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C.M.A.No.1359 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.07.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1359 of 2023

Pushpavel

... Appellant

Versus

1.Prasath

2.The National Insurance Company Limited,

94/34, 2nd Floor,

Dr.Nanjappa Road, United Shopping Complex,

Coimbatore.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.12.2019 in M.C.O.P.No.814 of 2016 on the file of the Motor Accident Claims Tribunal, (the Special Subordinate Judge), Dharmapuri.

For Appellants : Mr.S.Sathiaseelan

For Respondents : Mr.C.Paranthaman for R2

No appearance for R1



J U D G M E N T

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This Civil Miscellaneous Appeal has been filed for enhancement of compensation awarded by the Tribunal in the award dated 19.12.2019 made in M.C.O.P.814 of 2016 on the file of the Motor Accident Claims Tribunal, (the Special Subordinate Judge), Dharmapuri.

2. The appellant is claimant in M.C.O.P.No.814 of 2016 on the file of Motor Accident Claims Tribunal, (the Special Subordinate Judge), Dharmapuri. He filed the said claim petition claiming a sum of Rs.30,00,000/- as compensation for the grievous injuries sustained by him in the accident that took place on 17.07.2016.

3. According to the appellant, on the date of accident i.e, on 17.07.2016 at about 09.30 p.m., while the appellant was proceeding in his two wheeler in the Morappur to Dharmapuri Main Road, near Balakrishna Bakery in Kurumpatti Tea Shop bus stop, the driver of the car bearing Registration No.TN-09-AV-4452 drove the same in a rash and negligent manner in the opposite direction without observing the Traffic Rules, while trying to overtake the vehicle going in front of him, dashed against appellant and caused the accident. Due to the impact, the appellant



suffered injuries. Hence, he filed claim petition claiming Rs.30,00,000/- as compensation.

4. The first respondent, who is the owner of the car, remained *ex-parte* before the Tribunal.

5. The second respondent/Insurance Company filed counter statement, denying the averments made in the claim petition and stated that the accident was not due to the rash and negligent act of the driver of the car bearing Registration No.TN-09-AV-4452. The appellant, rider of motorcycle bearing Registration No.37-AQ-8561 came on the wrong direction in a rash and negligent manner and dashed against the car and invited the accident. Hence, the second respondent is not liable to pay any compensation to the appellant. In any event, the quantum of compensation claimed is excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1 and marked sixteen documents as Exs.P1 to P16. The second respondent/Insurance Company did not let in any oral or documentary evidence.



7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent act of the driver of the first respondent's vehicle and directed the second respondent being the insurer of the vehicle to pay a sum of Rs.14,93,453/- as compensation to the appellant.

8. Challenging the quantum of compensation awarded by the Tribunal, the appellant has filed the instant appeal.

9. The learned counsel for the appellant submitted that in the accident, the appellant suffered fracture in both legs and also disfigurement in his face. The Medical Board examined the appellant and assessed the disability at 37%. Though the Tribunal had rightly applied the multiplier method for awarding compensation towards loss of earning capacity, the income taken by the Tribunal at Rs.7,000/- is meagre. That apart, the Tribunal had not taken into consideration the future prospects of the appellant while calculating the monthly income. The learned counsel further submitted that the compensation of the Tribunal under the other



heads are also meagre and need to be enhanced and hence, prayed for enhancement of the compensation.

10. Per contra, the learned counsel for the second respondent submitted that the appellant had filed this appeal belatedly after withdrawing the compensation deposited by the second respondent. The appellant has not filed any document to prove his avocation and income. In the absence of any documentary proof, the notional income fixed by the Tribunal is not meagre and need not be interfered with. The learned counsel further submitted that as per the judgment of the Hon'ble Supreme Court in Raj Kumar Vs Ajaj Kumar reported in 2011(1) SCC 343, the appellant is not entitled to future prospects. The learned counsel further submitted that the award of compensation under the other heads are also just and reasonable and prayed for dismissal of the appeal.

