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CMA.No.2505 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.12.2023

CORAM: JUSTICE N.SESHASAYEE

CMA.No.2505 of 2023

K.Santhosh

... Appellant

-Vs-

1.Radhadevi
2.The Oriental Insurance Company Ltd.,
Rep by its Divisional Manager,
No.59, Raja Street,
Gopichettypallayam Taluk,
Erode District.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 20.12.2019 passed by the III Additional District Court cum Motor Accidents Claims Tribunal, Erode in M.C.O.P.No.36 of 2017.

For Appellant : Mr.P.Sesubalan Raja

For R1 : Mr.S.P.Yuvaraj

For R2 : Mr.S.Senthil Kumar



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over a period of time. This surgery too ended in a total failure. The consequence was that the entire motor activity of the right hand was lost to the victim. To state it differently, his right has become dysfunctional permanently.

3.It is in these circumstances, the claimant approached the Motor Accident Claims Tribunal, III Additional District Court, Erode seeking compensation in MCOP.No.36 of 2017. The medical board Vide Ext.C.1 certificate assessed the permanent disability of the victim of the accident at 65%. The Tribunal however, awarded compensation at Rs.3,000/- for every percentage of disability and arrived at a sum of Rs.1,95,000/- as compensation for permanent disability, to which it added medical expenses and compensation payable under certain non-pecuniary/conventional heads. In all, it awarded a total compensation of Rs.3,35,450/- and the break-up is as below;

Sl.No.	Head	Amount awarded by the Tribunal
1.	Permanent Disability	Rs.1,95,000/-
2.	Attender Charges	Rs.2,000/-



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Sl.No.	Head	Amount awarded by the Tribunal
3.	Medical expenses	Rs.23,442/-
4.	Transportation charges	Rs.15,000/-
5.	Extra nourishment	Rs.25,000/-
6.	Pain and suffering	Rs.50,000/-
7.	Mental agony	Rs.25,000/-
	Total	Rs.3,35,442/- Rounded of to Rs.3,35,450/-

Justly aggrieved by the inadequacy of the compensation awarded, the appellant is now before this Court with this appeal.

4. When the matter was taken up on an earlier occasion, this Court required the presence of the victim to ascertain the gravity of the injury he had suffered.

5. The victim of the accident has appeared before the Court and it is he who explained the injuries and surgeries that he had undergone. It may be stated that this young man was prosecuting his Bachelor's Degree in Political Science at the time when the accident had taken place and having passed it successfully, he had proceeded to do his Law. He



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explained that he wrote all his examination with the assistance of a scribe.

6.Heard both sides.

7.The learned counsel for the appellant submitted that the Tribunal has been singularly insensitive to the plight of this young boy, despite the fact the medical board has recorded his right hand is dysfunctional. Secondly, it failed to grant adequate compensation under other conventional heads.

8.On seeing the unfortunate demonstration of the victim of the accident about the surgeries he had undergone, the learned counsel for the second respondent made a fair statement that it is a case where the disability must be treated as a functional disability.

9.The circumstances are ideally set for this Court to treat the disability of the victim as a functional disability. Inasmuch as the right hand of this young man has literally become dysfunctional, it may affect his marital



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prospects. This Court is also informed that he is a right hander and his is now managing with his left hand.

10. On evaluation of the facts before this Court, this Court considers it to be appropriate to treat the nature of disability suffered by the claimant/appellant as functional disability and determines the same at 50%.

11. This Court now fixes the notional monthly income of the victim of the accident at Rs.18,000/-, to which it adds another 40% towards future prospects of increase in income, applies 18 as the multiplier and arrives at a net sum of Rs.54,43,200/- and on reducing it to 50%, the sum awardable under the head of functional disability is determined at Rs.27,21,600/-. The modified award will now read as below;

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent	1,95,000/-	27,21,600/	Enhanced



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	Disability		-	
2.	Attender Charges	2,000/-	25,000/-	Enhanced
3.	Medical expenses	23,442/-	23,442/-	Confirmed
4.	Transportation Charges	15,000/-	30,000/-	Enhanced
5.	Extra nourishment	25,000/-	50,000/-	Enhanced
6.	Pain and suffering	50,000/-	1,00,000/-	Enhanced
7.	Mental agony	25,000/-	25,000/-	Confirmed
8.	Loss of Amenities	-	5,00,000/-	-
	Grand Total	3,35,450/-	34,75,042/- -	Enhanced by 31,39,592/-

12.In fine, this Civil Miscellaneous Appeal is partly allowed and the compensation is enhanced from Rs.3,35,450/- to Rs.34,75,042/-, together with interest at 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance company is now required to deposit the sum now awarded by this Court, along with interest, less the interest payable for 1110 days, within a period of six (6) weeks from the date of receipt of a copy of this order. On such deposit, the appellant is



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permitted to withdraw the award amount, now determined by this Court,
along with interest and costs, less the amount if any, already withdrawn.

The appellant is directed to pay the necessary Court Fee, if any, on the
enhanced award amount. No costs.

15.12.2023

Tsg

To

- 1.The III Additional District Court
cum Motor Accidents Claims Tribunal,
Erode.
- 2.The Section Officer,
V.R.Section, High Court, Madras.



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N.SESHASAYEE, J.,

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