



CMA.No.1413 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1413 of 2020

S.Vignesh

... Appellant

Vs

1. Aandiyappan
2. Sriram General Insurance Company Ltd.,
1 Floor, Sachin Plaza,
Azhagapuram Main Road,
Salem 636016

... Respondents

PRAYER:

Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to modify the judgment and award passed in MCOP.No.1694 of 2017 on the file of Motor Accident Claims Tribunal(Special Subordinate Judge II), Salem dated 19.07.2019 and enhance the same.

For Appellant : M/s.J.Prithivi

For Respondents

For R2 : Mr.Poomalai



CMA.No.1413 of 2020

JUDGMENT

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This appeal is filed against the award and decree dated 19.07.2019 passed in MCOP.No.1694 of 2017 on the file of Motor Accident Claims Tribunal(Special Subordinate Judge II), Salem. The appeal is filed by the claimant seeking enhancement of compensation for the injuries sustained by him in a motor accident that took place on 09.05.2017.

2. According to the claimant, while he was travelling as a pillion rider in a Yamaha bike, the first respondent who was riding his two wheeler came in a rash and negligent manner and hit against the claimant's two wheeler. Due to the impact, the claimant suffered grievous injuries. Because of the injuries sustained by the claimant in the accident, the left leg of the claimant was amputated above the knee. He was working as a lorry cleaner and earning a sum of Rs.10,000/- per month. Therefore, he filed the claim petition seeking Rs.30,00,000/- as compensation.

3. The first respondent was set exparte and the claim petition was contested by the second respondent / insurance company. The second respondent / insurance company disputed the negligence, liability and quantum in its counter.

4. Before the Claims Tribunal, the claimant examined himself as



CMA.No.1413 of 2020

PW1 and marked Ex.P1 to Ex.P20. On the side of the respondents, two witnesses were examined and three documents were filed. The disability certificate was marked as Ex.C1. The Claims Tribunal, on assessment of entire evidence on record, returned a finding of negligence against the first respondent and awarded a sum of Rs.24,56,493/- as compensation and mulcted liability on the second respondent / insurance company. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the claimant has filed this appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that assessment of income at Rs.7,500/- per month was very much on the lower side considering that the claimant was aged only 18 years at the time of accident which took place on 09.05.2017. The learned counsel further submitted that the claimant was a cleaner in a lorry and was earning Rs.10,000/- per month. The learned counsel further submitted that the left leg of the claimant was amputated above the knee and therefore, the claimant had lost his marital prospects. The learned counsel further submitted that the Tribunal miserably failed to award any compensation towards the head of 'Loss of marital prospects'. As far as the other heads are concerned, the learned counsel fairly submitted that she is not disputing the same.



CMA.No.1413 of 2020

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6. The learned counsel for the second respondent on the other hand submitted that the award of the Tribunal was just, fair and reasonable and did not call for any interference in this appeal.

7. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

8. Negligence, liability are not disputed and therefore, the short question to be decided is what is the fair compensation payable to the claimant?

9. It is undisputed that the claimant's left leg was amputated above the knee because of the grievous injuries sustained by him in the motor accident. The disability of the claimant was assessed at 80% under Ex.C1 i.e. the disability certificate issued by the medical board. Therefore, it is clear that the claimants marital prospects would be affected. The accident took place on 09.05.2017 and therefore I am of the view that the income fixed by the Tribunal can be enhanced considering the cost escalation. The appropriate income in my considered opinion would be Rs.10,000/- per month. I am of the view that the claimant would be entitled to compensation towards 'loss of



CMA.No.1413 of 2020

marital prospects' because of the amputation on his left leg above the knee. In

view of the above discussion, the Award of the Tribunal needs to be modified

and the same is modified as follows:

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1	Claimant's annual income	Rs.90,000/-	(Rs.9,000/- x 12) Rs.1,08,000/-
2	Claimant's annul income on adding 40% future income with claimant's annual income	Rs.1,26,000/-	(40% = Rs.43,200/- Rs.1,51,200/-
3	Compensation for loss of income using 18 multiplier	Rs.22,68,000/-	Rs.27,21,600/-
4	Functional disability	Rs.18,14,400/-	Rs.21,77,280/-
5	Pain and sufferings	Rs.1,00,000/-	Rs.1,00,000/-
6	Loss of livelihood	Rs.1,00,000/-	Rs.1,00,000/-
7	Medical expenses	Rs.1,99,593/-	Rs.1,99,593/-
8	Artificial leg fixed	Rs.2,00,000/-	Rs.2,00,000/-
9	Transport charges	Rs.11,500/-	Rs.11,500/-
10	Nutrition	Rs.20,000/-	Rs.20,000/-
11	Attendant charges	Rs.10,000/-	Rs.10,000/-
12	Clothes	Rs.1,000/-	Rs.1,000/-
13	Marital prospects	NIL	Rs.1,00,000/-
	Total	Rs.24,56,493/-	Rs.29,19,373/-

10. The amount awarded by the Tribunal is modified to Rs.29,19,373/- along with 7.5% interest. The insurance Company is directed to deposit the entire enhanced award amount of Rs.29,19,373/- with 7.5% interest, less amount, if any, already deposited within a period of six (6) weeks



CMA.No.1413 of 2020

from the date of receipt of a copy of the order. The claimant / appellant herein shall thereafter be permitted to withdraw the deposited amount by filing appropriate application before the Claims Tribunal.

11. In view of the above discussions, this appeal is partly allowed.

There shall be no order as to costs in the present appeal.

26.04.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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CMA.No.1413 of 2020

N.MALA, J.

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To
1.Motor Accident Claims Tribunal
(Special Subordinate Judge II),
Salem
2. Sriram General Insurance Company Ltd.,



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