



C.M.A. No. 2296 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

C.M.A. No. 2296 of 2014

Kumar ... Appellant / Petitioner

Vs.

1. S. Saravanakumar
2. The Branch Manager,
The Reliance General Insurance Company Ltd.,
Branch Office,
Shri Lakshmi Complex, I Floor,
Bharathi Street, Omalur Main Road,
Swarnapuri, Salem-636 004. ... Respondents/ Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 13.03.2012 passed in M.C.O.P. No. 651 of 2009 on the file of the Special Judge, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : M/s. M. Sriram

For R1 : No Appearance

For R2 : M/s. C. Bhuvanasundari



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C.M.A. No. 2296 of 2014

JUDGMENT

This appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. NO. 651 of 2009, dated 13.03.2012 on the file of the Special Judge, Motor Accident Claims Tribunal, Krishnagiri, wherein the Tribunal has awarded a total compensation for a sum of Rs.2,93,805/- to the claimant along with the interest @ 9% per annum from the date of filing of claim petition till the date of realization.

2. For the sake of convenience, the parties are referred herein according to their litigative status before the Tribunal.

3. The case of the claimant is that on 30.12.2008 at about 3:45AM, the claimant was driving a Maxi Van bearing Registration No. TN-30-F-2398 from Pochampalli to Chennai with coconut load and he was driving the vehicle slowly on the left hand side of the road cautiously and observing the traffic rules. While the said vehicle was proceeding near Sembarampakkam Nakman company in Bangalore Highways road, the rear left side tyre of the vehicle sustained to puncture, which forced the driver of



the vehicle to park the vehicle on the left hand side of the road, he also switched on the parking light as a precautionary measure. Thereafter, he was changing the punctured wheel, at that time, a Eicher Van bearing Registration No. TN-28-AA-3911, belongs to the first respondent and insured with the second respondent came in a rash and negligent manner, dashed on the rear side of the claimant vehicle. Due to the impact, the vehicles were capsized and the claimant also sustained severe injuries. A criminal case was registered in Cr.No.884/PH2/2008 U/s.279, 337 and 304(A) of IPC on the file of Poonamallee Highways Traffic Investigation Wing Police, Chennai. For the injuries sustained, the claimant has come forward with a claim petition seeking compensation for a sum of Rs.10,00,000/- along with the interest @ 12% per annum under section 166 of the Motor Vehicles Act,1988.

4. The first respondent has not appeared and contested the claim and remained Ex-parte. The second respondent-Insurance Company has filed a counter and appealed that the claimant has negligently parked his vehicle on the road in darkness without parking lights, which resulted in accident. So, the negligence is on the part of the claimant, hence the second



C.M.A. No. 2296 of 2014

respondent is not liable to pay any compensation. The second respondent also disputed the age, income and occupation of the claimant and further contended that the compensation claimed under various heads is on the higher side, hence, prays to dismiss the claim petition.

5. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P.1 to P.10 were marked and on the side of the respondent, no witnesses were examined and no exhibits were marked.

6. Based on the evidence placed on record, the Tribunal in point No.1 has held that the rash and negligence on the part of the driver of the first respondent's Eicher Van bearing Registration No. TN-28-AA-3911 is responsible for the accident and fixed the liability on the second respondent - Insurance Company to pay the compensation to the claimant. In point No.2, the Tribunal had quantified the compensation and granted Rs.2,93,805/- along with interest @ 9% per annum as compensation to the claimant.

7. Aggrieved over the compensation awarded, the claimant has



filed this appeal seeking enhancement of compensation.

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8. The learned counsel appearing for the claimant submitted that the Tribunal has not properly considered the nature of the injury sustained by the claimant. Due to the injuries sustained, the claimant is not able to continue his earlier avocation as driver. The Tribunal has also not considered loss of earning capacity of the claimant, hence prays to enhance the compensation.

9. The learned counsel appearing for the Insurance Company has submitted that based on the evidences placed on record, the Tribunal has arrived at just and fair compensation under various heads, hence prays to dismiss the appeal.

10. I have considered the submissions made by both sides and perused the materials available on record.

11. The only question arises for considering before this Court is that, whether the compensation awarded by the Tribunal is just compensation.



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12. The P.W.2 - Doctor, who examined the claimant for assessing disability stated that, the Ex.P.3, discharge summary issued by Sri Ramachandra Hospital, Chennai shows that the claimant has undergone open reduction and internal fixation with plate Osteosynthesis for Acetabular fracture and Extensor Tendons Repair at Wrist, second and third fingers at meta phalanx level under General Anesthesia. Thereafter, at the time of assessing the disability of the claimant, x-ray was also taken and found that the claimant had sustained right Acetabular and greater trochanter right femur fracture which was treated as per mentioned in the discharge summary. Based on the above medical records and x-rays of the claimant, the P.W.2 has fixed the disability of the claimant as 45% permanent functional disability and the disability certificate is marked as Ex.P.10. The P.W.2 also stated that due to these injuries, there is a stiffness on the right hip joint and the claimant is also finding difficulty in standing or sitting, hence concluded that the claimant could not continue his earlier avocation as driver. The Tribunal based on the above disability fixed by the P.W.2, has awarded Rs.2,000/- per percentage of disability and granted Rs. 90,000/- under the head temporary disability.



