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C.M.A.No.2174 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 20.09.2023

Coram

The Hon'ble Mr.Justice Sunder Mohan

C.M.A.No.2174 of 2023

V.Natarajan

...Appellant

Vs.

1. M.Vijayalakshmi

2. I.C.I.C.I Lambord General Insurance Company Ltd.
No.414, Veer Savarkkar Marg,
Near Prabhadevi Sithi Vinayakar Kovil,
Mumbai – 400 025.
having office at
Opposite to Ramesh Theater,
Trichy Road, Namakkal Town.

3. G.Pachayammal

4. The New India Assurance Company Ltd.,
D.No.17, 2nd Floor, Kottai Main Road,
Shevapet, Salem – 636 002.
having Office at Paramathi Road, Namakkal Town.

...Respondents



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Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 15.11.2017 made in M.C.O.P.No.135 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Namakkal.

For Appellant : M/s.N.Premalatha

Respondent -1 &3 : Notice Dispensed with

For Respondent-2 : Mrs.R.Sreevidhya

For Respondent-4 : Ms.A.Salomi

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the award passed by the Motor Accident Claims Tribunal, Namakkal (hereinafter, referred to as 'the Tribunal') in M.C.O.P.No.135 of 2012 dated 15.11.2017.

2. The appellant filed the Claim Petition stating that on 13.04.2012, at 8.00 a.m, while he was riding his two wheeler bearing Regn. No.TN 28 AA 0635 (CD-100) on the Salem-Karur Bypass Road, a Lorry, bearing Regn. No.TN 69 AE 1098 driven by its driver in a rash and negligent



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manner and hit the two wheeler of the appellant from behind, as a result of which the appellant rammed into the lorry bearing Reg.No.TCV-0451 which was going ahead of him.

3. The first respondent, the owner of the lorry, bearing Regn. No.TN 69 AE 1098 remained *ex-parte* before the Tribunal.

4. The second respondent, insurer of the lorry, bearing Reg.No.TN 69 AE 1098 filed a counter denying that the accident took place due to the negligence of the driver of the insured vehicle; and that, in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5. The third respondent, owner of the lorry bearing Reg.No.TCV-0451, filed a counter stating that the accident took place only due to the negligent act of the driver of the lorry, bearing Reg.No.TN 69 AE 1098, who hit the two wheeler of the appellant from behind; that the FIR was registered only against the driver of the said lorry, and hence, the claim



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petition against the third respondent is liable to be dismissed.

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6. Fourth respondent is the insurer of the lorry belonging to the third respondent bearing Reg.No.TCV-0451, reiterated the submissions made by the third respondent in its counter and prayed for dismissal of the claim petition.

7. Before the Tribunal, the appellant examined himself as P.W.1 besides examining two other witnesses as P.W.2 and P.W.3 and marked 27 documents as Ex.P.1 to Ex.P.27. On the side of the respondent/Insurance Company, one witness was examined as R.W.1 and one document was marked as Ex.R.1.

8. The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the negligent driving of the vehicle owned by the first respondent insured with the second respondent and directed the second respondent to pay a compensation of Rs.34,05,344/-



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9. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.

10. M/s.N.Premalatha learned counsel appearing for the appellant/claimant has submitted that compensation awarded by the Tribunal needs to be enhanced since the Tribunal while computing compensation under the head, 'Loss of Future Income' failed to consider the future prospects, resulting in awarding a meagre sum of Rs.18,28,444/- towards 'Loss of Future Income'. The learned counsel further submitted that the award of compensation under the other heads also needs to be enhanced.

11. First respondent remained ex parte before the Tribunal, hence, notice to first respondent is dispensed with and the learned counsel for the appellant has also made an endorsement to that effect.



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12. Since third respondent was exonerated by the Tribunal, the learned counsel made an endorsement to dispense with notice to third respondent as well. Hence, notice to third respondent is also dispensed with.

13. M/s A.Salomi, learned counsel for second respondent, per contra, submitted that though the appellant had not adduced any evidence to establish functional disability, the Tribunal had awarded compensation under the head, 'Loss of Future Income' by adopting multiplier method, which resulted in awarding an excess amount of Rs.18,28,444/- under the said head. The learned counsel also submitted that the award of compensation under other heads are also just and fair and no interference is called for and therefore, prayed for dismissal of the Appeal.

