



C.M.A.No.2643 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:02.03.2023

Delivered on: 09.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.B.BALAJI

C.M.A.No.2643 of 2019

Pandian

... Appellant

Vs.

1.Srinivas Kesineni
(Since R1 remained ex-parte
before the Tribunal, his presence
may be dispensed with)

2.Oriental Insurance Co. Ltd
No.215, Prakasam Salai
Broadway,
Chennai-600 106

... Respondents

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the judgment and decree dated 24.01.2019, made in M.A.C.T.O.P. No.3320 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai .

For Appellant : Mr.F.Terry Chellaraj

For Respondents : Mr.M.J.Vijaya Raghavan for R2



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JUDGMENT

The claimant before the Motor Accident Claims Tribunal in M.A.C.T.O.P. No.3320 of 2016 on the file of the Small Causes Court, Chennai is the appellant in the present Civil Miscellaneous Appeal, aggrieved by the award passed by the Tribunal, for a sum of Rs.1,04,500/- as against the claim of Rs.15,00,000/- sought for in the claim petition. The 1st respondent is the owner of the bus involved in the accident and the 2nd respondent is the insurer of the 1st respondent.

2. The appellant/claimant, on 01.01.2016, in the late evening at about 07.30 p.m travelling as a pillion rider in a motorcycle, near Arunachalam Nagar, near Tindivanam to Vandavasi Road, met with an accident caused by the rash and negligent driving of the bus by the 1st respondent. The claimant suffered multiple grievous injuries and in respect of which he sought for compensation of Rs.15,00,000/-.

3. The 1st respondent did not choose to appear before the Tribunal. The



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2nd respondent/insurer filed a counter denying the various claims made by the appellant/claimant and besides also stating that the claim was exaggerated and unrealistic.

4. Before the Tribunal, Claimant examined himself as P.W.1 and a Doctor by name Dr.K.J.Mathiazhagan was examined as P.W.2 and Exs.P.1 to P.12 were marked. On the side of the respondents, especially on the side of the 2nd respondent no oral and documentary evidence was let in.

5. The Tribunal on perusing the materials available on record and discussing the oral and documentary evidence, arrived at a sum of Rs.1,04,500/- towards compensation to be paid for the injuries sustained by the appellant. Aggrieved by this award, the claimant is before this Court by way of the present Civil Miscellaneous Appeal.

6. Heard the learned counsel for the claimant/appellant as well as the 2nd respondent/insurance company.



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7. Learned counsel for the appellant stated that the claimant was working as a coolie and was aged about 30 years at the time of the accident and he was earning about Rs.1,000/- per day and therefore the Tribunal erred in fixing Rs.7,000/- as his monthly income. The counsel also drew the attention of this Court to the nature of injuries suffered by the claimant, treatment taken for the same and attacked the percentage of disability fixed by the Tribunal at 10%. It is also argued by the counsel that the multiplier method ought to have been adopted for the disability suffered by the claimant/appellant. Learned counsel also agitated and argued the various other grounds in the Civil Miscellaneous Appeal.

8. Per contra, the counsel for the insurance company/2nd respondent contended that in the absence of any proof of income, the Tribunal was not in error in fixing the notional income at Rs.7,000/- and that multiplier method cannot be adopted, since the claim was based only on injuries and not on any permanent disability caused and prayed for confirmation of the award passed by the Tribunal.



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9. This Court has paid anxious consideration to the rival submissions made. This Court has also carefully gone through the oral and documentary evidence available on record.

10. With regard to the income of the deceased, the Tribunal finding that there is no proof adduced by the claimant to prove his income proceeded to fix a notional income of Rs.7,000/-. This Court, considering that the claimant was a coolie, would have earned not less than Rs.10,000/- per month and therefore, the finding of the Tribunal in this regard needs to be interfered and revised.

11. Coming to the second aspect of disability, the Tribunal has taken 10% towards disability. It is argued on behalf of the counsel for the claimant that the Tribunal ought to have appreciated the evidence of P.W.2-Doctor and fix 30% towards disability.

12. Per contra, the counsel for the 2nd respondent contended that



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considering the nature of injuries, the Tribunal was right in not adopting the multiplier method and also equally right in fixing 10% towards disability and such finding does not warrant any interference.

13. This Court has gone through the evidence, oral and documentary with regard to the nature of injuries sustained by the claimant. Admittedly, the claimant has sustained fractures of zygoma, fracture over supra condyle right femur/both bones fracture right leg, deformity over right leg proximal 3rd and right thigh of distal 3rd injuries and other injuries. The reasoning of the Tribunal that the appellant has not chosen to examine the Doctor who treated him appears to be far fetched. It is a well known fact that professionals like Doctors are busy with their schedules and commitments and it would be too much to ask them to appear in Court to give evidence with regard to treatment given to their patients. Therefore, the available evidence of the Doctor-P.W.2 has to necessarily be taken into consideration. The Tribunal having found that P.W.2 has assessed the injury after 2½ years and has not filed any details of calculation for assessment fixed disability at 10%, holding



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that the claimant was entitled for compensation for the injuries sustained by him at Rs.3,000/- per percentage. As seen from the evidence, it is not a case of permanent disability warranting applying the multiplier method. The Tribunal has rightly adopted percentage method. However, Rs.3,000/- is enhanced to Rs.5,000/- per percentage, as Rs.3,000/- adopted is very low.