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13. Admittedly, in this case, the claimant was not assessed by any Medical Board for the disability sustained by him. However, on perusal of the Ex.P.3, discharge summary and evidence of P.W.2, it is clear that the claimant has sustained grievous injury and fracture on his right Acetabular and greater trochanter right femur. It is admitted fact that the claimant is a heavy vehicle driver by profession. He could not continue his said profession due to injuries sustained by him. It is also the evidence of the P.W.2, that he has assessed the disability of whole body of the claimant and based on the settled guidelines. I have also taken note of the complications resulted in the above injuries. Considering all the above evidences, this Court is of the view that the injuries sustained by the claimant have drastically reduced his earning capacity. Hence, proper method of granting compensation is by adopting multiplier method and by following the guidelines laid down by the Hon'ble Apex Court in ***Raj Kumar vs. Ajay Kumar [2011 ACJ 1]***, this Court is inclined to fix the loss of earning capacity of the claimant to the extent of 20%.

14. The Tribunal has fixed the monthly notional income of the



C.M.A. No. 2296 of 2014

claimant as Rs.4,500/- and this Court considering the age and avocation of the claimant and date of accident confirms the same. On perusal of the driving licence of the claimant, it shows that he is 32 years old. By following the dictum laid down in Apex Court judgments in *Sarla Verma and others Vs. Delhi Transport Corporation and another [2009 ACJ 1298 SC : 2009 (6) SCC 121]*, the multiplier is fixed as 16 and based on *Erudhaya Priya vs. State Express Transport Corporation Ltd., [2020 SSCR 299, 2020 ACJ 2159]*, 40% future prospectus is fixed. Accordingly, the loss of earning capacity of the claimant is assessed as follows:

Annual income (Rs.4,500/- x 12)	= Rs.54,000/-
Future prospects @ 40%	= Rs.21,600/-
Yearly income of the claimant	= Rs.75,600/-
Applicable Multiplier	= 16
Total Amount (Rs.75,600/- X 16)	= Rs.12,09,600/-
Total Compensation towards loss of earning capacity for Disability fixed @ 20%	= Rs.2,41,920/-

15. The Tribunal has awarded Rs.10,000/- under the head pain and suffering, which is on the lower side by considering the injuries sustained by the claimant, this Court is inclined to modify the same to Rs.20,000/-. Whereas, the compensation on other heads are concerned, the Tribunal has



awarded a just compensation and the same are hereby confirmed. However, the Tribunal has awarded interest @ 9% per annum on the compensation amount from the date of filing of claim petition till the date of its realization, Hon'ble Apex Court in ***Tamil Nadu State Transport Corporation Ltd. Vs. S. Rajapriya and Ors., [2005AC J1441]***, has modified the rate of interest to 7.5% per annum based on the prevailing rate of interest in bank deposits, by observed in paragraph no.18 as follows:

“Considering the age of the deceased and the principles indicated above, the appropriate multiplier would be 12 and not 16 as adopted by the Tribunal and affirmed by the High Court. By applying multiplier 12, amount of compensation is fixed at Rs.4,50,000/- (in round figures). The Tribunal has fixed interest @ 9% per annum from the date of the claim petition. Taking note of the prevailing rate of interest in bank deposits, the same is fixed at 7.5% per annum....”

16. In view of the above, this Court inclined to fix the rate of interest as 7.5% per annum for the compensation amount awarded and interest shall be payable from the date of filing of claim petition till the date of realization.

17. Accordingly, the award passed by the Tribunal under various



heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss due to temporary disability (loss of earning capacity)	90,000/-	2,41,920/-	Enhanced
2.	Partial loss of income	13,500/-	13,500/-	Confirmed
3.	Medical bills (expenses)	1,25,806/-	1,25,806/-	Confirmed
4.	Transport bills (expenses)	38,500/-	38,500/-	Confirmed
5.	Nutritious Food	3,000/-	3,000/-	Confirmed
6.	Attenders Expenses	3,000/-	3,000/-	Confirmed
7.	Pain and Sufferings	10,000/-	20,000/-	Enhanced
8.	Loss of Amenities	10,000/-	10,000/-	Confirmed
	Total Compensation	2,93,805/-	4,55,726/-	Enhanced

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,93,805/- is hereby enhanced to **Rs.4,55,726/- [Rupees Four Lakh Fifty Five Thousand Seven Hundred and Twenty Six only]** together along with interest at the rate of **7.5%** per annum from the date of filing of Claim Petition till the date of realization, excluding the default period if any. The Second Respondent - Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any,



C.M.A. No. 2296 of 2014

within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.651 of 2009 on the file of the Special Judge, Motor Accidents Claims Tribunal, Krishnagiri. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

08.09.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Special Judge,
Motor Accident Claims Tribunal,
Krishnagiri.
2. The Section Officer,
V.R.Section,



High Court, Chennai.

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C.M.A. No. 2296 of 2014

K. RAJASEKAR, J.

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C.M.A. No. 2296 of 2014

08.09.2023