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CMA No.2933 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2023

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.2933 of 2022

Sanam Rajasekar Reddy

.. Appellant

Vs.

1. K.Sivakumar.

2. The Oriental Insurance Company Limited,
Motor Third Party Hub,
No.115, Broadway,
II Floor,
Chennai – 600 001.

.. Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 to enhance the award dated 11.11.2019 passed in MCOP No.6721 of 2013 on the file of the Motor Accident Claims Tribunal [V Court of Small Causes], Chennai.

For Appellant : Mr.C.Richard Suresh Kumar

For Respondents : Mr.D.Bhaskaran (for R2)



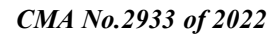
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JUDGMENT

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In a road transport accident on 15.10.2012, a Tanker lorry bearing Regn. No.AP-03-X-6566, driven by its driver in a rash and negligent manner, got capsized and the lorry got burst, thereby caused fire accident, wherein 22 persons were injured and 2 persons were dead. Injured claimants/legal representatives of the deceased, filed individual claim petitions, numbering 24, before the Motor Accident Claims Tribunal [V Court of Small Causes], Chennai. All the 24 cases were tried jointly and by a common judgment dated 11.11.2019, the claims tribunal held that the driver of the Tanker Lorry was negligent in causing the accident and accordingly, fastened liability on the insurer of the Tanker Lorry viz., the Oriental Insurance Company, the 2nd respondent herein and awarded compensation in each claim petitions.

2. Claim petitioner in MCOP No.6721 of 2013, is the appellant herein seeking enhancement of compensation for grievous injuries sustained in his right leg, resulting in amputation of his right leg below the knee, in the above said accident.



4. The factum of the accident, the manner of the accident and the negligence on the part of the driver of the offending vehicle, are not disputed. Hence, the findings of the claims tribunal, are confirmed.

5. The claim petitioner, who had suffered injury in the road transport accident on 15.10.2012, has filed the above MCOP and the claims tribunal has awarded a sum of Rs.16,69,200/- with interest at the rate of 7.5% per annum from the date of numbering of claim petition till the date of realization with costs.

6. On the point of quantum of compensation, heard the learned counsel for the appellant/claim petitioner and the learned counsel appearing on behalf of the 2nd respondent/Insurance Company and perused the materials available on record.



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7. On perusal of Ex.P93, copy of the discharge summary issued by Halsted Surgical Clinic, the injured claimant was in the hospital for three days. And as per Ex.P94, the 2nd discharge summary, he was in the hospital for one day. Ex.P98 series are the medical prescriptions and Ex.P97 is the photograph of the petitioner. The right leg below the knee has been amputated and hence, the disability of the injured claim petitioner has been assessed at 50% and finding that the same is functional disability, the claims tribunal has adopted multiplier method. However, a sum of Rs.6,000/- has been fixed as notional income. As per Ex.P99, Aadhar Card, the claim petitioner is aged 30 years and the claim petitioner claimed to be doing independent business and earned Rs.15,000/- per month. Therefore, I am of the view that fixing a sum of Rs.9,000/- per month as notional income, would be fair and reasonable. Accordingly, taking Rs.9,000/- as notional income; by applying '17' multiplier and also adding 40% of income towards future prospects, as done by the claims tribunal, the loss of earnings is arrived at as follows:

Monthly Income	: Rs. 9,000/-
Add 40% Future Prospects	: Rs. 3,600/-
Total	: Rs.12,600/-

$$\text{Rs.12,600} \times 12 \times 17 \times 50\% = \text{Rs.12,85,200/-}$$



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8. As stated supra, the right leg of the claim petitioner has been amputated below the knee and hence, the award of Rs.50,000/- and Rs.1,500/- under the heads 'pain and suffering' and 'attender charges', respectively, is very less and requires to be enhanced. Accordingly, a sum of Rs.1,00,000/- towards pain and suffering and Rs.50,000/- towards attender charges, are awarded. Compensation amount under other heads and the interest awarded by the tribunal, appears to be just and reasonable and hence, they are kept intact. The reassessed compensation is as follows:

	Amount awarded by the tribunal Rs.	Award now modified Rs.	Enhanced Amount
Pain & sufferings	50,000	1,00,000	50,000
Transport and Extra Nourishment	30,000	30,000	-
Loss of earning	8,56,800 (6000+(6000*40%)x 12x17x50%	12,85,200 (9000+(9000*40%)x1 2x17x50%	4,28,400
Loss of amenities	50,000	50,000	-
Attender Charges	1,500	50,000	48,500
Medical Expenses	6,80,823	6,80,823	-
Total	16,69,123	21,96,023	
Rounded off	16,69,200	21,96,100	
Enhanced now			Rs.5,26,900/-



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9. In the result, it is ordered as follows:

- (i) The judgment and decree dated 11.11.2019, made in MCOP No.6721 of 2013 on the file of the Motor Accident Claims Tribunal [V Court of Small Causes], Chennai, stands modified to the limited extent that the compensation of Rs.16,69,200/- awarded by the claims tribunal is enhanced to Rs.21,96,100/- i.e. Rs.16,69,200/- + Rs.5,26,900/- and the interest awarded by the claims tribunal remains unaltered.
- (ii) Additional Court fee, if any, to be paid by the claim petitioner within a period of four weeks and decree to be drafted after the payment of Court fee.
- (iii) The 2nd respondent-Insurance company is directed to deposit the enhanced compensation amount of Rs.21,96,100/- with proportionate interest and costs to the credit of MCOP No.6721 of 2013 on the file of the Motor Accident Claims Tribunal [V Court of Small Causes], Chennai, within a period of eight weeks from the date of receipt of a copy of this order, less the amount deposited, if any.
- (iv) On such deposit, the appellant/claim petitioner, is permitted to withdraw the same, less the amount withdrawn, if any, on making necessary applications.



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10. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs.

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Index : Yes/No

Neutral Citation : Yes/No.

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To

The V Judge,
Court of Small Causes,
Motor Accident Claims Tribunal, Chennai.



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RMT.TEEKAA RAMAN,J.,

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