



C.M.A.No.2922 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

C.M.A.No.2922 of 2019

Sadhasivam

...Appellant

Vs.

1. Kalaiselvi
2. The Branch Manager,
Royal Sundaram Alliance Insurance Co. Ltd.,
Sundaram Tower, No.46, Whites Road,
Rayapettah, Chennai – 600 014.
3. Selvakumar
4. The Branch Manager,
The Oriental Insurance Co. Ltd.,
Suba Govindam Building,
II Floor, Imperial Road,
Cuddalore – 2.
5. Raja

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the fair and decretal order dated 10.08.2018 made in M.C.O.P.No.166 of 2008 on the file of the Motor Accidents Claims Tribunal (CJM) at Cuddalore.



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C.M.A.No.2922 of 2019

For Appellant : Mr.S.Kalyanaraman
For Respondents : Mr.E.Rajadurai for R2
: Not ready notice, for R1 & R5
: R3 – Died
: Mr.K.Vinod, for R4

JUDGEMENT

Aggrieved by the fair and decreetal order passed by the Motor Accidents Claims Tribunal (CJM) at Cuddalore in M.C.O.P.No.166 of 2008 dated 10.08.2018, the claimant has come up with this Appeal.

2. The case of the appellant is that, on 02.11.2007 at about 12.30 pm., when the appellant was riding his Hero Honda Motor cycle bearing Regn.No.PY-01-J-9918 on Cuddalore Bharathi Road, opposite to Subburayalu Reddiar Park, the 1st respondent's lorry bearing Regn.No.PY-01-S-4559, insured with the 2nd respondent driven by its driver in a rash and negligent manner, hit behind the appellant, due to which, the appellant sustained grievous injuries all over his body. Thereby, the appellant filed a claim petition claiming a compensation of Rs.20,00,000/-. After contest, the tribunal, vide impugned judgment awarded a compensation of Rs.2,27,000/-. Aggrieved by the said order,



C.M.A.No.2922 of 2019

the appellant had come up with this appeal seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent and at the time of accident, the appellant was aged about 54 years and was working as a load man and was earning a sum of Rs.7,500/- and due to the injuries sustained by him at the time of accident, the appellant suffered 45% disability and the appellant being a load man by profession, is unable to continue his avocation which he was carrying on before the accident and as a result of which, his earning capacity got reduced and necessarily, the disability suffered by the appellant have to be considered as functional disability. Whiles, without considering any of the above said facts, the tribunal, had adopted percentage method instead of adopting multiplier method and awarded a compensation of Rs.1,35,000/- under the head “Disability”, which is not sustainable. Further, the appellant worked as A.F.M in Kumbakonam Co-operative Central Bank and after retirement, he was working as a load man and he also worked as Chief Gurukkal and was earning a sum of



C.M.A.No.2922 of 2019

Rs.7,500/- per month, however, the tribunal had fixed the monthly income of the appellant as Rs.5,000/- alone, which is wholly erroneous and the same has to necessarily be interfered with. Further, the compensation awarded by the tribunal under the other heads are also on the lower side. Accordingly, he prayed for appropriate enhancement in favour of the appellant.

4. Per contra, the learned counsel appearing for the 2nd respondent submitted that, the accident is of the year 2007 and as per the existing law at the relevant point of time, a sum of Rs.2,000/- per percentage of disability has to be adopted, however, the tribunal had adopted Rs.3,000/- per percentage of disability which is erroneous and excessive and therefore no further enhancement is required. Accordingly, he prayed for dismissal of this appeal.

5. On the above said contentions, heard learned counsel appearing for the 4th respondent and perused the material documents placed on record.



C.M.A.No.2922 of 2019

WEB COPY

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded. It is claimed by the appellant that, at the time of accident the appellant was working as a load man and was earning a sum of Rs.7,500/-, however, the tribunal had fixed the income as Rs.5,000/- which is meagre and though the appellant sustained 45% permanent disability, the tribunal adopted percentage method instead of multiplier method and awarded a meagre compensation, which is not sustainable.

7. A perusal of the claim petition and the impugned award reveals that, the appellant had claimed that he was earning a sum of Rs.7,500/- per month. If a person claims that he is earning a sum of Rs.7,5000/ per annum, necessarily he has to file appropriate documents with regard to the same or he can produce his owner or customer to prove his job. In the case on hand, except the oral submission, no other documents were filed by the appellant to establish his income. In the absence of any such proof, the tribunal had rightly fixed the notion income of the respondent as Rs.5,000/-, which cannot be found fault with.



C.M.A.No.2922 of 2019

WEB COPY

8. Insofar as the Disability sustained by the appellant is concerned, though the learned counsel for the appellant claim that the disability sustained by the appellant is functional in nature and that the adoption of percentage method instead of multiplier method by the tribunal is erroneous, however, the said contention cannot be accepted for the reasons that the extent of the disability would not really hamper the appellant/claimant from discharging his work. Therefore, considering the said fact that the Tribunal had adopted percentage method and arrived at the compensation and the procedure adopted by the Tribunal cannot be found fault with and this Court in agreement with the adoption of percentage method. Accordingly, the said compensation is confirmed.

9. Further, it is to be pointed out that the per percentage disability amount awarded by the Tribunal is on the higher side by around Rs.1000/, while the award of compensation towards the other heads are on the lower side and, therefore, giving under one head and reducing under the other head would result in the amount to be awarded to be the same and, therefore, no useful purpose would be served in modifying the compensation under the heads, while the compensation amount would



C.M.A.No.2922 of 2019

remain the same, which would be nothing but an exercise in futility.

Therefore, this Court is not embarking upon the said modification, but suffice to confirm the compensation awarded by the Tribunal.

10. For the reasons aforesaid, the appeal stands dismissed and the 2nd respondent-insurance company is directed to deposit the compensation awarded by the tribunal to the credit of M.C.O.P.No.166 of 2008 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any, already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

08.11.2023

skt

Index	: Yes / No
Speaking order	: Yes / No
NCC	: Yes / No



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C.M.A.No.2922 of 2019

M.DHANDAPANI, J.

skt

To

- 1.The Motor Accidents Claims Tribunal (CJM),
Cuddalore.
- 2.The Section Officer, V.R.Section, High Court, Madras.

C.M.A.No.2922 of 2019

08.11.2023