14. The learned counsel for the fourth respondent who was exonerated by the Tribunal submitted that the fourth respondent is only a formal party in this Appeal.



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15. The only question that arises for consideration in the instant Appeal is, whether the quantum of compensation awarded by the Tribunal is just and reasonable.

15 (a) On perusal of records, it is seen that due to the accident that took place on 13.04.2012, the appellant sustained grievous injuries and his right leg had to be amputated and there is no dispute with regard to the said fact. The Medical Board assessed the disability sustained by the appellant at 80%, as the disability is permanent in nature.

15 (b) It is seen that the appellant was working in a Private Concern as Senior Administrative Officer as per Ex.P.11, viz. the Appointment Letter issued by the said Private concern. Further, the appellant also filed Ex.P.12, letter of resignation dated 26.08.2012 .Considering the nature of injuries sustained by the appellant and the assessment made by the Medical Board, this Court is of the view that there is no infirmity in the finding of the Tribunal in fixing the functional disability at 80%. Further, it is seen that though the Tribunal had fixed the monthly income of the appellant at



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Rs.14,651/- based on Ex.P.11, viz. the appointment letter of the Employer, however, failed to consider the enhancement towards future prospects.

Considering the facts and circumstances of the case, this Court is of the view that the appellant would be entitled to enhancement towards future prospects, which would at 25% as the appellant was aged 47 years at the time of the accident and the multiplier applicable is '13'. Hence, the award of compensation under the head, 'Loss of Future Income' is assessed as follows:-,

$$\begin{aligned} &\text{Rs.14,651/-} + \text{Rs.3,663/-(25\%)} = \text{Rs.18314/-} \times 12 \times 13 \times 80/100 \\ &= \text{Rs. 22,85,587/-} \end{aligned}$$

15 (c) Therefore, the award of the Tribunal under the head, 'Loss of Future Income' at Rs.18,28,444/- is modified and enhanced to Rs.22,85,587/-

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15 (d) Insofar as the award of compensation under the head, 'Transportation' is concerned, it is seen that the appellant had marked Ex.P.17, Bills to prove the expenses incurred by him towards transportation.



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However, the Tribunal had awarded only a sum of Rs.35,000/- which is not just. Thus, on perusal of Ex.P.11, this Court is of the view that there is no reason to reject Ex.P.17, wherein, it is seen that a sum of Rs.1,05,000/-was spent by the appellant towards transportation charges.

15 (e) As regards the award of compensation of Rs.75,000/- by the Tribunal under the head, 'Pain and Suffering', this Court is of the view that the same is low and is hereby enhanced to a sum of Rs.1,00,000/-.

15 (f) Further, it is seen from the award that of the Tribunal though the appellant was hospitalized for nearly 39 days and had taken continuous treatment, no amount was awarded by the Tribunal towards Attender's Charge. Hence, this Court is inclined to grant a sum of Rs.15,000/- under the said head.

15 (g). Insofar as the award of compensation by the Tribunal under other heads are concerned, the same are hereby confirmed.

15 (h). The modified award of the Tribunal by this Court is as



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follows:-

SL. No.	Head	Tribunal award in (Rs.)	High Court Award in (Rs.)	Modified/ confirmed
1	Transportation	35,000/-	1,05,000/-	Enhanced
2	Extra Nourishment	46000	46,000/-	confirmed
3	Medical Expenses	30,900/-	30,900/-	confirmed
4	Pain and Suffering	75,000/-	1,00,000/-	Enhanced
5	For Fixation of Artificial Leg	13,90,000/-	13,90,000/-	Confirmed
6	Loss of Future Income	18,28,444/-	22,85,587/-	Enhanced
7	Attender's charges		15,000/-	Granted
	Total	Rs.34,05,344/-	Rs.39,72,487/-	Enhanced

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.34,05,344/- is hereby enhanced to Rs.39,72,487/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of 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 interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment.



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On such deposit, the appellant is permitted to withdraw the same along with proportionate interest and costs, less the amount if any, already withdrawn, by making proper application before the Tribunal. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

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Index : Yes/No

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal, Namakkal.



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Sunder Mohan,J.,
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