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C.M.A.No.3703 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 3703 of 2019

V.Shanmugam

... Appellant

Vs.

1.S.Devi

2.Divisional Manager,

The New India Assurance Company Ltd.,

No.99/C-3, I Floor,

Opp.To New Bus Stand,

Perambalur.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the Award against the judgment and decree dated 17.10.2016 in M.C.O.P.No.03 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur.

For Appellants : Mr.S.Sankar
for Mr.C.Thangaraju

For Respondents : Insufficient Address – R1
Ms.Asalomi
for Mr.C.Ramesh Babu for R2



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J U D G M E N T

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The claimant is the appellant before this Court and the Award and decree passed in M.C.O.P.No.03 of 2015 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Perambalur, is under challenge in this present appeal.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The case of the claimant/appellant before the Tribunal was that on 07.09.2014 at about 9.30 a.m the claimant was riding his TVS XL Super bearing Registration No.TN-45-BZ-2831 on Kalpatti Chathram Road, from East to West direction. At that time, a Van bearing Registration No.TN-27-W-2338, belonging to the first respondent and insured with the second respondent came in the opposite direction i.e. from West to East, driven by its driver in a rash and negligent manner and dashed against the claimant. Due to the said impact the claimant sustained grievous injuries. The claimant took first aid treatment in Government Hospital, Dindigul and



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then he was admitted in the Government Rajaji Hospital, Madurai as inpatient from 07.09.2014 to 22.09.2014. Hence, he claimed a sum of Rs.15,00,000/- as compensation.

4. The first respondent, who is the owner of the offending van remained *ex-parte* before the Tribunal.

5. To substantiate the case on the side of the claimant, 2 witnesses were examined as P.W.1 and P.W.2 and 11 documents were marked as Ex.P1 to Ex.P11. On the side of the Insurance Company no oral evidence was adduced and no document was marked.

6. The Tribunal, after considering the oral and documentary evidence available on record, awarded a total compensation of Rs.3,34,300/- along with interest at 7.5% per annum from the date of claim petition till the date of payment. The break-up details of the amounts awarded by the Tribunal under various heads are as follows :

<i>S. No.</i>	<i>Heads under which the amount is awarded by the Tribunal</i>	<i>Amount awarded by the Tribunal in Rs.</i>
1.	Loss of Future Income for 50% disability	2,16,000
2.	Medical Expenses	38,300
3.	Extra Nourishment, Transportation	15,000



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S. No.	Heads under which the amount is awarded by the Tribunal	Amount awarded by the Tribunal in Rs.
	and Attendant Charges	
4.	Pain and Suffering	40,000
5.	Removal of plate in future	25,000
	Total	3,34,300

7. Not being satisfied with the quantum awarded by the Tribunal, the appeal has been filed by the claimant for enhancement of the compensation amount.

8. The learned counsel for the appellant/claimant submitted that the appellant, who is aged about 58 years was working as Mason and was earning a sum of Rs.30,000/- per month, at the time of accident. However, the Tribunal failed to appreciate the evidence of the appellant/P.W.1 and fixed his Notional Income at Rs.6,000/- per month, which is below the wages index. He further submitted that though the Doctor/P.W.2 had examined the claimant and fixed the permanent disability at 52%, the Tribunal without assigning any valid reason, had taken the permanent disability of the claimant at 50%. The age of the injured at the time of the accident was 58 years and as per the decision of the Apex Court in force, the proper multiplier is "9", however, the Tribunal applied multiplier "8" and



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awarded a meagre amount under the head "Loss of Future Income". He further submitted that the amounts awarded by the Tribunal under the other heads are very low, which needs interference by this Court.

