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CMA.No.1343 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CMA.No.1343 of 2018

Mohan @ Issakai Muthu Mohan

Appellant

Vs

1. Sivaraman

2. The New India Assurance Company Limited
Chennai-1

Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 07.01.2014, made in MCOP.No.231 of 2012, by the Subordinate Judge (MACT) Ponneri.

For Appellant : Mrs.A.Subadra

For Respondents : Mr.R.Neethi Perumal-R2

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, against the judgement and decree, dated, 07.01.2014, made in MCOP.No.231 of 2012, by the Subordinate Judge (MACT) Ponneri.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.9,00,000/- on various heads, for the injuries sustained by him, in a motor road accident, which took place on 18.03.2012. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/ Insurance Company, by filing a counter. On the side of the claimant, PW.1



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and PW.2 were examined and Ex.P1 to Ex.P12 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.5,02,500/-, 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	Partial Disability	40000.00
2	Future Loss of Income and Permanent Continuing Disability	408000.00
3	Transportation Expenses	3000.00
4	Medical Expenses	28450.00
5	Pain and Suffering	20000.00
6	Extra Nourishment	3000.00
Total Compensation		502450.00

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 30 years old at the time of the accident and he was earning a sum of Rs.350/- per day as a painter. He suffered right leg amputation at ankle and fracture on left hand both bone and grievous injuries all over the body and hence, considering the nature of injuries, his age and avocation and medical



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records, the Tribunal ought to have taken 70% disability while arriving at the compensation under the head of loss of future earnings due to the disability and the compensation awarded under the other heads are also on the lower side.

7. According to the learned counsel for the 2nd Respondent/ Insurance Company, the compensation awarded by the Tribunal is just and proper.
8. The claimant was aged 30 years old at the time of the accident and he was earning a sum of Rs.350/- per day as a Painter. In absence of evidence to prove the monthly income of the claimant, the Tribunal fixed the same at Rs.2,000/-, which is not proper and hence, it would be appropriate to fix his monthly income at Rs.8,000/-. 17 is the proper multiplier as adopted by the Tribunal.
9. As per Ex.P3 discharge summary, the claimant suffered crush injury R-foot, G-III B Comm medical malleolus left c Raw area BK Amputation right Kwire fixation left ankle, SSG done. As per Ex.P10 disability issued by PW.2 and Ex.P5 issued by Government Stanley Hospital, Chennai, the claimant suffered 70% permanent disability.
10. 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, the functional disability in



respect of the whole body suffered by him is to be assessed.

11. In the instant case, in view of the disabilities suffered by the claimant, he cannot perform the work as he was doing prior to the accident and he would be finding it very difficult to do his normal avocations as a Painter, 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 taken as 40% in respect of the whole body.

12. The compensation of Rs.40,000/- awarded under the head of partial 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 at 40%. Thus, the compensation towards loss of earnings due to the disability would come to Rs.6,52,800/= (Rs.8000 x 12 x 17 x 40/100).

13. Considering the nature of injuries, the compensation of Rs.3,000/- towards transportation expenses, Rs.20,000/- towards pain and sufferings awarded by the Tribunal are modified to Rs.10,000/- and Rs.40,000/- respectively. Further, a sum of Rs.20,000/- towards attendants charges, Rs.25,000/- towards loss of amenities and Rs.25,000/- towards future medical expenses are awarded. The compensation amounts awarded under the heads of medical expenses and extra nourishment are retained. In all, the claimant is entitled to a total compensation of Rs.8,04,250/- with interest 7.5% p.a. from the date of the claim petition till the date of realisation.



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14. In the result, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.8,04,250/-, (Rupees eight lakhs four thousand two hundred and fifty 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	Future Loss of Income and Permanent Continuing Disability	652800.00
2	Transportation Expenses	10000.00
3	Medical Expenses	28450.00
4	Pain and Suffering	40000.00
5	Extra Nourishment	3000.00
6	Attendants Charges	20000.00
7	Loss of Amenities	25000.00
8	Future Medical Expenses	25000.00
Total Compensation		804250.00

The 2nd 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, 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 entire compensation amount with interest, by filing proper application and by paying proper court fee for the enhanced compensation. No costs.

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