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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.06.2023

PRONOUNCED ON: 22.06.2023

CORAM

THE HON'BLE Mr.JUSTICE **C.KUMARAPPAN**

C.M.A.No.3442 of 2019

S.Janakiraman

... Appellant

- Vs -

1. R.Sekar
2. M/s.Cholamandalam
   MS General Insurance Co Ltd.,
   2nd Floor, New No.2 (Old No.234)
   N.S.C.Bose Road,
   Chennai-600 001.
   (Since the first respondent has remained exparte before the Tribunal, he is given up)

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988, praying to set aside the judgment and decree dated 22.02.2018 passed in M.A.C.T.O.P.No.3203 of 2008 by the Motor Accidents Claims Tribunal/V Small Causes Court, Chennai.

For Appellant	:	Mr.T.Ayyasamy
For Respondents	:	Ms.C.Harini for M/s.N.Vijayaraghavan for R2 R1-Given up

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JUDGMENT

The appellant/claimant has filed CMA.No.3442 of 2019 aggrieved by the quantum of compensation awarded by the Tribunal in MACTOP.No.3203 of 2008.

2. For the sake of convenience, the parties are referred to as per their ranks in MACTOP.No.3203 of 2008.

3. It is a case of the petitioner that, on 13.10.2007, when he was riding his TVS Victor Motor cycle bearing Registration No.TN-22-AD-0280, and when he was waiting near Kovalam junction at East Coast Road at 10.00 a.m, a TATA Sumo Car bearing Registration No.TN-22-AM-5767, which was proceeding from Chennai to Mahabalipuram, has dashed against the petitioner. Due to which the petitioner sustained grievous injuries. According to the petitioner, he was initially treated in P.S.Hospital, Kelambakkam and thereafter, admitted in Vijaya Health Centre, Chennai and took treatment as an in-patient. Hence, the petitioner claimed a compensation of Rs.50,00,000/- with interest against the 2nd respondent, who is the insurer in this case.

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4. The first respondent, who is the owner of TATA Sumo Car, remained exparte.

5.The second respondent/Insurance Company had filed a counter statement denying the petitioner's allegations, and contended that the accident was not occurred due to rash and negligent driving of the driver of TATA Sumo vehicle, on the other hand it was the fault of the petitioner, and that the charge sheet was also laid against him. Therefore, prayed to dismiss the claim application.

6. Before the Tribunal, the claimant examined four witnesses as PW-1 to PW-4, and marked 27 documents as Exs.P1 to P27. On behalf of the respondent, one witness was examined as RW1 and two documents were marked as Exs.R1 & R2.

7. The Tribunal, on the basis of the evidence on record and pleadings, found that the driver of the TATA Sumo vehicle bearing Registration No. TN-22-AM-5767 was negligent, and also awarded a sum of Rs.12,56,900/- as compensation against the second respondent/insurer of the vehicle. Against

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the same, the claimant preferred the instant Civil Miscellaneous Appeal for enhancement of compensation.

8. Mr.T.Ayyasamy, learned counsel for the claimant would submit that the finding of the Trial Court is erroneous in respect of reducing the disability to 50%, contrary to the evidence of the Doctor. He also would further contend that the inadequate amount awarded for continuing disability, and totally ignoring the bill submitted for medical expenses, on the ground that the same is a duplicate bill is arbitrary. The learned counsel would also emphatically submit that the reimbursement of medical expenses through a mediclaim policy, would in no way disentitle the claimant to again claim the same against tortfeasor . It is also the submission of the learned counsel for the petitioner that the finding of the Trial Court in respect of determination of paltry notional income at Rs.6,500/- is not supported by any basis. Hence, prayed for an enhancement of award by setting aside the award of the Tribunal.

9. Per contra, the learned counsel for the second respondent would vehemently submit that the determination of the notional income is as per settled principles, and the Trial Court has given a justifiable reason for

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ignoring certain medical bills. The learned counsel for second respondent would also submit that the Trial Court while distinguishing the partial permanent disability with that of functional disability, has rightly arrived at 50% functional loss and loss of earning capacity, and therefore, the award, in all respects is perfect and it does not require any interference.

10. From the material on record, it is apparent that the respondent has not challenged the finding in respect of rash and negligence on the part of the first respondent. Thus, the issue now has become narrow down, to find out the correctness of the quantum determined by the Trial Court.

11. The learned counsel for the petitioner/appellant disputes the quantum on three grounds viz., (i) inadequate notional income, (ii) determination of functional disability at 50% is not inconsonance with the medical evidence and (iii) reimbursement of medical expenses under mediclaim policy will not disentitle the claimant to once again to reimburse the same against the tortfeasor.

