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C.M.A.No.2563 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2023

CORAM :
THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

C.M.A.No.2563 of 2014

P.Ramasamy

... Appellant / Petitioner

Vs.

1.K.Mayavatharan

2.J.Balamani

3.National Insurance Company Limited,
Heaving its issuing office at 1st Floor, Karthikeya Complex,
403, B-10, Mettur Main Road,
Bhavani, Erode – 638 302.

Having its Divisional Office at D.No.930,
Sathy Road, Gandhipuram,
Coimbatore.

... Respondents / Respondents

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree dated 10.04.2013 made in M.C.O.P.No.526 of 2012 on the file of the Motor Accidents Claims Tribunal/Special Sub Court at Coimbatore.

For Appellant : Mr.Ma.P.Thangavel

For Respondents 1 & 2 : Notice Dispensed with



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Respondent 3 : Mr.D.Bhaskaran

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J U D G M E N T

This Civil Miscellaneous Appeal No.2563 of 2014 has been filed to enhance the compensation amount awarded in the judgment and decree dated 10.04.2013 made in M.C.O.P.No.526 of 2012 on the file of Motor Accident Claims Tribunal/Special Sub Court, Coimbatore with interest and cost by allowing this Civil Miscellaneous Appeal.

2. The facts of the case in a nutshell:

On 19.04.2012 at about 1.00 P.M., the appellant was waiting for the traffic green signal with his started motor cycle bearing Reg.No.TN-38-AM-8313 at the junction of Palaghat Main Road and Sungam Bye-Pass road near Ukkadam bus stop in order to go to east. After getting the signal, the appellant carefully moved with his motor cycle towards east, at that same time, a lorry bearing Reg.No.TN-39-BD-4748 driven by the first respondent in a rash and negligent manner without noticing appellant's motor cycle and hit behind the appellant. In the result, the appellant was thrown away on the road and sustained grievous injuries. The appellant is a free lance driver and aged about 67 years; earns a sum of Rs.15,000/- per month. The appellant



underwent amputation and become bedridden and cannot do his day today activities without the help of others. Hence, the appellant filed the claim petition claiming a compensation of a sum of Rs.10,00,000/- before the Tribunal.

3. The learned counsel for the appellant submitted that the appellant was a driver and earning a sum of Rs.15,000/- per month and to substantiate the same, his Salary Certificate was marked as Ex.P.9. In the said accident, the appellant has sustained grievous injuries. Due to the same, his right leg was amputated below the knee and X-ray certificate was marked as Ex.P.12, which shows the disability as 60%. Moreover, the appellant was hospitalized for 35 days and the certified xerox copy of the discharge summaries were marked as Ex.P.2 and Ex.P.3.

4. The learned counsel for the appellant further submitted that the Tribunal has awarded only a sum of Rs.5,91,000/- towards compensation as against the claim of Rs.10,00,000/- and the same is unjust, unreasonable and improper. In support of his submission, the learned counsel has relied upon



the following decisions of the Hon'ble Apex Court and the same is reads as follows:

(i) In the case of ***K.Janardhan Vs. United India Insurance Co. Ltd. & Anr.*** reported in ***2008 (2) TN MAC 162 (SC)***, it was held that:

“4. Applying the said ratio of the cited judgment to the facts of the present case we are of the opinion that the appellant herein has also suffered a 100% disability and incapacity in earning his keep as a tanker driver as his right leg had been amputated from the knee. Additionally, a perusal of Sections 8 and 9 of the Motor Vehicles Act, 1988 would show that the appellant would now be disqualified from even getting a driving license.

5. We therefore allow this Appeal, set aside the judgment of the High Court and restore that of the Commissioner but with no order as to costs.”

