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C.M.A.No.3172 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.07.2023

PRONOUNCED ON : 14.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.3172 of 2013

Umapathy

... Appellant/petitioner

Vs.

1. Sudhakar Darla

[R1 remained ex-parte before Tribunal.
Hence, notice to R1 dispensed with]

2. Shri Ram General Insurance Company Ltd.,

No.66, Thirumalai Pillai Road,

T. Nagar, Chennai – 17.

... Respondents/Respondents

[R1 and R2 remained ex-parte before Tribunal.
Hence notice to R1 and R2 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award and Decree dated 23.07.2013, made in M.C.O.P.No.291 of 2011, on the file of the Motor Accidents Claims Tribunal, II Judge, Small Causes Court, Chennai.

For Appellant	:	Mr. K. Varadha Kamaraj
For R1	:	Dispensed with
For R2	:	Ms. K. Poomalai



JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation granted by the Tribunal in the award passed in M.C.O.P.No.291 of 2011, dated 23.07.2013, on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai.

2. The parties are referred to herein according to their status and ranking before the Tribunal.

3. According to the petitioner, on 18.12.2010 at about 7.45 hours, while he was travelling as a pillion rider in a Motor-cycle bearing Registration No.TN 02 AF 5406 at P.H.Road, Mettukulam Junction, Koyambedu, Chennai, from East to West, Eicher Van bearing Registration No.AP 26 TT 2113 belongs to the first respondent came from same direction in rash and negligent manner, hit behind the Motor-cycle and thereby, the petitioner sustained grievous injuries. Hence, the petitioner filed Claim Petition claiming compensation for a sum of Rs.30,00,000/- from the respondents for the injuries sustained by him in the road accident.



4. The respondents have not contested the claim and remained
ex-parte.

5. Before the Tribunal, on the side of the petitioner, P.W.1 to P.W.5 were examined and Exs.P1 to P16 were marked.

6. The Tribunal after considering the pleadings, oral and documentary evidence placed on record in Point No.1 has held that the accident occurred due to rash and negligent driving by the driver of the Eicher Van, belongs to the first respondent. In Point No.2, the Tribunal has held that the second respondent is the insurer of the first respondent's vehicle hence, the second respondent is liable to pay the compensation to the petitioner. In Point No.3, the Tribunal has quantified the compensation for a sum of Rs.27,60,200/- to the petitioner.

7. Not being satisfied with the compensation awarded by the Tribunal, the petitioner has come out with the present appeal seeking enhancement of compensation.



8. The Tribunal has awarded total compensation of

Rs.27,60,200/- under various heads as follows:

“ For Loss of Income for 6 months a sum of Rs.42,000/-; For Transportation a sum of Rs.10,000/-; For Extra Nourishment a sum of Rs.30,000/-; For Damage to clothes a sum of Rs.1,000/-; For Medical Expenses a sum of Rs.9,10,000/-; For Future Medical Expenses a sum of Rs.2,00,000/-; For Loss of amenities of life and Loss of Expectation of life a sum of Rs.3,00,000/-; For Future Attender Charges a sum of Rs.1,50,000/-; For Pain and Sufferings a sum of Rs.1,50,000/-; For Loss of Earning Capacity a sum of Rs.9,07,200/- and For Disability at 30% at the rate of Rs.2,000/- per percentage a sum of Rs.60,000/-. In all, a total sum of Rs.27,60,200/-.

9. It is submitted by the learned counsel for the claimant that the Tribunal has not properly fixed the income of the deceased and also not properly awarded future prospects. He has also stated that considering the nature of the injury sustained, the compensation awarded under the head “pain and sufferings” shall also to be increased and prays to enhance the compensation.



10. The learned counsel for the Insurance Company would oppose the same stating that the Tribunal after considering the evidence placed on record has rightly awarded just compensation and there is no reason for enhancing the same hence prays to confirm the award passed by the Tribunal.

11. I have considered the rival submissions made on both sides and also perused the materials placed on record.

12. To prove the income of the claimant / injured person P.W.4/Thiru. Inbarajan was examined and he has stated that the injured was working as Taxation Assistant in FUSO Glass India Private Limited and was being paid R.7,000/- per month. Ex.P14 is the Authorisation Letter given to the P.W.4 - the Senior Executive, authorising him to give evidence. Ex.P15 is the Appointment Order of the claimant. Salary Certificate for the Month of December-2010 was marked as Ex.P16. It shows that it is the definite case of the claimant that, he has earning Rs.7,000/- per month and he has not claimed more than Rs.7,000/- as a salary. The evidence of P.W.4 and P.W.1



was accepted by the Tribunal and monthly income has been fixed as Rs.7,000/- per month and this Court finds no infirmity in the said finding.