9. The learned counsel for the second respondent/Insurance Company submitted that the claimant has stated he was admitted in the Government Rajaji Hospital, Madurai for 15 days as inpatient and a surgery was performed in his right hand and a plate was fixed and he has spent a huge amount for his disablement, but he has not produced any documentary evidence to prove the same. She further submitted that the claimant has not produced any documentary evidence to prove his avocation and income. In the absence of the same, the Tribunal ought not to have applied multiplier method, however, the Tribunal erroneously adopted the multiplier method and arrived loss of future earning. The amounts awarded by the Tribunal under the other heads are very high, which resulted in awarding exorbitant



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sum of Rs.3,34,300/- as compensation and, hence the same needs proper reduction.

10. Heard the learned counsel for the appellant and the learned counsel for the second respondent and also perused the materials.

11. The manner of the accident is not in dispute and the liability is also not in dispute. The point for consideration is as to whether the impugned Award passed by the Tribunal reflects the 'just and fair compensation'.

12. This Court as an Appellate Court re-appreciated the entire materials and finds that except the evidence of P.W.1/claimant, absolutely no documentary evidence was produced before the Tribunal to prove that the claimant was working as Mason and earning a sum of Rs.30,000/- per month. In the absence of any documentary evidence, the Tribunal has rightly fixed the notional income of the deceased at Rs.6,000/- per month. The Tribunal deducted 1/4th amount towards personal expenses, since this is a case of injury and the claimant is injured and hence, deduction of personal



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expenses would not lie.

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13. As far as the disability is concerned, the Tribunal had taken the permanent disability of the claimant at 50% and applied multiplier method. On a combined reading of the medical records and the evidence of P.W.2/Doctor, this Court finds that the claimant sustained multiple fracture in his right hand and a plate was fixed and also he sustained injuries all over the body, therefore, the fixation of the disability at 50% and applying multiplier method by the Tribunal cannot be said to be improper. The age of the injured is 58 years at the time of the accident and as per the decision of the Apex Court in force, the proper multiplier is "9", however, the Tribunal had wrongly applied multiplier "8". Thus, this Court is applying multiplier "9" and re-calculated the "Future loss of income"

Notional Income : Rs.6,000/-

Annual Income (6,000x12) : Rs.72,000/-

Multiplier "9"
(72,000 x 9) : Rs.6,48,000/-

50% disability : Rs.3,24,000/-
[6,48,000 x 50%]

14. Thus, the sum of Rs.2,16,000/- awarded by the Tribunal



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under the head of "Future loss of income" is hereby enhanced to Rs.3,24,000/-. Except, this modification, this Court finds that the amount awarded by the Tribunal under the other heads are "just and fair" and hence, they are confirmed. Accordingly, the modified compensation is as follows:

<i>S. No.</i>	<i>Compensation awarded under the heads</i>	<i>Amounts awarded by the Tribunal in Rs.</i>	<i>Amounts awarded by this Court in Rs.</i>
1.	Future Loss of Income for 50% disability	2,16,000	3,24,000
2.	Medical Expenses	38,300	38,300
3.	Extra Nourishment, Transportation and Attendant Charges	15,000	15,000
4.	Pain and Sufferings	40,000	40,000
5.	Removal of Plate in future	25,000	25,000
	Total	3,34,300	4,42,300

15. Thus, the total sum of **Rs.3,34,300/-** awarded by the Tribunal towards compensation is hereby enhanced to **Rs.4,42,300/-**, which shall carry interest at 7.5% from the date of claim petition till the date of payment. The claimant shall pay necessary Court fee, on the enhanced compensation. The second respondent / Insurance Company is directed to



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deposit the total compensation now awarded by this Court, before the Tribunal together with interest and costs, after adjusting the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant is permitted to withdraw the award amount, less the amount, if any already withdrawn.

16. In the light of the above modification, this Civil Miscellaneous Appeal is partly allowed and the impugned Award and decree passed by the Tribunal in M.C.O.P.No.03 of 2015, is hereby set aside. There shall be no order as to costs.

19.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To
1.The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Perambalur.

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



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P.VELMURUGAN, J.

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