11. Though notice was served on the first respondent, none appeared on his behalf before this Court.



12. Heard, the learned counsel for the appellant and the learned counsel for the second respondent and perused the materials available on record.

13. This Court on perusal of the award passed by the Tribunal and on hearing the learned counsel appearing on either side finds that the award of compensation to the appellant under the head "Loss of earning capacity" during the period of treatment is not justified. It is seen that the Tribunal had fixed the notional income of the appellant at Rs.7,000/- per month. The appellant was working as Mechanic at the time of the accident. In the facts and circumstances of this case, this Court is of the view that in the absence of any evidence establishing the income of the appellant, it would be just and reasonable to fix the notional income at Rs.10,000/- per month.

14. This Court finds that in a decision of the Hon'ble Apex Court in Papy Deo Yadav and Others Vs Naresh Kumar and Others reported in 2020 SCC Online 752, it has been held that the injured person is entitled to future prospects as well while calculating the compensation under the head "Loss of earning capacity". Accordingly, the appellant is entitled to



an addition of 40% towards the future prospects. For better appreciation, the relevant portion of the judgment is extracted hereunder:-

"21.If one takes into account contemporary minimum wages for skilled workers (which was in the range of Rs.8,000/-) the realistic figure would be Rs.10,000/- per month. Adding future prospects at 40% the income should be taken as Rs.14,000/- for the purpose of calculation of compensation. Accordingly, this Court finds that the compensation payable for the disability of loss of an arm (assessed at 65%) would be Rs.19,65,600/-) i.e., Rs.14,000/- x 12 x 65% x 18) or Rupees Nineteen Lakhs Sixty Five Thousand Six Hundred only."

15. It is also seen that in case of serious injury, the Hon'ble Apex Court in very same judgment has observed that the Court should be mindful of the fact that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victims and compensation should be awarded considering all those factors.

16. Thus, by fixing the monthly income as Rs. 10,000/-adding 40% towards future prospects, applying multiplier 16 and taking 37% as disability, the compensation under the head "Loss of earning capacity is



calculated as follows:- Rs.10,000/- + Rs.4,000/- (Rs.10,000/- x 40%) x 12
x 16 x 37% = Rs.9,94,560/-.

17. Considering the nature of injuries and the period of treatment, this Court is of the view that the appellant would not have attended his work for four months. Thus, by fixing notional monthly income at Rs.14,000/- including future prospects, loss of earning during the period of treatment for four months is enhanced to Rs.56,000/- instead of Rs.28,000/-. The award of compensation under all other heads are justified and are confirmed. 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 or reduced
1.	Loss of earning capacity	4,97,280	9,94,560	Enhanced
2.	Loss of earning for 4 months during treatment period	28,000	56,000	Enhanced
3.	Pain and suffering	40,000	40,000	Confirmed
4.	Extra	25,000	25,000	Confirmed



	nourishment expenses			
5.	Medical bills	8,32,773	8,32,773	Confirmed
6.	Physiotherapy bills	16,800	16,800	Confirmed
7.	Attender charges	15,000	15,000	Confirmed
8.	Transport bills	37,600	37,600	Confirmed
9.	Loss of clothing	1000	1000	Confirmed
	Total	Rs.14,93,453	Rs.20,18,733	Enhanced by Rs.5,25,280/-

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.14,93,453/- is hereby enhanced to Rs.20,18,733/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the period of default, if any). The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount along with 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. On such deposit, the appellant is permitted to withdraw the entire award amount along with interest and costs, after adjusting the amount if any, already withdrawn. It is made clear that the appellants are



not entitled for any interest for the delay period of 1070 days in filing the appeal on the amount of Rs.5,25,280/- enhanced by this Court, as per the order of this Court, dated 14.06.2023 in C.M.P.No.6377 of 2023 in C.M.A.SR.No.35482 of 2023. No costs.

19.07.2023

Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

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To

1.The Special Subordinate Court,
The Motor Accident Claims Tribunal,
Dharmapuri.

2.The Section Officer
VR Section
High Court of Madras
Chennai – 600 104



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SUNDER MOHAN,J.

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