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CMA.No.2318 C



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :21.06.2023

Judgment Pronounced on : **17.07.2023**

CORAM :

THE HON'BLE MRS.JUSTICE J.NISHA BANU

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

C.M.A.No.2318 of 2022

S.Sahul Hameed

.. Appellant

Versus

1.M/s.Gemini Sea Air Freight Services,
New No.235, Old No.112,
AngappaNaicken Street, 2nd Floor,
Chennai-600 001.

2.United India Insurance Co. Ltd.,
Third Party Claim Office,
134, Silingi Building, IV Floor,
Greens Road, Chennai-6.

.. Respondents

Prayer: Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Motor Accidents Claims Tribunal Special Sub Court No.1, Small Causes Court, Chennai and made in MCOP.No.9198/2015 dated 19.01.2021 praying to set aside the same.

For Appellant:Mrs.P.T.Saleem Fathima

For Respondents :Mr.J.MichaelVisuvasam, for R2

R1 - Vacated



JUDGMENT

D.BHARATHA CHAKRAVARHY, J.

This Civil Miscellaneous Appeal is filed by the injured claimant aggrieved by the quantum of compensation awarded by the Motor Accidents Claims Tribunal, Special Sub Court No.1, Small Causes Court, Chennai dated 19.01.2021 in MCOP.No.9198 of 2015 awarding a sum of Rs.33,24,250/- as against the total claim of Rs.1,00,00,000/-.

2. The brief factual background of the case is that in the year 2015, the claimant was 28 years. He was working as Accountant in one Tharika Trading Corporation, Chennai. While so, on 21.11.2015, at about 23.00 hrs, when he was riding a motor cycle bearing registration No.TN 02 AW 5810 at CTH Road near Padi Sairam motor showroom from north to south, a lorry bearing registration No.TN 04 AE 0019 belonging to the 1strespondent was driven in an excessive speed and rash and negligent manner, hit the petitioner's vehicle and caused grievous injuries to the petitioner. As a result of the same, the petitioner was hospitalized for two periods from 21.11.2015 to 20.12.2015 and 03.08.2016 to 06.08.2016 and underwent surgeries. On account of the accident, the appellant's spinal cord disks are crumbled, both shoulder bones were fractured, right ear torn, there was a blood clot in the lungs and due to this spinal cord disk injury, he



sustained paraplegia, losing the sensation in whole of the lower body. Upon being referred to the medical board, he was assessed of 100 % permanent disability. In the said background, the above compensation was awarded, aggrieved by which, the claimant is on appeal before this Court.

3. Mrs. P.T.Saleem Fathima, learned counsel appearing on behalf of the appellant, more specifically by relying upon the latest judgment of the Hon'ble Supreme Court of India *Divya Vs. National Insurance Co. Ltd (2023 (1) TN MAC 30 (SC))* would contend that the Tribunal did not award proper compensation in respect of any of the claim including the loss of hearing, attender charges, compensation for pain and sufferings, transport charges, marital prospects etc.

4. Mr. J.Michael Visuvasam, learned counsel appearing on behalf of the respondent insurance company would submit that the Tribunal has awarded the entire medical expenses of Rs.11,10,721/- and has also awarded compensation under the heads of loss of future expenses, attender charges, extra nourishment, pain and sufferings and the pecuniary losses and awarded a fair compensation and would pray that the same does not require any enhancement. He also relied upon the judgments of the Hon'ble Supreme Court of India in *Halappa Vs. Malik Sab*



(2018 (1) TN MAC 281 (SC)) and *Rupa Roy Vs. New India Assurance Co. Ltd.*

& Another (2019 (2) TN MAC 289 (SC)).

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5. We have considered the rival submissions made on either side and perused the materials on record.