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12. Let us consider the above objection one by one. Coming to the notional income, on perusal of the award, by referring the judgments in ***Iffco-Tokio General Insurance Co. Ltd., Vs. K.Elammal*** reported in ***2015 (2) TNMAC 42*** and ***Syed Siddiq etc., Vs. Divisional Manager, United India Insurance Co., Ltd***., reported in ***214 (1) TNMAC 459 (SC)*** the Trial Court determined the notional income at Rs.6,500/- per month. However, the learned counsel for the appellant relied upon the judgment of Hon'ble Supreme Court in the case of ***M.R.Krishna Murthi Vs. The New India Assurance Co., Ltd and Others*** reported in (***2020) 15 SCC 493, and*** would contend that while determining the notional income of a student, the Court has to consider his carrier prospects and future earning. The relevant portion of ***M.R.Krishna Murthi***'s case (supra) is extracted hereunder:-

"23) **.......**

(i). *In those cases where the victim of the accident is not an earning person but a student, while assessing the compensation for loss of future earning, the focus of the examination would be the career prospect and the likely earning of such a person in future.* ***For example, where the claimant is pursuing a particular professional course, the poser would be: what would have been his income had he joined a service commensurating with the said course. That***

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***can be the future earning*.”**

(Emphasis supplied by this Court)

13. In the above judgment, for a school student of age 18 years, the Hon'ble Supreme Court determined the notional income of Rs.5,000/- for the accident took place in the year 1988.

14. The learned counsel for the appellant would also rely upon yet another judgment in the case of ***Pappu Deo Yadav Vs. Naresh Kumar and Ors*** reported in ***2020 SCCOnLine SC 752*** and the relevant portion of the said judgment is paragraph 22 and the same is extracted hereunder:-

“***22.*** *In parting,* ***it needs to be underlined that Courts should be mindful that a serious injury not only permanently imposes physical limitations and disabilities but too often inflicts deep mental and emotional scars upon the victim. The attendant trauma of the victim's having to live in a world entirely different from the one she or he is born into, as an invalid, and with degrees of dependence on others, robbed of complete personal choice or autonomy, should forever be in the judge's mind, whenever tasked to adjudge compensation claims.*** *Severe limitations inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic*

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component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. From the world of the able bodied, the victim is thrust into the world of the disabled, itself most discomfiting and unsettling. ***If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim****."*

(Emphasis supplied by this Court)

15. Further, in the above judgment, the Hon'ble Supreme Court takes into account of minimum wages of the skilled workers, and fixed a sum of Rs.10,000/- as a notional income for a data entry operator, who has studied upto XII standard.

16. The learned counsel for the appellant would also rely upon the another Supreme Court judgment in ***Jithendran Vs The New India Assurance Co., Ltd., & Another*** reported in ***2021 SCC OnLine SC 983*** and would contend that the Court has to make a genuine attempt to restore the self dignity of a claimant by determining the correct notional income.

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17. However, the learned counsel for the second respondent/Insurance Company would rely upon the judgments of Hon'ble Supreme Court in ***Arvind Kumar Mishra Vs. New India Assurance Company Limited and another*** reported in ***(2010) 10 SCC 254,*** and ***Radhakrishna and another Vs. Gokul and others*** reported in ***(2013) 16 SCC 585,*** and would contend that, in respect of student, the Court should not opt for multiplier method. This Court is of the view that, after the above two judgments, the later judgments of the Hon'ble Supreme Court, which has been discussed elsewhere in this order has proceeded to determine the notional income and applied multiplier method. Therefore, this Court is of the view that the judgment cited by the counsel for the second respondent could not be relied for the present case.

18. As contended by the learned counsel for the appellant, as per the ratio of the judgment of the Hon'ble Supreme Court in ***M.R.Krishna Murthi's*** case and ***Pappu Deo Yadav'***s case (cited supra), a B.Sc student, who pursued Hotel and catering Management would indubitably get atleast a sum of Rs.10,000/- as monthly salary in the event of joining job after his study. Therefore, considering the money value and inflation of the year 2007, this Court is inclined to determine the notional income of the claimant in a sum of

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Rs.10,000/- per month. As per the judgments of Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and others*** reported in ***(2017) 16 SCC 680,*** and ***Sarla Verma (Smt) and others Vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***, the petitioner/claimant being 21 years old, is entitled for a future prospects of 40% thereof. Thus, his multiplicant would be Rs.14,000/- pm.

