



C.M.A.No.2668 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 12.06.2023	Delivered on: .07.2023
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CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2668 of 2014

J.Allen Mathew

... Appellant/Petitioner

Vs.

1.M.Syedumar

[R1 remained ex-parte before the Tribunal.

Hence, notice to R1 is dispensed with]

2.Royal Sundaram Alliance Insurance Co., Ltd.,
Sundaram Towers,
No.46, Whites Road,
Royapettah, Chennai – 14.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.01.2014 made in M.C.O.P.No.2243 of 2011 on the file of the Motor Accident Claims Tribunal, Special Sub Court-II, Chennai.

For Appellant : Mr.K.Varadhakamaraj
For Mr.V.Nithiyanandam

For R1 : Ex-parte before Tribunal

For R2 : Mr.N.Vijayaraghavan



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J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the claimant in M.C.O.P.No.2243 of 2011, for enhancement of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Judge-III, Chennai, dated 08.01.2014, wherein the Motor Accident Claims Tribunal has awarded a sum of Rs.4,35,000/- as compensation with interest at the rate of 7.5% per annum from the date of numbering of Claim Petition till the date of realization.

2.The parties are referred to hereunder according to status and ranking before the Trial Court.

3.According to the claimant, on 17.01.2011 at about 14.00 hrs, while the petitioner was riding his motorcycle bearing registration No.TN 07 BB 2900 at C.T.H.Road, from West to East direction, opposite to Kavarapalayam Pioneer broiler chicken shop at Chennai, a goods lorry bearing registration No.TN 23 AD 5297 came in a rash and negligent manner and dashed against the motorcycle and caused injuries to him.



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Hence, the petitioner filed the claim petition, claiming a sum of Rs.15,00,000/- as compensation.

4. The first respondent who is the owner of the goods lorry remained ex-parte before the Tribunal. The second respondent who is the insurer of the goods lorry filed counter affidavit and denied all the averments made by the claimant and contended that due to the negligent act of the driver of the motorcycle, the accident occurred and that the Insurance company is not liable to pay compensation. In any event, the quantum of compensation claimed by the claimant is highly excessive and prayed for dismissal of the Claim Petition.

5. Before the Tribunal, on the side of the claimant examined P.W.1 to P.W.4 and marked documents as Exs.P1 to P21 and on the side of the respondents, no witness was examined and no documents marked.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the goods lorry belonging to first



respondent and directed the second respondent-Insurance Company to pay a sum of Rs.4,35,000/- as compensation to the appellant on the following heads:

For 50% Permanent Disability at the rate of Rs.2,000/- per percent a sum of Rs.1,00,000/-; For Pain and Sufferings a sum of Rs.50,000/-; For Extra Nourishment a sum of Rs.10,000/-; For Attendant Charges a sum of Rs.10,000/-; For Transportation Charges a sum of Rs.10,000/-; For Medical Expenses a sum of Rs.1,75,000/-; For Loss of Income for a period of six months a sum of Rs.30,000/- and for Loss of Future Prospects a sum of Rs.50,000/- in all a total compensation was arrived at a sum of Rs.4,35,000/-

7. Aggrieved over the quantum fixed by the Tribunal, the appellant/claimant has filed this appeal seeking enhancement of compensation.

8. The learned counsel appearing for the appellant/claimant would submit that fixation of notional income and assessing the disability by the Tribunal is not sustainable since the claimant as a Plumber, he was earning Rs.10,000/- per month and the same has not been properly



appreciated by the Tribunal. Similarly, the disability assessed by the medical officer is 80% and the same has been reduced to 50% without assigning any reasons. The future prospects of the injured also not taken into account and the method adopted for the grant of compensation for the injury is to be revised by this Court. The grant of compensation under other heads also not inaccordance with the settled procedures adopted by the Courts.

9. The learned counsel appearing for the second respondent- Insurance Company has opposed and contended that the Tribunal has awarded just and fair compensation and prayed for dismissal of the appeal.

10. I have considered the contention of both sides and perused the entire materials placed on record.

11. Before the Tribunal, to prove the disability, the claimant has examined two medical officers viz., P.W.3-Dr.Thiruvengadam and P.W.4- Dr.K.J.Mathiazhagan has deposed that he is not a Doctor who treated the injured and based on the records Ex.P3-Discharge Summary, Ex.P7-X-ray, Ex.P9-MRI Cervical Spine Report, Ex.P21-Motor Nerve Studies Report, he



has opined as follows: “*Brachial Plexus injury C5 to C8 right, and assessed disability for wasting of right upper muscles, total loss of strength, sensory loss and muscle power*” and assessed the disability as 80%. This evidence and documents were considered by the Tribunal and held that there is no abnormalities found to prove that the claimant has sustained injury of C5 to C8. However, the Tribunal has accepted the disability to the claimant, assessed liability as 50%. But the Tribunal has not adopted multiplier method and instead of choosing to award Rs.2,000/- per percentage of injury and granted Rs.1,00,000/- as a future loss of earning capacity.

