



C.M.A.No.3027 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.03.2023

PRONOUNCED ON : 14.03.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.3027 of 2019

M.Sahul Hameed

... Appellant

vs.

1.Lakshmi

2.Reliance General Insurance Co. Ltd.,
Motor Third Party Claim Cell,
No.6, Haddows Road, 6th Floor,
Chennai-6. ... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against decree and judgment dated 10.09.2018 passed in M.C.O.P.No.8866 of 2015 on the file of Motor Accident Claims Tribunal, Small Causes Court, (Special Sub Judge No.1), Chennai.

For Appellants : Mr.K.Varadha Kamaraj

For Respondents : Mr.S.Arunkumar [R2]

R1 – Served – No Appearance

JUDGMENT

The sole claimant herein has preferred this appeal seeking enhancement of the award passed by the Motor Accident Claims Tribunal,



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Small Causes Court, (Special Sub Judge No.1), Chennai, in

M.C.O.P.No.8866 of 2015 dated 10.09.2018.

2. Heard both sides.

3. The Appellant/claimant has filed the claim petition before the Tribunal for compensation for the injury sustained by him in a road accident held on 21.10.2015.

4. The Tribunal having gone through the records awarded a sum of Rs.2,77,700/- as compensation. Being aggrieved of the award, specifically, in respect of disability, transportation, attender charges, damage to clothes, loss of amenities and future medical expenses, the claimant has preferred this appeal.

5. The learned counsel for the appellant/claimant strenuously contended that Rs.4,000/- per percentage may be granted and the amount awarded under the head of attender charges is very meagre as mentioned supra, besides that no amount was granted under the heads of damage to clothes and loss of amenities. To strengthen his argument, the learned counsel for the appellant referred judgment in the case of **Sandeep Khanuja v. Atul Dande & Another** reported in **2017(1)TNMAC 410 (SC)**,



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and pointed out that when the claimant suffered permanent disability, and if it reflects in earning capacity of the injured, the Tribunal has to adopt multiplier method in assessing the loss of earning capacity. In the referred case, the claimant happened to be a Chartered Accountant who sustained fractures on both the legs, when he was driving a Scooter and hit by a Hyundai Getz Car which resulted in 70% permanent disability. Taking into consideration the age and he being a Chartered Accountant, he needs to move around and multiplier method was adopted.

6. In another judgment in the case of ***M.Chinnathambi v. S.Deepa*** reported in **2020 (1) TN MAC 617** was also referred to for the purpose of awarding Rs.5,000/- per percentage of disability. In the said case, 36 year old injured claimant was said to be an agriculturist and suffered multiple fractures all over the body and for which he had undergone surgery. Taking into consideration of these circumstances, Rs.5,000/- per percentage of disability was awarded.

7. In the case of ***R.Muniammal v. R.Abhubakkar*** reported in **2018 (2) TN MAC 475** was also referred to by the learned counsel for the appellant stating that for the injured who suffered both bones in one leg for



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the injured claimant, multiplier method was applied to assess the loss of earning capacity by this Court.

8. Per contra, the learned counsel for the 2nd respondent/Insurance Company would argue that based on the disability certificate, functional disability with regard to the whole body has to be arrived at. Based on the principles enunciated by the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar and Another** reported in **2011 (1) SCC 343**, wherein, the Hon'ble Supreme Court has held that :

19. We may now summarise the principles discussed above :

"(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to



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be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

9. The learned counsel for the 2nd respondent / Insurance Company would further contend that the compensation granted by the Tribunal under all the heads are just and reasonable and hence, the same may be confirmed.

10. As far as this case is concerned, the appellant/claimant is stated to be worked as a Server in a hotel but no document was filed to substantiate the same.

11. On perusal of medical records, it appears that the petitioner having met with an accident, as he was crossing the Ennore high road hit by a motor cycle, thereby sustained Comminuted Proximal fracture in right tibia. Based on the disability certificate issued by the Medical Board, Rajiv Gandhi Government General Hospital, Chennai, it was concluded that he suffered a total disability of 40% and only Rs.3,000/- per percentage was



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awarded.

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12. The claimant is stated to have worked as Hotel server and by virtue of the accident, he has sustained Comminuted Proximal fracture in right tibia, for which, the disability was assessed as mentioned supra by the the Medical Board, Rajiv Gandhi Government General Hospital, Chennai, as he was suffered fracture in one of the leg, definitely the claimant have difficulties in walking, climbing steps that would definitely reflect in his work. Hence, considering the nature of injury sustained by the claimant, taking into consideration of his work, based on the above said observations made by the Hon'ble Supreme Court and our High Court, it is held that he is entitled for Rs.3,500/- per percentage, it would come to 40% x Rs.3500/- = Rs.1,40,000/- towards disability. As regards attender charges, atleast for three months, considering the nature of injuries sustained and he having undergone surgery a sum of Rs.10,000/- is granted.

13. As the claimant had undergone surgery by implanting ORIF plate fixation in right leg and for removal of the same, a sum of Rs.20,000/- is granted under the head of future medical expenses. For damage to clothes and loss of amenities a sum of Rs.15,000/- is granted.



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14. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Disability	Rs. 1,20,000/-	Rs. 1,40,000/-	Enhanced
2	Pain and Sufferings	Rs. 25,000/-	Rs. 25,000/-	Confirmed
3	Transportation	Rs. 5,000/-	Rs. 5,000/-	Confirmed
4	Medical Expenses	Rs. 69,936/-	Rs. 69,936/-	Confirmed
5	Extra Nourishment	Rs. 15,000/-	Rs. 15,000/-	Confirmed
6	Attender Charges	Rs. 1,750/-	Rs. 10,000/-	Enhanced
7	Loss of Earnings	Rs. 21,000/-	Rs. 21,000/-	Confirmed
8	Loss of Future Prospects	Rs. 20,000/-	Rs. 20,000/-	Confirmed
9	Damage to Clothes and Loss of Amenities	NIL	Rs. 15,000/-	Granted
10	Future Medical Expenses	NIL	Rs. 20,000/-	Granted
	Total	Rs. 2,77,686/-	Rs. 3,40,936/-	
	Rounded to	Rs. 2,77,700/-		

15. In the result,



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

(ii) The compensation awarded by the Tribunal is enhanced from Rs.2,77,700/- to Rs.3,40,936/-.

(iii) The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after receipt of the Court fee.

(iv) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., Rs.3,40,936/- (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.8866 of 2015 on the file of Motor Accident Claims Tribunal, Small Causes Court, (Special Sub Judge No.1), Chennai, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same by filing necessary cheque application.

14.03.2023

Index : Yes/No
Speaking / Non-speaking order
ssn



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To:

1. The Motor Accident Claims Tribunal,
Small Causes Court, (Special Sub Judge No.1),
Chennai.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

R.KALAIMATHI, J.,

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