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C.M.A. No.1730 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.M.A. No.1730 of 2018

Srinivasan

... Appellant

Vs.

1.Gnanamanikandan

2. Future Generaly India Insurance Company Limited
2nd and 3rd Floor, Plot No.55 (Old No.27)
Vijayaraghava Road, T.Nagar,
Chennai - 600 017

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2017 in MCOP No.1367 of 2013 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal.

For Appellant : M/s.D.Jeevitha for
Mr.Nalliyappan

For Respondents : M/s.C.Harini for
M/s.M.B.Gopalan Associates for R2
R1- Not ready



JUDGMENT

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The above Civil Miscellaneous Appeal is filed against the judgment and decree dated 05.07.2017 in MCOP No.1367 of 2013 passed by the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, for enhancement of compensation.

2. The appellant is the claimant. The 1st respondent is the owner and the 2nd respondent is the insurer of the offending car bearing Regn. No.TN-30-AJ-6718.

3. The case of the claimant is that on 06.10.2012, at about 4.30 a.m., he was travelling in a Tavera Car bearing Regn. No.TN-30-AJ-6718, on the Thanjavur to Thiruvarur main Road. At Vilamal Village opposite to a Tasmac shop, the driver of the Car, drove the same in a rash and negligent manner without observing the road traffic rules and hit against a road side tree, due to which, the claimant sustained multiple grievous injuries all over the body. He was admitted in the Thiruvarur Medical College Hospital for first aid. Then he was referred to Thanjavur Medical College Hospital and thereafter, shifted to Salem Polyclinic. Subsequently, he took treatment as inpatient for more than



4 months at Vinayaka Missions Hospital, Salem. Due to the accident, he sustained fracture in sphenoid sinus with bleed in sinus cavity, fissure fracture in occipital bone extending down to involve the posterior lip of foramen magnum, fracture in right mastoid bone, tiny haemorrhagic contusion in right occipital lobe.

4. Even after taking treatment, since the injured was not able to speak, the next friend and wife of the injured, filed a claim petition in MCOP No.1367 of 2013 before the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, claiming compensation of Rs.20,00,000/- for the injuries sustained by the injured stating that at the time of accident, he was aged 29 years and was working as a Mason and earning Rs.12,000/- per month. Due to the accident, the injured lost his earning power and employment.

5. The said claim petition was taken by the Tribunal along with the connected matters, filed by the injured/dependents who travelled in the said car at the time of accident and affected due to the accident and common order was passed.



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6. In order to substantiate the claim before the Tribunal, on the side of the claimants, the 8 witnesses were examined as P.W.1 to P.W.8 and 50 documents were marked as Ex.P.1 to Ex.P.50. On the side of the respondents, one witness was examined as R.W.1 and 2 documents were marked as Ex.R1 and Ex.R2 besides, Court documents were marked as Ex.C1 to C6 Series.

7. Before the Tribunal, the 1st respondent herein/owner of the car remained ex-parte.

8. The Tribunal, after hearing the arguments on either side and considering the materials, awarded compensation of Rs.12,42,945/- with interest at 7.5% per annum from the date of petition till the date of deposit with cost and the Insurance Company was directed to deposit the said award amount on behalf of the owner of the car.

9. Challenging the Award passed by the Tribunal, the claimant has filed the present appeal for enhancement of compensation.

10. The learned counsel for the Appellant/claimant submitted that due to the accidental injuries, the claimant could not sit, stand or walk. Even he is



not able to discharge his natural calls on his own. The claimant is in vegetative state in the bed and he needs assistance thorough out his life time.

Therefore, the Tribunal ought to have fixed 100% disability and also awarded compensation under the head of attender charges, whereas the Tribunal fixed only 90% disability as assessed by the doctor and no Award was passed towards attender charges. The evidence of P.W.8/doctor would clearly show that the claimant cannot act without the help of others. Further, the amount awarded under the other heads are also very meagre. At the time of accident, the claimant was working as a Mason. But the Tribunal has fixed only Rs.6,000/- as the notional income of the claimant which is also very low. Though the Tribunal adopted multiplier method, failed to consider future prospects, which warrants interference.

11. The learned counsel for the 2nd respondent/Insurance Company submitted that the Award passed by the Tribunal reflects the 'just compensation'. Therefore, there is no merit in the appeal and the same is liable to be dismissed.

12. The accident is not in dispute. The injuries sustained by the claimant is also not in dispute. Liability is also not disputed. Though the



learned counsel for the appellant contended that the the claimant was working as a Mason and earning Rs.12,000/- per month, no material was produced to prove the avocation and income of the claimant. Therefore, the Tribunal fixed Rs.6,000/- notionally. This Court does not find any perversity in fixing the notional income of the claimant.

13. Though the Tribunal adopted multiplier method considering the 90% permanent functional disability of the claimant, failed to add future prospects. Since the claimant was below the age group of 40 years, as per the guidelines of the Hon'ble Supreme Court in the case in ***National Insurance Co. Ltd. Vs. Pranay Sethi reported in (2017) 2 TN MAC 609 (SC)***, 40% of the income has to be added towards future prospects. Accordingly, the income of the claimant is arrived at Rs.8,400/- (Rs.6,000+40%) and after adopting multiplier '17', the loss of income is arrived at Rs.15,42,240/- (Rs.8,400x12x17x90/100).

14. Considering the fact that due to the accident the claimant has become a vegetable like surviving person and he needs others help through out his life, this Court Awards a sum of Rs.1,00,000/- towards attender



charges. Further, this Court enhances the Award under the heads of "Pain and Sufferings" and "Nutrition" from Rs.5,000/- to Rs.25,000/-.

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15. Accordingly, the Award passed by the Tribunal is re-worked as tabulated below;

S. No.	<i>Particulars</i>	<i>Amount Awarded by the Tribunal</i>	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced or set aside
1.	Loss of Income	Rs.11,01,600/-	Rs.15,42,240/-	Enhanced
2.	Medical Bills	Rs.1,31,345/-	Rs.1,31,345/-	Confirmed
3.	Pain and Sufferings	Rs.5,000/-	Rs.25,000/-	Enhanced
4.	Nutrition	Rs.5,000/-	Rs.25,000/-	Enhanced
5.	Attender Charges	Nil	Rs.1,00,000/-	Awarded
	Total	Rs.12,42,945/-	Rs.18,23,585/-	Enhanced



16. The award of the Tribunal is modified by enhancing the compensation amount from Rs.12,42,945/- to Rs.18,23,585/- which according to this Court is a 'just compensation'.

17. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount of Rs.18,23,585/- to the credit of MCOP No.1367 of 2013 on the file of the Motor Accident Claims Tribunal (Principal District Judge), Namakkal, with interest at 7.5% per annum from the date of petition till the date of deposit, with cost as awarded by the Tribunal, less the amount if any already deposited, within a period of four weeks from the date of receipt of copy of this judgment.

18. On such deposit being made, the Tribunal is directed to calculate the above said compensation, including interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant, and credit the actual amount, in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental Insurance Company Limited, Kannur Vs. Rajesh and others).



19. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation amount awarded by this Court.

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20. In the result, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs in the present appeal.

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(1/3)

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Index : Yes / No

Speaking Order : Yes / No

Neutral Citation Case : Yes/No

To

1.The Motor Accident Claims Tribunal
(Principal District Judge),
Namakkal.

2.The Section Officer,
VR Section, High Court, Madras.



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P.VELMURUGAN. J.

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