6. At the outset, we find that the compensation awarded by the Tribunal is on the lower side with reference to all the heads and therefore, we proceed to calculate the compensation as follows :

(i) Pecuniary loss: In case of permanent disability, there is no quarrel over the compensation that multiplier method has to be applied. In this case, the claimant has claimed a monthly income of Rs.15,000/-. Even though the same was disbelieved for the fact that no further proof by examining the employer was let in, still, this Court in CMA.No.576 of 2022 has held that the notional income during the relevant period i.e., during the year 2015 shall be taken as Rs.15,000/- and not as Rs.9,000/- as taken by the Tribunal. The claimant was self-employed and was aged 28 years and therefore, 40% future prospects have to be granted as per paragraph 59.4 of *National Insurance Company Limited Vs. Pranay Sethi and Ors*((2017) 16 SCC 680). Therefore,

$$\begin{aligned}\text{Monthly Income} &= \text{Rs.15,000/-} + \text{Rs.6,000/-} \\ &= \text{Rs.21,000/-}\end{aligned}$$



$$\begin{aligned}\text{Pecuniary Loss} &= \text{Rs.}21,000/- \times 12 \times 18 \\ &= \text{Rs.}45,36,000/-\end{aligned}$$

The pecuniary loss would be Rs.45,36,000/-.

(ii) As far as the pain and sufferings are concerned, it must be seen that the claimant is bed ridden throughout the rest of his life. He has undergone surgeries and therefore, the pain and sufferings is maximum. In *Divya's* case cited supra, more specifically at paragraph 10.1.4 under the heading pain and sufferings and loss of amenities, the Hon'ble Supreme Court of India had held that, where the permanent disability is more than 90%, Rs.3,00,000/- each towards pain and sufferings and loss of amenities has to be granted. Therefore, petitioner claimant would be entitled for Rs.6,00,000/- on that score.

(iii) Towards marital prospects and marital life, a sum of Rs.3,00,000/- has to be granted and accordingly, the petitioner would be entitled for the same.

(iv) As far as attender charges is concerned, once the petitioner is bed ridden, the Hon'ble Supreme Court of India in the above said judgment in paragraph 10(1) has held that the same has to be calculated adopting the multiplier method. In this case, if multiplier method is adopted and is calculated at the rate of Rs.4,000/- per month, the attender charges would amount to as follows,

$$\begin{aligned}\text{Attender charges} &= \text{Rs.}4,000 \times 12 \times 18 \\ &= \text{Rs.}8,64,000/-\end{aligned}$$



Therefore, the total compensation would be as follows,

PARTICULARS	AMOUNT
1.Pecuniary Loss	Rs.45,36,000/-
2.Pain and Sufferings and Loss of Amenities	Rs.6,00,000/-
3.Transportation	Rs.5,000/-
4.Medical Expenses	Rs.11,10,721/-
5.Extra Nourishment	Rs.20,000/-
6.Attender Charges	Rs.8,64,000/-
0Total	Rs.71,35,721/-

7. The Trial Court has awarded a sum of Rs.33,24,250/- only. Even though the appeal has been filed, the claimant has specifically restricted the claim to an additional sum of Rs.25,00,000/-. Therefore, the total compensation payable in this case shall be Rs.33,24,250/- + Rs.25,00,000/- =.

8. In the result, (i) CMA.No.2318 of 2022 is allowed as prayed for ;

(ii) The respondents are directed to pay to the appellant a total compensation of Rs.58,24,250/- with interest at the rate of 7.5% from the date of petition till date of realization;

(iii) The 2nd respondent is directed to deposit the entire compensation, after deducting the sum,if any, already deposited, within a period of six weeks from the date of receipt of a copy of this order;

(iv) Upon such deposit, the appellant/claimant would be entitled to withdraw the entire sum;



(v) The appellant/claimant will be entitled to the proportionate costs in this Appeal as well as in the Original Petition;

(vi) The connected miscellaneous petitions are closed. No costs.

(J.N.B., J.)

(D.B.C., J.)

17.07.2023

Index : yes/no

Speaking/Non-speaking order

Neutral Citation : yes/no

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To

The Motor Accidents Claims Tribunal
Special Sub Court No.1,
Small Causes Court, Chennai.



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CMA.No.2318 C



**J.NISHA BANU, J.
AND
D.BHARATHA CHAKRAVARTHY, J.**

mpl

Pre-Delivery Judgment in

C.M.A.No.2318 of 2022

17.07.2023