(ii) In the case of ***S.Suresh Vs. Oriental Insurance Co. Ltd and another*** reported in ***2010 (1) TN MAC 253 (SC)***, the relevant paragraphs are read as under:

“7. The correctness of the impugned judgment is questioned mainly on the ground that the claimant being a lorry driver, the loss of his right leg ipso facto meant a “total disablement” as understood in terms of Section 2(1)(1) of the Act



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*and as such the compensation payable to the claimant had to be computed on that basis. In support of the plea, reliance is placed on a Four-Judge Bench decision of this Court in **Pratap Narain Singh Deo v. Srinivas Sabata & anr.**, 1976 (1) SCC 289. In that case, a carpenter had suffered amputation of his left arm from the elbow. This Court held that his amounted to a total disability as the injury was of such a nature that the claimant had been disabled from all work which he was capable of performing at the time of the accident. It was observed as under:*

“5. The expression “Total Disablement” has been defined in Section 2(1)(1) of the Act as follows:

(1) “total disablement” means such disablement whether of a temporary or permanent nature, as incapacitates workman for all work which he was capable of performing at the time of the accident resulting in such disablement.

It has not been disputed before us that the injury was of such a nature as to cause permanent disablement to the respondent, and the question for consideration is whether the disablement incapacitated the respondent for all wok which he was capable of performing at the time of the accident. The Commissioner has examined the question and recorded his finding as follows:

The injured workman in this case is carpenter by profession. By loss of the left hand above the elbow, he has evidently been rendered unfit for the work of carpenter as the work of carpentry cannot be done by one hand only. This is obviously a reasonable and correct finding.”

8. In our view, the ratio of the said judgment is squarely



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applicable to the facts at hand. We are of the opinion that on account of amputation of his right leg below knee, he is rendered unfit for the work of a driver, which he was performing at the time of the accident resulting in the said disablement. Therefore, he has lost 100% of his earning capacity as a lorry driver, more so, when he is disqualified from even getting a driving license under the Motor Vehicles Act.”

5. The learned counsel for the appellant further relied upon the Judgment of the Division Bench of this Court in the case of ***National Insurance Co.Ltd., Chennai & Others Vs. Jansi Rani & Others***, reported in ***CDJ 2019 MHC 5202***. For better appreciation, the relevant paragraphs are extracted hereunder:

“9. With regard to the quantum, it is an admitted case that the deceased was working as a driver and the only dispute is with regard to the quantum of monthly salary. According to the claimants, it is only Rs.21,000/- as proved by PW3 evidence, whereas, the Insurance Company would submit that Rs.21,000/- cannot be paid in cash though PW3 himself stated that the amount was paid in cash. The said contention of the Insurance Company is acceptable since no company would pay Rs.21,000/- in cash. Therefore, Rs.21,000/- fixed by the Tribunal is set aside.

10. As proved by Ex.P.7, the deceased was a driver. The date of the accident is 18.05.2013. It is very difficult to get a driver nowadays. In the year 2013 also, it would have been very



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*difficult to get a driver for less than Rs.15,000/- per month.
Therefore, Rs.15,000/- is taken as monthly income of the
deceased.”*

6. Per contra, learned counsel for the third respondent submitted that the appellant has to prove that the lorry bearing Reg.No.TN39-BD-4748 was insured with them at the time of accident, which occurred on 19.04.2012 and the appellant has to further prove that the vehicle and documents pertaining to both the vehicles are in order. He further submitted that the police has instituted a criminal case against the driver of the heavier vehicle and by this it cannot be inferred that he was at fault and it is the appellant who had been the tortfeasor and invited the accident.

7. Learned counsel for the third respondent further submitted that according to Ex.P.2, which was marked as certified xerox copy of discharge summary, the appellant was a chronic diabetics, heart and B.P. patient. The salary certificate which was marked as Ex.P.9 should not be taken into account for the reason that the appellant was not examined. Further, in the case of compensation, the income of the claimant is vital and the appellant did not produce any necessary documents. He further submitted that the



judgments which were relied by the learned counsel for the appellant is not applicable to this case.

8. Heard the learned counsel for the appellant as well as the third respondent and perused the materials available on record.