14. The Hon'ble Supreme Court in *Raj Kumar Vs. Ajay Kumar & another*, reported in *2010 (2) TNMAC 581 (SC)* has laid down guidelines for assessing injuries with illustrations. Even in the said judgment, the Hon'ble Supreme Court has categorically held that claimants will face difficulties in securing presence of busy Surgeons or Doctors who treated the claimants for the purpose of giving evidence. The Hon'ble Supreme Court has also discussed permanent disability and future loss of earnings on such account. The Hon'ble Supreme Court has held that the Tribunals should first decide whether there is any permanent disability and if so to what extent and that such decision should be based on evidence with regard to disablement being permanent or temporary, and if such disablement is permanent, whether



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it is permanent or partial; whether the disablement percentage expressed is with reference to specific limb or entire body and concluded that if there is no permanent disability then there is no necessity of proceeding to determine the loss of future earning capacity. The Tribunals have been called upon to ascertain the actual extent of permanent disability of the claimant based on medical evidence and also determine whether such permanent disability has affected or will affect the earning capacity of the claimant.

15. Keeping the principles laid down by the Hon'ble Supreme Court in ***Raj Kumar's*** case, it is seen that the claimant was a coolie and necessarily his day to day activities would have been jeopardized because of the injuries suffered by him viz., fractures of zygoma, fracture over supra condyle right femur/both bones fracture right leg, deformity over right leg proximal 3rd and right thigh of distal 3rd injuries and other injuries. The nature of injuries set out above clearly suggest that the claimant could not effectively carry on his normal functions and activities as earlier and he would be certainly prevented or restricted from discharging his previous functions and activities.



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16. This Court in *M.Chinnathambi Vs. S.Deepa and another*, reported in **2020 (1) TNMAC 617**, held that when there is no evidence of any functional disability, multiplier method could not be applied and the proper course would be to adopt percentage method. In the said case, this Court has fixed Rs.5,000/- per percentage taking into account the fact that the accident occurred in the year 2016. In the present case also, the accident has occurred only in the year 2016 and therefore this Court feels it just and proper to take Rs.5,000/- per percentage of disability. Considering the nature of injuries and the inconvenience caused to the claimant who is a coolie, this Court fixes the disability percentage at 30%. Therefore, this Court on an overall appreciation of the evidence available regarding this aspect fixes the disability at 30% and at Rs.5,000/- per percentage considering the nature of multiple and grievous injuries suffered by the claimant.

17. Coming to the other heads, towards pain and suffering the Tribunal has awarded only a sum of Rs.20,000/-. This Court taking into account the multiple and grievous injuries suffered by the claimant deems it fit to award Rs.30,000/-. Considering the expenses that would have been



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incurred by the claimant towards transportation and considering the evidence on record with regard to the treatment underwent by the claimant at more than one hospital viz., initially at Government General Hospital, Vandavasi and subsequently Government Hospital, Chengalpet and thereafter again at Rajiv Gadhi Government General Hospital at Chennai, a sum of Rs.10,000/- can be awarded as against Rs.5,000/- alone awarded by the Tribunal. The amounts awarded towards 'Extra nourishment' is enhanced from Rs.10,000/- to Rs.15,000/-, 'Transportation' is enhanced from Rs.5,000/- to Rs.10,000/-, 'Medical expenses' is enhanced from Rs.2,500/- to Rs.5,000/-. Towards 'Loss of clothing' Rs.6,500/- is awarded, though nothing was awarded by the Tribunal under this head. Loss of future prospects Rs.20,000/- awarded by the Tribunal is confirmed. 'Attender charges' is enhanced from Rs.3,000/- to Rs.5,000/-, 'Loss of earnings' is enhanced from Rs.14,000/- to Rs.15,000/-. Towards disability the Tribunal has awarded Rs.3,000/- per percentage for 10% disability, the same is enhanced to Rs.5,000/- per percentage for 30% disability. Accordingly, Rs.1,50,000/- is awarded. The enhanced compensation awarded by this Court is as follows:



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Disability	Rs.1,50,000/-
Pain and sufferings	Rs. 30,000/-
Extra Nourishment	Rs. 15,000/-
Transportation	Rs. 10,000/-
Medical Expenses	Rs. 5,000/-
Attender Charges	Rs. 5,000/-
Loss of earnings	Rs. 15,000/-
Loss of clothings	Rs. 6,500/-
Loss of future prospects	Rs. 20,000/-

Total compensation fixed at	Rs. 2,56,500/-

18. In fine the judgment and decree dated 24.01.2019, made in M.A.C.T.O.P. No.3320 of 2016 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai is modified and the Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount to Rs.2,56,500/- payable



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together with interest at 7.5% per annum from the date of claim petition till the date of deposit. In view of the modified amount, the 2nd respondent/Insurance Company is directed to deposit the award amount, less the amount, if any, already deposited, along with accrued interest within a period of six weeks from the date of receipt of a copy of this judgment. No costs.

09.03.2023.

Internet:Yes
Index:Yes/No
Speaking order
Neutral Citation:Yes/No
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To

1. The Judge
Motor Accident Claims Tribunal,
Special Sub Court No.1,
Motor Accidents Claims Petitions,
Small Causes Court,Chennai

2.The Section Officer
V.R.Section
High Court, Madras

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P.B.BALAJI, J.,
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Pre-delivery judgment in
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