13. To prove the injury/disability, the claimant has examined P.W.2 and P.W.3 who are the Doctors who has assessed the disability. The Tribunal based on the evidence and also on the basis of the Accident Register-Ex.P4, the Discharge Summaries issued by the Vee Care Hospital-Exs.P5 to P8 and also based on the X-ray - Ex.P11 and based on the evidence adduced by P.W.2 and P.W.3, the Tribunal accepted the disability assessed to the claimant to the extent of 60%. The claimant has suffered amputation of left leg below knee and he has also sustained fracture on humerus left leg and Anal sphincter injury. He has also undergone several injuries and also debridement with left leg amputation. Based on the various injuries sustained and also for the amputation, the loss of earning power has been assessed by the Tribunal to the extent of 60% and this Court finds the same is just and reasonable and same is accepted. The claimant has suffered amputation and other injuries and there is no appeal filed on the side of the Insurance Company protesting awarded compensation under the head loss of earning power. Admittedly, the Tribunal has not awarded future



prospects. As per the Judgment of the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others [2018 (4) SCC 571]*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 INSC 466 SC Website : AIR 2020 SC 4284]***, the claimant is entitled for future prospects. Since, it is proved by adducing evidence that, the claimant was having permanent job in the Private Company, as per the Judgment of the Hon'ble Apex Court in ***National Insurance Company Ltd., vs. Pranay Sethi and others*** reported in ***2017 (16) SCC 680***, he is entitled for 50% of loss of earning capacity as additional compensation under the head loss of future prospects i.e., $[907200 / 2] = \text{Rs.}4,53,600/-$.

14. The Tribunal has separately awarded compensation under the head disability and awarded compensation by fixing Rs.2,000/- per percentage of each injury, by totally Rs.60,000/- $[2000 \times 30\%]$ was awarded under the caption for disability. This Court is of the view that since loss of earning capacity has been assessed and awarding compensation separately under the head disability is not proper. Hence, this Court is inclined to reject the compensation awarded under the head loss of earning capacity. The



Tribunal has also awarded future medical expenses for a sum of Rs.2,00,000/-. Since the claimant is fixed with screws and plates on his left hand which is to be removed very soon and the claimant has also required artificial leg hence, this Court finds that there is no infirmity in granting the future medical expenses. With regard to other heads are concerned, this Court finds the same is just and reasonable and the same is hereby confirmed.

15. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Income for 6 months	Rs.42,000/-	Rs.42,000/-	Confirmed
2.	Transportation	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Extra Nourishment	Rs.30,000/-	Rs.30,000/-	Confirmed
4.	Damages to Clothes	Rs.1,000/-	Rs.1,000/-	Confirmed
5.	Medical Expenses	Rs.9,10,000/-	Rs.9,10,000/-	Confirmed
6.	Future Medical Expenses	Rs.2,00,000/-	Rs.2,00,000/-	Confirmed



7.	Loss of Amenities/Loss of Expectation of life	Rs.3,00,000/-	Rs.3,00,000/-	Confirmed
8.	Future attending Charges	Rs.1,50,000/-	Rs.1,50,000/-	Confirmed
9.	Pain and Sufferings	Rs.1,50,000/-	Rs.1,50,000/-	Confirmed
10.	Loss of future Earning Capacity	Rs.9,07,200/-	Rs.9,07,200/-	Confirmed
11.	Loss of Future prospects	---	Rs.4,53,600/-	Granted
12.	Disability 30%	Rs.60,000/-	---	Rejected
	Total	Rs.27,60,200/-	Rs.31,53,800/-	Enhanced by Rs.3,93,600/-

16. In the result, this Civil Miscellaneous Appeal is partly allowed. The compensation awarded by the Tribunal at Rs.27,60,200/- is hereby enhanced to Rs.31,53,800/- [Rupees Thirty One Lakhs Fifty Three Thousand and Eight Hundred only] together with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court along with proportionate interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of



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M.C.O.P.No.291 of 2011 on the file of the Motor Accident Claims Tribunal, II Judge, Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant without any formal application. In other aspects, the order of the Tribunal shall stand confirmed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

14.09.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No



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To

- 1.The II Judge,
Small Causes Court,
Motor Accidents Claims Tribunal,
Chennai.
- 2.The Section Officer,
VR Section,
High Court, Madras.



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K.RAJASEKAR,J.

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