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C.M.A.No.1633 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1633 of 2021

Karunakaran

... Appellant / petitioner

Vs.

1. The Correspondent,
C/o. Ezhil Swami Vivekanandha Nursery
And Primary School, Tirupattur,
Vellore District – 635 654.

2. The Manager,
Shriram General Insurance Company Limited,
Jaipur, Rajasthan – 302 022 ... Respondents/Respondents

[R1 & R2 remained ex-parte before Tribunal.
Hence notice to R1 & R2 dispensed with]

Civil Miscellaneous Appeal filed under Section 173 of the
Motor Vehicles Act, 1988, against the Award and Decree dated 03.08.2020,
made in M.C.O.P.No.934 of 2018 on the file of the Motor Accidents Claims
Tribunal, Special Sub Court, Krishnagiri.

For Appellant : Mr. S. P. Yuvaraj
For R1 : No appearance
For R2 : M/s. K. Poomalai



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant for enhancement of compensation against the Award passed in M.C.O.P.No.934 of 2018, dated 03.08.2020, on the file of the Motor Accidents Claim Tribunal, Special Sub Court, Krishnagiri.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant is that on 02.07.2018 at about 4.45 p.m., he was driving his two-wheeler namely, TVS XL moped bearing Registration No.TN 29 X 9904 on Pachur to Kalinganur Road within the jurisdiction of Natrampalli Police Station, while he reached near Perumal Gounder's Land, a School Van namely, Swaraj Mazda bearing Registration No.TN 22 P 8458 driven by its driver in the opposite direction in high speed and hit on the two-wheeler of the claimant, which resulted in causing severe injuries to him. Immediately he was taken to the Government Hospital, Krishnagiri and thereafter, he was shifted to Sri Saraswathi Hospital and Surgical Centre at Krishnagiri to undergone further treatment. In this regard, a criminal case was also registered against the School Van in crime No.223



of 2018 under Sections 279, 337 IPC on the file of the Natrampalli Police Station. He was an agriculturist and doing mason work and due to the accident he sustained crush injury on his right foot exposing tag of skin and tendon with fracture, he has come forward to file claim petition claiming compensation of Rs.25,00,000/- from the respondents.

4. The first and second respondents have not contested the claim and was remained ex-parte before the Tribunal.

5. Before the Tribunal, the on the side of the claimant P.W.1 was examined and Exs.P1 to P11 were marked.

6. Based on the evidences placed on record, in Point No.1 The Tribunal has held that the negligent act of the driver of the School van is responsible for causing the injuries to the claimant and in Point No.3, the Tribunal has quantified the compensation and awarded a sum of Rs.14,24,818/- as compensation payable to the claimant along with interest at the rate of 7.5% per annum from the date of filing of claim petition till the date of realisation.



7. Aggrieved over the quantum of compensation fixed by the Tribunal, the claimant has approached this Court seeking enhancement of compensation.

8. The learned counsel for the claimant has submitted that the claimant was an agriculturist and also doing building mason work in the surrounding areas and was earning a sum of Rs.25,000/- per month and due to the injuries sustained on his leg, he is not able to continue his manual work and the same has not been properly appreciated by the Tribunal while awarding compensation under the head disability. The compensation awarded under other heads are also on the lower side hence, prays to enhance the award of the Tribunal.

9. The learned counsel for the Insurance Company has submitted that eventhough they have been set ex-parte before the Tribunal, the Tribunal after considering the evidence placed on record has awarded compensation. While awarding compensation the Tribunal has not properly fixed the percentage of disability/percentage of loss of income in terms of the Judgment of the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***. He has also submitted that the compensation awarded on various

heads is also on the higher side hence prays to reduce the compensation awarded.

