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C.M.A.No.2297 of 2



THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.M.A.No.2297 of 2021

K.Sundar @ Krish Sundar

...Appellant

Vs.

1.Nalini Wilson

2.ICICI Lombard General Insurance Company Ltd.,
No.140, Chotabai Centre, II Floor,
Nungambakkam High Road,
Chennai - 600 034.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 02.07.2020 made in MACTOP.No.6025 of 2014 on the file of the Motor Accident Claims Tribunal, II-Court of Small Causes, Chennai.

For Appellant : Mr.A.G.F.Terry Chella Raja

For Respondents : Mr.B.Sivakolappan for R2
R1 - Notice - Dispensed with

J U D G M E N T



(Judgment of the Court was made by R.SUBRAMANIAN, J.)

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The injured claimant is the appellant. Challenge is to the award of a sum of Rs.5,07,453/- as compensation for the injuries suffered by him in the motor accident that occurred on 19.03.2014. According to the claimant, when he was travelling in the car bearing Registration No.TN-06-Q-1000 belonging to his employer from Chennai to Bangalore near Burgur, a Cow crossed the road, due to which, the driver who drove the vehicle in a rash and negligent manner applied sudden break, resulting in the car capsizing and dashing against the rock on the road side. As a result of the accident, the claimant suffered multiple injuries and was rendered paraplegic. Contending that the rash and negligent driving of the driver of the car was cause for the accident, the claimants sought for a compensation of Rs.50,00,000/-.

2.The quantum was sought to be supported by the pleading that the claimant, who holds Diploma in Hotel Management and Catering was working as a Marketing Head with a Resort in Mahabalipuram and was earning a sum of Rs.45,000/- per month. According to the claimant, he had lost his job and he cannot do any other work and therefore, the functional



disability as a result of the accident was assessed at 100%.

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3.The Insurance Company resisted the claim contending that the accident did not occur in the manner as suggested by the claimant. The age, occupation and monthly income of the claimant were denied and the claimant was put to strict proof of the same. It was also contended that the disability claimed is not 100% and therefore, the claimant would not be entitled to compensation on the basis of the multiplier method, since there is no functional disability.

4.On the above pleading, the Tribunal framed the necessary issues. At trial, before the Tribunal, P.W.1 to P.W.4 were examined on the side of the petitioner and Exs.P1 to P34 were marked. There was no evidence let in on the side of the respondent / Insurance Company. The 1st respondent / owner of the vehicle remained absent. In support of the disability, the claimant relied upon Ex.P-34, disability certificate issued by the Peripheral Hospital. The Tribunal, refused to take the same into account and required the petitioner to appear before the Medical Board. Since the petitioner did not co-operate and did not chose to appear before the Medical Board, the



Tribunal rejected Ex.P-34, the disability certificate issued by the Peripheral Hospital and assessed the disability at 40%.

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5.The Tribunal also found that there was no functional disability and therefore, the claimant would not be entitled to compensation on the basis of the multiplier method. The Tribunal granted a sum of Rs.1,20,000/- as compensation for the disability on the ground that the claimant had suffered disability of 40%, it calculated at Rs.3,000/- per percentage of disability and arrived the total compensation for disability at Rs.1,20,000/-. The Tribunal also awarded a compensation under the other heads as follows:-

<i>S.No.</i>	<i>Description</i>	<i>Amount</i>
1	Pain and Suffering	Rs.50,000/-
2	Extra nourishment	Rs.25,000/-
3	Transport to Hospital	Rs.25,000/-
4	Damages to clothes	Rs.1,000/-
5	Attender charges	Rs.3,400/-
6	Medical Expenses	Rs.1,33,053/-
7	Future Medical Expenses	Rs.25,000/-
8	Loss of Education	Rs.75,000/-
9	Loss of Amenities	Rs.50,000/-

Thus, the total compensation awarded by the Tribunal worked out to Rs.5,07,453/-, which was rounded off to Rs.5,07,500/-. Aggrieved, the



claimant is on appeal.

