



C.M.A.No.1867 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1867 of 2018

Devandiran

..Appellant

Vs.

1. Chandra Sekar

2. United India Insurance Co. Ltd.,
III Party Claim Cell, No.73,,
M.T.H.Road, Chennai – 53.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, challenging the fair and decretal order dated 22.03.2017 passed by the learned Motor Accident Claims Tribunal, Subordinate Judge, Ponneri.

For Appellant : Mr.K.Suryanarayanan

For Respondents : Mr.D.Bhaskaran for R2

JUDGMENT

This appeal is filed by the claimant challenging the fair and decretal order dated 22.03.2017 passed by the learned Motor Accident Claims Tribunal, Subordinate Judge, Ponneri.



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The appellant is the claimant, first respondent is owner of the offending vehicle, second respondent is Insurance Company.

3 The appellant/claimant filed a claim petition in M.C.O.P.No.717 of 2013 before the Tribunal claiming compensation of Rs.6,00,000/- for the injuries sustained by him in the accident that occurred on 04.08.2013. According to the appellant/claimant, on 04.08.2013 while he was riding the two wheeler bearing Reg.No.TN 04 AE 1910 on Manali Express Road, Ernavoor Bridge East Corner , an Ashok Leyland Lorry bearing Reg.No.TN 28J 5053 driven by its Driver in a rash and negligent manner came from west to east and dashed against the the appellant's vehicle due to which he sustained injuries. Hence he filed the claim petition claiming Rs.6,00,000/- as compensation for the injuries sustained in the accident.

4 The claim petition was contested by the second respondent/Insurance Company and they filed detailed counter denying all the allegations apart from disputing the liability. 1st respondent viz. owner of the offending vehicle remained ex-parte before the Tribunal.



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5 Before the Tribunal, on the side of the appellant/claimant P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. On the side of the second respondent/Insurance Company, no oral and documentary evidence was produced.

6 The Tribunal, on an assessment of entire evidence on record, fixed liability on the Insurance Company and awarded a sum of Rs.3.00 Lakhs as compensation along with 7.5% interest and directed the Insurance Company to pay the award amount. Challenging the quantum of compensation, the claimant has filed the present appeal.

7 Learned counsel appearing for the appellant/claimant would submit that the appellant sustained grievous injuries, which resulted in amputation of left leg below the knee and hence the Doctor issued disability certificate assessing the disability at 80%. The Tribunal accepted the disability as 70% only, but, instead of applying multiplier method awarded Rs.3,000/- per percentage of disability, which is erroneous. Further the appellant was fisherman, which was proved from Ex.P9 certificate from Fisheries Association



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and since one leg was amputated, he could not do his work as he was doing before the accident. The Tribunal has failed to consider the above facts and erroneously awarded Rs.3.00 Lakhs, which is very meagre and the same has to be enhanced.

8 Learned counsel appearing for the second respondent/Insurance Company even though not disputed the accident and injury, justifying the quantum of compensation, argued that the claimant in the claim petition has not clearly stated about his business and he only stated that he was doing whole sale business. There was also no proof for the avocation of the claimant and hence the Tribunal considering all these facts, has awarded Rs.3.00 Lakhs, which is just, fair and reasonable and the same need not call for any interference of this Court.

9 Heard the learned counsel appearing for the appellant and the learned counsel appearing for the second respondent/ Insurance Company and perused the materials available on record.

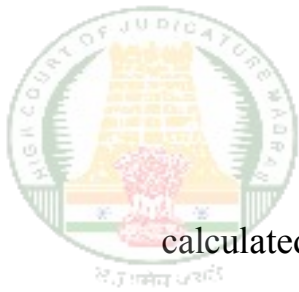
10 The claimant at the time of accident was 42 years old and in the claim petition it was stated that he was doing wholesale business and the details



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of the same has not been stated. The claimant was examined as P.W.1 and in the proof affidavit also it is stated that he is doing wholesale fish business and also was working as Manager and was earning Rs.10,000/- p.m. Even though he has marked Ex.P9, however, the claimant has not examined any independent witness to prove the fish business. Further the claimant either should have examined the office bearers of the Fisheries Association from where he got Ex.P9 or member of the said association or atleast any fisherman to prove his avocation. However, considering the fact that the claimant suffered 70% disability i.e. amputation of one leg, which is permanent one and the same cannot be cured, the percentage method adopted by the Tribunal is perverse and this is a fit case to adopt multiplier method.

11 As far of fixing of notional income is concerned, the claimant did not give any proof for his business and mere marking of document said to have been issued by the Fisheries Association i.e.Ex.P9 without examining any of the independent witness cannot be accepted. However, the man who was aged about 42 years at the time of accident would earn atleast Rs.6,000/- p.m. Hence this Court fixes the notional income of the appellant/claimant as Rs.6,000/- and the correct multiplier is 14 and compensation under the permanent disability is



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calculated as follows:

Rs.6000/- x 12 x 14 x 70% = 7,05,600/-

12 As far as other heads are concerned, there is no need for the interference of this Court and the same are hereby confirmed.

13 Hence there shall be a direction to the second respondent/Insurance Company to deposit the award modified by this Court i.e. Rs.7,95,600/- along with 7.5% interest within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, Tribunal is directed to credit the award amount directly to the account of the claimant without any formal application as per the decision of the Division Bench of this Court reported in 2016 (2) LW 561 (*The Divisional Manager, The Oriental Insurance Company Limited, Kannur, Vs. Rajesh and Others*). The appeal is accordingly partly allowed. There shall be no order as to costs.

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Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No



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To

1. The Motor Accident Claims Tribunal,
Subordinate Judge, Ponneri.
2. The Section Officer, V.R.Section,
High Court, Madras.



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P.VELMURUGAN. J.,

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