10. I have heard the rival submissions made by both sides and also perused the entire records.

11. The claimant has marked various medical records to prove his disability including Disability Certificate issued by the Department of Welfare and Differently abled. In the Disability Certificate, which has been marked as Ex.P6, it is categorically recorded that the claimant has suffered an amputation of right leg below knee and the disability assessed as 65% permanent disability. As stated by the learned counsel for the Insurance Company that the injuries sustained by the claimant is the scheduled injury, as per the Employees' Compensation Act, 1923. In part II of the Schedule I Entry 19 to 21 deals with the amputation of the left leg below knee states as follows:

“19. Amputation below middle thigh to [8.89 cms] below knee;

20. Amputation below knee with stump exceeding [8.89 cms] but not exceeding [12.70 cms] and



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21. *Amputation below knee with stump exceeding [12.70 cms]”.*

12. In the Medical Certificates marked by the claimant, nowhere it is properly described about the measurement of the injury as stated in the serial number 19 to 21. Those Certificates only stated that he has sustained amputation below knee. However, the Tribunal in paragraph No.15 as recorded its observation about the injury of the claimant while examining him as a witness. The Tribunal has stated that the claimant has sustained amputation below the knee nearly half feet below i.e., 15 cms below from the knee. This shows that the injury/amputation sustained by the claimant is with stump exceeding 8.89 cms or more than that.

13. Under the said circumstances, this Court is of the view that the percentage of disability fixed on the claimant would be 50%. However, in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***, the Hon'ble Apex Court has given the guidelines and as per the guidelines the loss of right leg by a Mason could not be treated as 50% future loss of income since the claimant could not continue any manual work like moving or lifting heavy objects. Under the said circumstances, this Court is of the view that loss of income



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shall be assessed as 60% and the same would be proper. The Tribunal has fixed the notional income of the claimant is Rs.8,500/-. The age of the deceased in this case is 60 years and considering the age and date of accident, this Court is of the view that fixing the notional income of Rs.10,000/- would be appropriate and accordingly, the notional income fixed by the Tribunal is enhanced to Rs.10,000/-.

14. The claimant is also entitled for 10% of notional income under the head future prospects and the same has also been awarded by the Tribunal. The applicable multiplier is '9'. Accordingly, the loss of income is arrived as follows: $[(10000 + 10\% \text{ of } 10000) = 11000 \times 12 \times 9 \times 60\%] = \text{Rs.7,12,800/-}$. The Tribunal after awarding compensation under the head loss of income also awarded Rs.1,95,000/- under the head disability and this Court is of the view that since the disability sustained by him has been considered as functional disability and separately a loss of income has been assessed, the compensation awarded under the head disability is not proper. Accordingly, the compensation awarded under the head disability is rejected. The compensation awarded by the Tribunal under the head pain and sufferings is Rs.52,000/- is hereby enhanced to Rs.1,00,000/-. As far as the compensation awarded under other heads are concerned, the same is just



and reasonable and the same are hereby confirmed.

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15. The evidence also placed on record shows that the claimant has undergone in-patient treatment for the period of 47 days and it is urged by the learned counsel for the claimant that the Tribunal has not awarded any amount under the head attender charges hence, this Court is inclined to award a sum of Rs.30,000/- under the head attender charges for three months.

16. Thus the compensation awarded by the Tribunal under various heads are hereby 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.	Disability 65%	Rs.1,95,000/-	---	Rejected
2.	Loss of income	Rs.5,55,390/-	Rs.7,12,800/-	Enhanced
3.	Medical Expenses	Rs.3,31,728/-	Rs.3,31,728/-	Confirmed
4.	Transportation Charges	Rs.14,000/-	Rs.14,000/-	Confirmed
5.	Extra Nourishment and Attender Charges	Rs.18,000/-	Rs.30,000/-	Enhanced



6.	Pain and Sufferings	Rs.52,000/-	Rs.1,00,000/-	Enhanced
7.	Social Amenities	Rs.52,000/-	Rs.52,000/-	Confirmed
8.	Damages to clothes and articles	Rs.1,000/-	Rs.1,000/-	Confirmed
9.	Future Medical Expenses	Rs.2,05,700/-	Rs.2,05,700/-	Confirmed
	Total	Rs.14,24,818/-	Rs.14,47,228/-	Enhanced by Rs.22,410/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.14,24,818/- is hereby enhanced to Rs.14,47,228/- [Rupees Fourteen Lakhs Forty Seven Thousand Two Hundred and Twenty Eight only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent/ Insurance Company is directed to deposit the award amount, now determined by this Court, 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 to the credit of M.C.O.P.No.934 of 2018, on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Krishnagiri. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with proportionate interest and costs, less the amount, if any, already



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withdrawn. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

06.11.2023

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Special Sub Judge,
Motor Accidents Claims Tribunal,
Krishnagiri.

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

K.RAJASEKAR,J.

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