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6.Heard Mr.A.G.F.Terry Chella Raja, learned counsel appearing for the appellant and Mr.B.Sivakolappan, learned counsel appearing for the 2nd respondent / Insurance Company. The 1st respondent though served, is not appearing either in person or through counsel, duly instructed.

7.Mr.A.G.F.Terry Chella Raja, learned counsel for the appellant would vehemently contend that the Tribunal's assessment of the disability is skewed and it is intemperate consequence of the claimant not complying with the direction of the Tribunal to appear before the Medical Board as suggested by it. The learned counsel would point out that even the Peripheral Hospital is an authorized Institution and it has certified the disability at 90%. The Tribunal was not right in rejecting the same and fixing the disability at 40% and concluding that there was no functional disability.

8.During the pendency of this appeal, a Division Bench of this Court dated 24.06.2022, required the petitioner to appear before the Medical Board. Since there was some difficulty, we had passed an order on



10.02.2023, requiring the petitioner to appear before the Medical Board on 13.02.2023. The petitioner has accordingly, appeared before the Medical Board constituted by the Dean of Rajiv Gandhi Government General Hospital, Chennai - 3. The Medical Board, which consists of the Dean, Senior Civil Surgeon, Physical Medicine, Senior Civil Surgeon, Neuro Surgery and Senior Civil Surgeon, Orthopaedics had examined the petitioner and had given its opinion wherein, the Medical Board has opined that the petitioner has suffered Traumatic Quadriplegia. Locomotor disability due to the said condition is assessed at 90%. Clinical and Physical assessment would show that there is a profound level of disability in social and adaptive functioning at 100%. As per Stedman's Medical Dictionary, Traumatic Quadriplegia means paralysis of all the four limbs. This is a condition, which would render person 100% immobile and dependent on external support even for his day to day activities. Relying upon the report of the Medical Board, Mr.Terry Chella Raja would vehemently contend that the Tribunal's assessment of disability and grant of compensation on percentage basis is wholly unacceptable and the Tribunal fell in error in rejecting the certificate issued by the Peripheral Hospital, which is now found to be in tune with the opinion of the Medical Board.



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9.On the negligence, the Tribunal concluded that the accident occurred due to the negligent driving of the driver of the car based on the First Information Report, Ex.P1 and the evidence of the petitioner himself, who was a passenger in the car, which met with the accident. The appellant, Insurance Company has not chosen to let in any evidence on the negligence aspect so as to enable us to interfere with the findings of the Tribunal on the question of negligence.

10.Mr.A.G.F.Terry Chella Raja, learned counsel would further argue that the Tribunal has granted only Rs.3,400/- towards attender charges, which is abysmally low, considering the fact that the petitioner would be requiring an attender through out his life.

11.Mr.B.Sivakolappan, learned counsel for the Insurance Company would however, submit that there is no proof for income and claim based on Ex.P33, the salary slip cannot be believed. He would also point out that the claimant has not chosen to produce any bank statement or any other evidence in support of the salary slip. The salary slip, Ex.P33



relates to the month of April, 2010. The accident occurred in 2014 and except the said salary slip, no other document has been filed to show the income of the injured. The claimant in order to prove his salary or income is expected to produce at least some documentary evidence in support of the salary slip. In the absence of such supporting document, Mr.Sivakolappan would submit that, we cannot safely go by Ex.P33 to fix the monthly income. We have considered the rival submissions.

12.On a perusal of the report of the Medical Board that has been placed before us pursuant to the reference made by this Court, it is clear that the Tribunal's finding regarding quantum of disability will have to be necessarily set aside. As rightly argued by the learned counsel for the appellant, the finding on disability appears to be a intemperate out burst because of the attitude of the claimant for not appearing before the Medical Board as suggested by the Tribunal. We are unable to resist observing that the Tribunal should not be so emotional and be vindictive against the parties, who normally act according to the advise of their learned counsel. Personal emotions or anger against the counsel or a party should not be reflected in the judgments of the Tribunals.



