



C.M.A.No.1781 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2023

CORAM:

THE HONOURABLE Mrs.JUSTICE R.KALAIMATHI

C.M.A.No.1781 of 2020

R.Nallamuthu

... Appellant / Claimant

vs.

1.S.Irulappan

2.Reliance General Insurance Company Ltd.,

Shri Lakshmi Complex, I Floor,

Bharathi Street, Omalur Main Road,

Swarnapuri,

Salem-636 004.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 21.01.2019 passed in M.C.O.P.No.1405 of 2014 on the file of Motor Accident Claims Tribunal / Special Sub-Judge, No.2, Salem.

For Appellant : Mr.S.Sankar
for M/s.C.Thangaraju

For 1st Respondent : Notice Served – No Appearance

For 2nd Respondent: Mr.S.Arunkumar

JUDGMENT

This Civil Miscellaneous Appeal is filed by the claimant against the



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judgment and decree dated 21.01.2019 passed in M.C.O.P.No.1405 of 2014 on the file of Motor Accident Claims Tribunal / Special Sub-Court, No.2, Salem, for enhancement of compensation.

2. The claim petition was filed under Section 166 of Motor Vehicles Act, 1988, read with Rule 3 of Tamil Nadu Motor Accident Claims Tribunal Rules, claiming compensation of Rs.7,00,000/- for the injuries sustained by the claimant in the road accident that occurred on 12.06.2014.

3. The learned Tribunal, on hearing both sides and upon consideration of oral and documentary evidence has granted compensation of Rs.1,97,132/- holding the 2nd respondent / Insurance Company is liable to pay the said compensation with 7.5% interest per annum from the date of filing of petition till the date of deposit (except default period).

4. The learned counsel appearing for the appellant/claimant would vehemently argue that due to the accident, the claimant who was a 42 year old at the relevant point of time suffered fracture of left femur. He was a coolie and earning a sum of Rs.10,000/- per month. The Medical Board assessed the disability of the appellant at 18% vide Ex.C1. It is his further



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argument that the amount granted by the Tribunal for pain and sufferings, attender charges and for transport expenses are less and prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the 2nd respondent / Insurance Company would strenuously contend that the learned Tribunal, after taking into account of the oral and documentary evidence has passed the award for an amount Rs.1,97,132/- is a well reasoned order and prayed to confirm the same.

6. It is the evidence of PW1 that one sadhasivam was riding the vehicle along with the appellant Nallamuthu in a motor cycle bearing Reg.No.TN-28-AA-8392 on 12.06.2014, at about 12 noon, along the Puduchathiram service road, near the puduchathiram police station, a motor cycle bearing Reg.No.TN-28-AR-1632 came in a rash and negligent manner and at a great speed hit on the motor cycle from behind. Eventually both sustained serious injuries, is not in dispute.

7. It is the evidence of PW1-Nallamuthu, that he was working as a coolie and earning a sum of Rs.10,000/- p.m. As per the medical records, his age is fixed at 42 years. As per Ex.P6 discharge summary, issued by Shri Akshaya Hospital, Namakkal, he had taken treatment as an inpatient



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from 12.06.2014 to 26.06.2014 and underwent surgery for the fracture of left femur. The Medical Board has assessed the disability at 18%. As per Ex.C1 disability certificate, it reads that he suffered from malunion and he has difficulties in sitting cross legged. It is the evidence of PW2 that he has difficulties in walking, doing the coolie work after the accident. Because of the fracture sustained, it would be difficult to perform his work as he did before. The Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar and Another** reported in **(2011) 1 SCC 343** has held that while assessing the permanent disability, the Tribunal has to take into account the effect of personal disability and the earning capacity of the injured. Therefore, it depends upon each and every case, depends upon the injury and disability suffered etc. A 42 year old appellant who was working as a coolie suffered fracture of left femur and the Medical Board has assessed the disability which is partial permanent at 18%. Considering the effects of injury, the functional disability is fixed at 16%.

8. The Hon'ble Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co. Ltd.**, reported in **2014 (1) TN MAC 459 (SC)** has fixed the monthly income of the injured vegetable vendor who was aged about 24 years, at Rs.6,500/- for the accident occurred in the year 2008. Date of accident is 12.06.2014. This Court, deems fit to fix



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the income of the appellant at Rs.8,500/- p.m. In order to award just compensation and based on the observations made by the Hon'ble Supreme Court in Rajkumar v. Ajaykumar's case, and in order to meet the ends of justice, multiplier method is invoked for assessing the loss of earning power.

9. As per the law laid down by the Hon'ble Supreme Court in **Smt.Sarla Verma & Ors., v. Delhi Transport Corporation & Another** reported in **2009 (2) TN MAC 1 (SC)**, the relevant multiplier is 14. Based on the above said details, for loss of earning power, the formula emerges as follows:

Age of the Appellant : 42 years

Monthly income fixed : Rs.8,500/-

Multiplier to be adopted : 14 m

Functional disability fixed : 16%

For Loss of Earning Power : Rs.8,500/- X 12 X 14 X 16%
: Rs.2,28,480/-.

10. That apart, for the loss of amenities and for pain and sufferings undergone, an amount of Rs.10,000/- each is granted in addition to the amount already granted by the Tribunal. For Transport Expenses and for



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Extra Nourishment, an amount of Rs.5,000/- each is granted in addition to the amount already granted by the Tribunal. In all other aspects, the amount awarded by the Tribunal appears to be reasonable, therefore, needs no interference. Therefore, the Compensation awarded by the Tribunal is reworked and tabulated below:

Sl. No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	Loss of Earning Capacity	Rs.61,425/-	Rs.2,28,480/-	Enhanced
2	For Pain and Sufferings	Rs. 10,000/-	Rs. 20,000/-	Enhanced
3	For loss of amenities	Rs. 10,000/-	Rs. 20,000/-	Enhanced
4	For Medical Expenses	Rs.1,03,207/-	Rs.1,03,207/-	Confirmed
5	For Transport Expenses	Rs. 2,000/-	Rs. 7,000/-	Enhanced
6	For Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-	Enhanced
7	For Attender Charges	Rs. 5,000/-	Rs. 5,000/-	Confirmed
8	For Damage to Clothes	Rs. 500/-	Rs. 500/-	Confirmed
	Total	Rs.1,97,132/-	Rs.3,94,187/-	
	Rounded off to		Rs.3,94,200/-	

11. Thus, the compensation awarded by the Tribunal is enhanced from **Rs.1,97,132/-** to **Rs.3,94,200/-** which would carry interest at the rate of 7.5% per annum.



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12. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from **Rs.1,97,132/- to Rs.3,94,200/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.3,94,200/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit (except default period) to the credit of M.C.O.P.No.1405 of 2014 on the file of Motor Accident Claims Tribunal / Special Sub-Judge, No.2, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant/claimant is permitted to withdraw the same along with interest and costs, less the amount if any already withdrawn, by making necessary cheque application before the Tribunal. The appellant/claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

12.09.2023



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Index : Yes/No

Speaking / Non-speaking order

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R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Special Sub-Judge, No.2,
Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.

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