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C.M.A.No.145



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No.1455 of 2022

Perumal
(Person of unsound mind, represented
by his next friend father Raja)

... Appellant

Vs.

1.M.S.Gabriel India Limited
No.52-55, SIPCOT, Phase II
Mookandapalli, Hosur
Krishnagiri District.

2. The Divisional Manager
The New India Assurance Co. Ltd.
Divisional Office, Bagalur Road
Hosur-635 109.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 09.08.2017 made in M.C.O.P.No.600 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr.S.P.Yuaraj

For R1 : No appearance

For R2 : Mr.J.Chandran



JUDGMENT

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The appeal is filed by the appellant/claimant for enhancement of compensation granted by the Tribunal in the award dated 09.08.2017 made in M.C.O.P.No.600 of 2014 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Krishnagiri.

2. The brief facts leading to the appeal are that, on 17.09.2013 at about 18.00 hours, while the claimant was riding Yamaha crux motor cycle bearing Registration No.TN 70 K 2565 on the left side of the road, opposite to Adhiyaman Engineering College in Hosur to Krishnagiri NH Road, the driver of the private bus bearing Registration No.TN 29 LO 9729 belonging to the 1st respondent, drove the same in a rash and negligent manner and hit the appellant's motor cycle, causing him grievous injuries. According to the claimant, he was aged 25 years at the time of accident and was earning Rs.20,000/- per month as a tempo driver. Due to the impact of the accident, the claimant was not able to continue his employment as a tempo driver and therefore, he filed Claim Petition claiming Rs.40,00,000/- as compensation for the permanent disability suffered by him in the accident.

3. Both the respondents 1 & 2, owner and insurer of the private bus remained exparte before the Claims Tribunal.



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4. Before the Claims Tribunal, in support of his claim, the father of the claimant Raja was examined as P.W.1 and Exs.P1 to P10 were marked. The disability certificate issued by the Medical Board was marked as Ex.C1. On the side of the respondents, neither any oral evidence was let in nor any documentary evidence was marked.

5. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the driver of the private bus belonging to the 1st respondent, assessed the compensation at Rs.14,15,000/- along with 9% interest and mulcted the liability on the 2nd respondent/Insurance Company. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the appellant/claimant has filed the present appeal for enhancement of compensation.

6. Learned counsel for the appellant/claimant submitted that the award of the Tribunal was meagre. Considering the nature of injuries and the disability suffered by the claimant, the Claims Tribunal ought to have awarded fair compensation under the head “loss of earning power”. The learned counsel further submitted that because of the injuries sustained by the claimant in the accident, he was not able to move his left hand. The Tribunal erred in assessing the functional disability at 50% only, in spite of its finding that the claimant would not be able to continue his earlier work as a tempo driver. The Tribunal had not awarded any sum towards loss of marital prospects and on these grounds, the learned counsel prayed that award of the Tribunal deserved to be enhanced.



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7. Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the Tribunal erred in awarding exorbitant sum towards all the heads and particularly, the award under the head “loss of amenities and enjoyment of life” at Rs.1,00,000/- is not sustainable in the light of the judgment of the Hon'ble Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and another*** reported in **2010 (2) TNMAC 881 SC**. Learned counsel therefore submitted that award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. Though notice has been served on the 1st respondent and its name is printed in the cause list, none appears before this Court.

9. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the materials placed on record.

10. It is seen that the Medical Board issued disability certificate assessing the disability at 45%. It is pertinent to note that the Claim Petition was filed by the claimant through his father/next friend Raja and in the cause title, it was stated that the claimant was of unsound mind. Though the claimant claimed to be of unsound mind, the Tribunal summoned the claimant and on seeing the claimant, found that the claimant could understand the questions put to him and answered the same, though in an incoherent manner. The Tribunal found that the claimant's left hand was



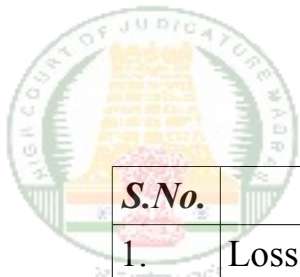
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non-functional. The Tribunal therefore, assessed the partial functional disability at 50% and assessed the compensation towards loss of earning power by adopting multiplier method. In my view, considering the evidence on record, the discharge summary, disability certificate and also in the light of the finding of the Tribunal that the claimant's left hand was non-functional, I am of the view that the functional disability can be assessed at 70% instead of 50% assessed by the Tribunal. The Tribunal in the absence of any evidence in support of income, assessed the income at Rs.10,000/- per month, which in my view is reasonable. The multiplier '18' appropriate to the age of the claimant is adopted. Thus the award towards loss of earning power is modified to Rs.15,12,000/- ($\text{Rs.10,000/-} \times 12 \times 18 \times 70/100$). The award of the Tribunal towards loss of amenities and enjoyment of life is exorbitant and hence, the same is reduced from Rs.1,00,000/- to Rs.50,000/-. The Tribunal having awarded Rs.25,000/- for nutritious food and attender charges ought not to have awarded Rs.5,000/- again for attender charges. In my view, in the absence of any evidence, the award towards future medical expenses is not sustainable. Hence, the claimant is not entitled to any compensation under those heads. I find that the compensation awarded by the Tribunal under other heads are just and reasonable and do not call for any interference in the appeal and therefore they are confirmed.

11. In view of the above discussions, the award of the Tribunal is modified as

follows:

<https://www.mhc.tn.gov.in/judis>



<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of earning power	Rs.10,80,000	Rs.15,12,000/-
2.	Medical Expenses	Rs.64,000/-	Rs.64,000/-
3.	Future Medical Expenses	Rs.25,000/-	-
4.	Transportation charges	Rs.15,000/-	Rs.15,000/-
5.	Nutrition and Attender charges	Rs.25,000/-	Rs.25,000/-
6.	Attender charges	Rs.5,000/-	-
7.	Pain and sufferings	Rs.1,00,000/-	Rs.1,00,000/-
8.	Loss of amenities and enjoyment of life	Rs.1,00,000/-	Rs.50,000/-
9.	Damages to clothing and articles	Rs.1,000/-	Rs.1,000/-
Total Compensation		Rs.14,15,000/-	Rs.17,67,000/- Enhanced compensation amount Rs.3,52,000/-

The appellant/claimant is entitled to the total compensation of Rs.17,67,000/- along with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

12. It is submitted by the learned counsel for the 2nd respondent that appeal was filed with the delay of 1583 days and delay was condoned, as per the order of this Court dated 16.06.2022 made in C.M.P.No.6506 of 2022 in C.M.A.SR.No.34700 of 2022, on condition that the appellant shall forfeit the interest for the delay period of 1583 days. In view of the above submission, it is made clear that the



appellant/claimant is not entitled for any interest for the delay period of 1583 days on the amount of Rs.3,52,000/- enhanced by this Court.

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13. Learned counsel for the 2nd respondent/Insurance Company submits that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the 2nd respondent/Insurance Company to deposit the balance enhanced compensation of Rs.3,52,000/- along with 7.5% interest and costs (excluding the delay period), 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 being made, the appellant/claimant shall be entitled to withdraw the same, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.

14. The appeal is accordingly partly allowed. There shall be no order as to costs.

19.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

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C.M.A.No.145.

N.MALA.J.,

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To

1.The Special Subordinate Judge
Motor Accidents Claims Tribunal
Krishnagiri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.1455 of 2022

19.06.2023