12. The Tribunal has not properly appreciated Ex.P21, Motor Nerve Studies Report. The Impression Report, reads that, “*Right Brachial plexus Lesion involving right Axillary and musculocutaneous nerves C5*”, which supports the evidence of the Doctor who assessed the disability. This brachial plexus injury, resulted in total loss of strength, sensory loss and muscle power on the right hand of the injured claimant herein. This has incoagulated him from doing any manual labour. This Brachial Plexus Lesion has occurred due to damage to nerves and this injuries could be diagnosed only by the detail study of Nerves. Based on the Discharge Summary, MRI



Scan, Digital 'X' ray report, Tribunal has held that “No significant abnormalities detected in Cervical Spine Region”, and no authenticated documentary evidence to prove the injury to C5 to C8. Medical records produced by the claimant shows that after he sustained injuries on 17.01.2011, he was undergone various procedures of treatments stage by stage and final procedure of treatment was given on 25.02.2012 as stated in Ex.P3. On 25.02.2012, Brachial Plexus Exploration was done. This shows that this injury sustained by him, more particularly, nerve injury i.e., Brachial Plexus Lesion was not cured even after one year. The injured was undergone continuous treatment and injuries sustained by him on the shoulder resulted in causing Brachial Plexus Injuries and the same has not been cured in spite of his better treatment. Exs.P3 and P21 supports the case of the claimant that he suffered permanent partial disability, it his right hand and the same has not been cured, which has also prevented him from doing regular manual work. Accordingly, the injury is taken to be functional permanent disability and I am of the view that fixing 30% disability for the same would be appropriate.



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13. In the case of ***Rajkumar vs Ajay kumar and another*** reported in ***2011 (1) SCC 343***, the Hon'ble Apex Court, it has been stated that before applying the disability factor for determination of compensation, the age, avocation i.e., of the claimant and circumstances of the case should be considered.

14. As observed above by the Hon'ble Apex Court, this Court is of the view that the appellant/claimant who is a manual laborer, who suffered the injuries which prevents him from doing any manual work, placed him from doing earlier avocation and this Court is of the view that, compensation has to be fixed by adopting multiplier method. Considering the date of accident, the notional income for the manual labour is fixed as Rs.6,000/- per month. The claimant is also entitled for future prospects as held by the Hon'ble Apex Court in ***Jagdish vs. Mohan and Others*** reported in ***(2018) 4 SCC 571*** and ***Erudhaya Priya vs. State Express Transport Corporation Ltd.***, reported in ***2020 INSC 466 SC Website*** and accordingly 40% is awarded as future prospects.



15. The claimant was undergone in-patient treatment as per

Discharge Summary-Ex.P2, from 17.01.2011 to 01.02.2011, he is admitted in the Government Hospital at Chennai. Ex.P3-Discharge Summary issued by the Life Med Hospital, Chennai shows that he once again treated as in-patient from 24.02.2012 to 27.02.2012. For loss of income during the treatment period, the Tribunal has awarded Rs.30,000/- and the same is confirmed. Loss of earning capacity is assessed as follows: Rs.3,88,800/- [6000 X 12 months X '18' X 30% disability].

16. 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.	Disability / Loss of earning capacity 30%	Rs.1,00,000/-	Rs.3,88,800/-	Enhanced
2.	Pain and Sufferings	Rs.50,000/-	Rs.50,000/-	Confirmed
3.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
4.	Attender Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
5.	Transportation Charges	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Medical Expenses	Rs.1,75,000/-	Rs.1,75,000/-	Confirmed



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S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
7.	Loss of Income for six months	Rs.30,000/-	Rs.30,000	Confirmed
8.	Loss of Future Prospects/ 40% of Rs.3,88,800/-	Rs.50,000/-	Rs.1,55,520/-	Enhanced
	Total	Rs.4,35,000/-	Rs.8,29,320/-	Enhanced by Rs.3,94,320/-

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,35,000/- is hereby enhanced to Rs.8,29,320/- [Rupees Eight Lakhs Twenty Nine Thousand Three Hundred and Twenty only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit. The second respondent-Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, 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.2243 of 2011 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge-II, Chennai. On such deposit, the appellant is



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permitted to withdraw the award amount now determined by this Court along with proportionate 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 necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

.07.2023

ssi

Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

To

1.The Special Sub Judge -III,
Motor Accident Claims Tribunal,
Chennai.

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



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K.RAJASEKAR,J.

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