities of life and mental agony to the petitioner	Rs.10,000/-	Rs.25,000/-	Enhanced
7	Pain and Sufferings	Rs.20,000/-	Rs.30,000/-	Enhanced
8	Loss of earning power Rs.4,500/- x12x18x25%	Rs.2,43,000/-	Rs.4,08,240/- (Rs.6,300/- x12x18 x 30%)	Enhanced
	Total	Rs.3,47,500/-	Rs.5,18,740/-	Enhanced



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26. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.3,47,500/- to Rs.5,18,740/-** which would carry interest at 7.5% per annum from the date of numbering of the petition, i.e.11.06.2001 till the date of deposit.

27. In the result,

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

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.3,47,500/- to Rs.5,18,740/-**

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.5,18,740/-** (less the amount already deposited if any) together with interest at 7.5% per annum from the date of numbering of the petition, i.e.11.06.2001 till the date of deposit to the credit of M.C.O.P.No.1864 of 2001 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes) Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same on filing of cheque petition. The claimant is directed



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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.

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Index : Yes/No
Speaking / Non-speaking order
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Encls:4

Photo copy of the leg of the appellant/claimant/Ex.P.5



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Ex.P.5 in M.C.O.P.No.1864 of 2001

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To:

1. The Motor Accident Claims Tribunal
(II Court of Small Causes), Chennai,
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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R.KALAIMATHI, J.,

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