19. Before we proceed to decide the multiplier, it is imperative to consider the evidence of the Doctor/PW4. He deposed before Court that the petitioner's partial permanent disability is 80%. In respect of which, the learned counsel for the second respondent relied upon the judgment of Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and Ors*** reported in ***MANU/SC/1018/2010,*** and invited the attention of this Court in respect of the distinction between partial permanent disability and functional disability. This Court is of the view that the Trial Court, after considering the evidence of PW-4/Doctor, who admittedly has not treated the petitioner, has arrived at a just and reasonable conclusion that there would be 50% of functional disability. This Court is in full agreement with the view expressed by the Trial Court in the light of the ***Rajkumar***'s judgment (cited supra). Coming

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back to the multiplier, considering the age of the petitioner as 21 years, which is not in dispute, the appropriate multiplier would be 18. Thus, the total loss of future earning of the petitioner would be Rs.15,12,000/- [Rs.14,000 x 12 x 18 x 50%].

20. The next aspect which was urged by the learned counsel for the petitioner is that, only because of submission of duplicate bills, the Trial Court has fully disallowed the claim in respect of the medical expenses. However, in the Memorandum of Appeal, the petitioner by referring the judgment of this Court in ***National Insurance Co. Ltd Vs. C.Ramesh Babu and another*** reported in ***2014 ACJ 1674*** would contend that the mere reimbursement of medical expenses through mediclaim policy will in no way debar the claimant to claim the same against the tortfeasor. The above judgment was rendered by the Hon'ble Single Judge of this Court by referring the Hon'ble Supreme Court judgment in ***Helen C.Rebello Vs. Maharashtra State Road Trans. Corpn*** reported in ***1999 ACJ 10 (SC)***. However, in a later judgment in the case of ***The Manager, TATA AIG General Insurance Company Ltd., Vs. Kathamuthu and another***, reported in ***2022 (1) TN MAC 801,*** the Hon'ble Single Judge of this Court elaborately discussed the above judgments, and

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ultimately held that the medical expenses claimed through the mediclaim policy cannot be again claimed before the Motor Accidents Claims Tribunal. This Court is inclined to follow the latter judgment held in ***TATA AIG General Insurance's*** case (cited supra).

21. In the case on hand, PW-1/petitioner, in his cross-examination would fairly concede that the medical bills were submitted before the Insurance Company to claim mediclaim policy. However, he pleaded ignorance, whether he received the amount from the Insurance Company or not. In such circumstances, the Trial Court on justifiable reason has rightly concluded that, unless the production of original bills, there cannot be any claim towards the medical expenses. Therefore, this Court is in full agreement with the view expressed by the Trial Court. Thus, the petitioner is not entitled to any further amount towards the medical expenses, except the amount already awarded by the Trial Court.

22. Thus, the total compensation payable to the claimant is re-calculated and tabulated below:-

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S. No.	*Heads under which the amount is awarded by the Tribunal*	*Amount awarded by the Tribunal in Rs.*	*Amount awarded by this Court in Rs.*	*Award confirmed or enhanced or increased or reduced*
1.	Loss of future earning due to loss of earning power	9,82,800	**15,12,000** (14000x12x 18 x 50%)	**Enhanced**
2.	Compensation for continuing of permanent disability	1,00,000	1,00,000	confirmed
3.	Pain and sufferings	50,000	50,000	confirmed
4.	Transport to hospital	1,000	1,000	confirmed
5.	Extra nourishment	20,000	20,000	confirmed
6.	Damages to cloths	3,000	3,000	confirmed
7.	Medical Expenses & Attender charges	1,00,003.49 ps	1,00,003.49	confirmed
	Total	**12,56,803.49/- rounded off to Rs.12,56,900/-**	**17,86,003.49/- Rounded off to Rs.17,86,000/-**	**Enhanced**

23. This Civil Miscellaneous Appeal is partly allowed and the impugned award of the Tribunal is modified, enhancing the compensation amount from Rs.12,56,900/- to **Rs.17,86,000**/-. The second

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respondent/Insurance Company is directed to deposit the enhanced amount to the credit of MACTOP.No.3203 of 2008 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit [except for the default period], and costs awarded by the Tribunal, less the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the petitioner/claimant is permitted to withdraw the award amount along with interest and costs as awarded by the Tribunal, less the amount if any already withdrawn. The claimant is directed to pay the necessary court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimant. There shall be no order as to costs in the present appeal.

22.06.2023

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Index : yes

Speaking Order

To

1. The V Small Causes Court,
   Motor Accident Claims Tribunal, Chennai.
2. The Section Officer, V.R.Section, High Court, Madras.

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