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13.If we are to take the Medical Board's opinion as the guiding factor on the injuries and on the physical assessment of atleast three experts that have been made available to us, we will have to necessarily conclude that the functional disability is 100% because a 90% Quadriplegic is definitely confined to a wheel chair and he cannot move about without the help of others. We therefore, conclude that the functional disability is 100%.

14.Once the functional disability is arrived at 100%, we will have to fix the quantum of compensation. As rightly argued by the learned counsel for the Insurance Company, Ex.P33 cannot form basis for the income. At the same time, we cannot also ignore the fact that there is evidence to the effect that the petitioner has a Diploma in Hotel Management and Catering. It is also seen that he has obtained a Diploma in Computer Office Management. It is also seen from the report in Times of India dated 1st May, 2010 that the petitioner was working with a Resort in Mahabalipuram, which is a hub of tourist activity in Tamil Nadu. We therefore, assume a monthly income of Rs.20,000/-. Since the petitioner was aged about 42 years at the time of the accident, we have to take future



prospects at 25%. Then, the monthly income would be Rs.25,000/- and the multiplier applicable is 14. Therefore, the compensation for disability would be Rs.25,000/- x 12 x 14 = Rs.42,00,000/-.

15.The next head, on which, the Tribunal has awarded very low compensation is attender charges. Once we find that the petitioner has suffered 100% disability, he has to have an attendant through out his life time. Therefore, the attender charges must be fixed on the expectation of life. The Hon'ble Supreme Court in ***Kavita Vs. Deepak & Others*** reported in ***CDJ 2012 SC 564*** has held that the attender charges must be fixed on the basis of the nature of injury and the life expectancy. While doing so, the Hon'ble Supreme Court observed as follows:-

"21. In light of the decision in Raj Kumar V. Ajay Kumar (supra), the Tribunal and High Court erred in failing to award compensation under the heads of loss of amenities and loss of expectation of life. Relying on the decision in Nizam's Institute of Medical Sciences V. Prasanth S.Dhananka (supra) and assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award attendant charges at the rate of Rs.2,000/- per month and physiotherapy expenses at the rate of Rs.3,000/- per month. With regard to the head of physical and



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C.M.A.No.2297 of 2



mental pains the amount is enhanced to Rs.3,00,000/- and another Rs.3,00,000/- is awarded under the heads of loss of amenities and loss of life expectancy."

16.The accident in the said case took place in 2004 and the Hon'ble Supreme Court had observed that monthly attender charges would be Rs.2,000/-. Since the accident in the case on hand, has occurred in 2014, ten years thereafter, we would be justified in assuming the monthly attender charges at Rs.5,000/-. If we are to apply the multiplier of 14, the attender charges would be Rs.5,000/- x 12 x 14 = Rs.8,40,000/-. The compensation granted by the Tribunal on the other heads does not required interference at our hands. Thus, the total compensation would be Rs.54,24,053/-, which is rounded off to Rs.54,24,000/-.

17.In fine, this Civil Miscellaneous Appeal is **allowed**, the award of the Tribunal is set aside. There will be an award of a sum of Rs.54,24,000/- with interest at 7.5% per annum from the date of filing of the petition before the Tribunal i.e., 03.09.2014 till date of payment. The



C.M.A.No.2297 of 2

amount, if any paid, pursuant to the award of the Tribunal will be deducted and the Insurance Company will have twelve weeks time to deposit the balance amount to the credit of the Original Petition before the Tribunal. On such deposit, the injured claimant will be entitled to withdraw the same. The claimant will pay the Court fee payable. Since the appeal was necessitated because of the claimant's refusal to appear before the Medical Board, we direct the parties to bear their own costs.

(R.S.M., J.) (N.S., J.)
23.11.2023

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Internet: Yes

Index: No

Speaking

Neutral Citation : No

To:-

The Motor Accident Claims Tribunal,
II-Court of Small Causes,
Chennai.

12/14



WEB COPY

C.M.A.No.2297 of 2



R.SUBRAMANIAN, J.
and
N.SENTHILKUMAR, J.

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WEB COPY

C.M.A.No.2297 of 2



C.M.A.No.2297 of 2021

23.11.2023