9. In this case, the appellant was examined as P.W.1 and F.I.R was marked as Ex.P.1. and other relevant documents were marked to prove that the accident was caused by the rash and negligent act of the first respondent. After analyzing those documents, the Tribunal has held that they are sufficient to hold that the first respondent's rash and negligent act is the cause for the accident. The contention of the third respondent is that the contributory negligence on the part of the appellant is also not proved and the same was rejected by the Tribunal. From the above, it is crystal clear and evident that it is the first respondent who drove the vehicle in a rash and negligent manner and committed the offence.



10. The appellant was examined himself as P.W.1 and P.W.2 /doctor has deposited about the nature of the injuries sustained. Ex.P.2 & P.3 are Discharge Summaries, Ex.P.5 is Lab report showing appellant's blood sugar level, Ex.P.10 are Photographs showing appellant's grievous injuries, Ex.P.11 is Disability Certificate and Ex.P.12 is X-ray. Further, the doctor who has examined the appellant finally arrived a permanent disability as 60% by relying upon the Wound Certificate and other relevant documents. On perusal of the Wound Certificate and other relevant documents, the Tribunal has held that the doctor who has given percentage of disability as 60% is correct.

11. In regard to the age of the appellant, there is no documents such as birth certificate, school certificate, mark sheet and other relevant documents to substantiate his age. In other documents submitted by the appellant, his age was mentioned as 67. Even in Discharge Summary and driving license, the age of the appellant is mentioned as 67. Hence, the Tribunal has decided the age of the appellant as 67 at the time of accident and applied the multiplier as 5.



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12. In regard to the salary, the appellant has produced the salary certificate and the same was marked as Ex.P.9, however, the person who issued the certificate was not examined. In the absence of such evidence by the employer or the person who issued the certificate, the appellant getting a salary of 15,000/- per month cannot be acceptable, however, the Tribunal has observed that in the place like Coimbatore, which is an industrial city and textile town and which is also called as “Manchester of South India”, a person who is in the age of 67 also can earn a sum of Rs.15,000/- as a monthly salary. Despite this observation, the Tribunal has come to a conclusion that the appellant has not produced the authenticated document and fixed a minimum salary of Rs.6,000/- as monthly income of the appellant i.e., Rs.200/- per day as the salary is unjust, improper and unsustainable.

13. Considering the above facts and circumstances and the ratio laid down by the Hon'ble Apex Court and Division Bench of this Court, the award of sum of Rs.2,16,000/- towards the compensation for partial and permanent disability and a sum of Rs.15,000/- towards pain and sufferings is



unreasonable and unacceptable to this Court. Therefore, the compensation awarded to the appellant under these two heads is interfered with by this Court for the reasons already stated supra. Thus, the total compensation awarded by the Tribunal is modified to Rs.7,50,000/- from Rs.5,91,000/-. The details of which are as follows:

<i>Head</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Compensation enhanced by this Court (Rs.)</i>
Compensation for partial permanent disability	2,16,000/- (6,000 x 12 x 5 x 60%)	3,60,000/- (10,000 x 12 x 5 x 60%)
Transport to Hospital	5,000/-	5,000/-
Extra Nourishment	10,000/-	10,000/-
Pain and Sufferings	15,000/-	30,000/-
Medical Bills	3,45,000/-	3,45,000/-
Total	5,91,000/-	7,50,000/-

14. In fine, this appeal is partly allowed. The third respondent/Insurance Company is directed to deposit the aforesaid modified compensation amount with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this Judgment to the credit of M.C.O.P.No.526 of 2012 on the file of Motor Accidents Claims Tribunal/Special Sub Court at Coimbatore. On such



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deposit being made, 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 by making necessary application before the Tribunal.

No costs.

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Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

J.SATHYA NARAYANA PRASAD,J.

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To:

1. The Motor Accidents Claims Tribunal,
Special Sub-Court,
Coimbatore.

2. The Section Officer,
VR Section,
Madras High Court.

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