



C.M.A.No.1827 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE R.KALAIMATHI

C.M.A.No.1827 of 2020

Manimaran

.. Appellant

Vs.

1.Karthikeyan

2.The Manager,
The New India Assurance Company Ltd.,
Pondicherry, D.O.(711000),
30, Jawaharlal Nehru Street, 2nd floor,
Pondicherry – 605 001.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 19.11.2019 made in M.C.O.P.No.66 of 2017 (M.C.O.P.No.11 of 2017 on the file of the Principal District Court, Ariyalur) on the file of the Motor Accidents Claims Tribunal, Sub Court, Jayankondam.

For Appellant : Mr.P.ParthiKannan
for Mr.S.Kaithamalai Kumaran

For R1 : No appearance

For R2 : Mr.J.Chandran



J U D G M E N T

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Seeking enhancement of compensation granted by the Tribunal in the award dated 19.11.2019 made in M.C.O.P.No.66 of 2017 (M.C.O.P.No.11 of 2017 on the file of the Principal District Court, Ariyalur) on the file of the Motor Accidents Claims Tribunal, Sub Court, Jayankondam, the claimant has filed this Civil Miscellaneous Appeal.

2.The claim petition was filed under Sections 140 & 166 of the Motor Vehicles Act, claiming compensation of Rs.20,00,000/- for the injuries sustained by him in the road accident that occurred on 09.08.2016.

3.According to claimant, on 09.08.2016 at about 08.30 P.M., while he was riding the Hero Honda motorcycle bearing Registration No.TN 46 D 5595 on the extreme left side of Trichy – Chidambaram Main Road near one Mason Shankar's house at Nachiyarpettai, the rider of the Bajaj CD 100 motorcycle bearing Registration No.TN 61 J 3079, came from the opposite direction in a rash and negligent manner, dashed on his motorcycle and caused the accident. In the said impact, the appellant and the pillion rider of



the appellant's motorcycle were thrown out from the motorcycle and sustained injuries.

4.The Tribunal after hearing both side arguments and upon perusal of oral and documentary evidence, has awarded compensation for a sum of Rs.5,87,745/- and directed the 2nd respondent – Insurance Company to pay the compensation amount to the appellant at the first instance and thereafter recover the same from the 1st respondent.

5.The learned counsel appearing for the appellant vehemently contend that the Tribunal granted only a meagre amount for 37% disability at Rs.3,000/- per percentage of disability. The compensation awarded by the Tribunal for pain and sufferings and extra nourishment are on the lower side. The Tribunal ought to have adopted multiplier method for granting compensation for 37% disability as the appellant suffered 37% permanent disability and prayed for enhancement of compensation.

6.Per contra, the learned counsel for the 2nd respondent – Insurance Company would contend that the Tribunal has awarded a sum of Rs.3,000/-

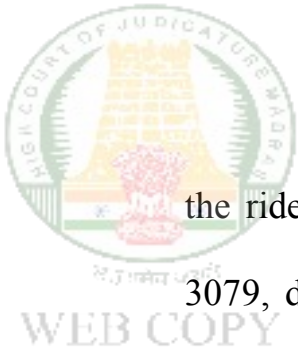


per percentage of disability for 37% disability and the same is not on the lower side. The amounts awarded by the Tribunal towards pain and sufferings and extra nourishment are not meagre and they need no enhancement. The appellant has not proved that he suffered functional disability and hence, he is not entitled to compensation by adopting multiplier method. The total compensation awarded by the Tribunal is reasonable and prayed for dismissal of the appeal.

7.Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him, either in person or through counsel.

8.Heard the learned counsel for the appellant and the learned counsel for 2nd respondent and perused the entire materials on record.

9.From the above materials, it is seen that on 09.08.2016 at about 08.30 P.M., while the appellant was riding the Hero Honda motorcycle bearing Registration No.TN 46 D 5595 on the extreme left side of Trichy – Chidambaram Main Road near one Mason Shankar's house at Nachiyarpettai,



the rider of the Bajaj CD 100 motorcycle bearing Registration No.TN 61 J 3079, drove the motorcycle, came from the opposite direction in a rash and negligent manner, dashed on the motorcycle driven by the appellant and caused the accident is not in dispute.

10.It is seen from the materials on record, that in the accident, the appellant suffered fracture over head and face and undergone surgery. P.W.2/Doctor after examining the appellant, has certified that the appellant suffered 37% disability and issued Ex.P23 / disability certificate to that effect. Further, P.W.2 / Doctor in his cross examination has deposed that the disability suffered by the appellant will get reduced if he takes proper medicine and he would be able to do his work with some difficulties.

11.The Tribunal considering the nature of injuries, disability and evidence of P.W.2/Doctor, awarded a sum of Rs.1,11,000/- for 37% disability at the rate of Rs.3,000/- per percentage of disability. Further, it is the case of the appellant that the Tribunal ought to have adopted multiplier method for granting compensation for 37% permanent disability. For application of multiplier method in injury cases, the relevant judgments are as follows:



12. In *Rajkumar Vs. Ajaykumar* reported in [2011 (1) SCC 343], wherein the Hon'ble Apex Court has held that disability refers to any restriction or lack of ability to perform an activity in the manner considered normal for a human-being. Permanent disability refers to the residuary incapacity or loss of use of some part of the body, found existing at the end of the period of treatment and recuperation, after achieving the maximum bodily improvement or recovery which is likely to remain for the remainder life of the injured. Temporary disability refers to the incapacity or loss of use of some part of the body on account of the injury, which will cease to exist at the end of the period of treatment and recuperation. Permanent disability can be either partial or total. Partial permanent disability refers to a person's inability to perform all the duties and bodily functions that he could perform before the accident, though he is able to perform some of them and is still able to engage in some gainful activity. Total permanent disability refers to a person's inability to perform any avocation or employment related activities as a result of the accident. The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995



(Disabilities Act' for short). But if any of the disabilities enumerated in section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.

13.In **Civil Appeal No.7223 of 2010, [Yadava Kumar Vs. The Divisional Manager, National Ins. Co. Ltd., and another]**, wherein the Hon'ble Apex Court held that in this case, the appellant has sustained a fracture of distal end of left radius with fracture of left ulnar styloid process and fracture distal end of right radius with mild diastosis and soft tissues swelling around wrist joint. The doctor has assessed the disability at 33% in respect of the right upper limb and 21% towards left upper limb and 20% in respect of the whole body, which prevents the appellant from painting in view of multiple injuries sustained by him.

13(i).The Hon'ble High Court while granting compensation refused to award any amount towards loss of future earning. Though that point was specifically urged before the Hon'ble High Court, the Hon'ble High Court refused any compensation towards loss of future earning by, inter alia,



holding that: "We are of the view that, the said submission has no force for the reason that, the appellant has not produced an iota of document to substantiate his stand."

13(ii).While assessing compensation in accident cases, the High Court or the Tribunal must take a reasonably compassionate view of things. It cannot be disputed that the appellant being a painter has to earn his livelihood by virtue of physical work. The nature of injuries which he admittedly suffered, and about which the evidence of PW-2 is quite adequate, amply demonstrates that carrying those injuries he is bound to suffer loss of earning capacity as a painter and consequential loss of income is the natural outcome.

13(iii).It goes without saying that in matters of determination of compensation both the Tribunal and the Court are statutorily charged with a responsibility of fixing a 'just compensation'. It is obviously true that determination of a just compensation cannot be equated to a bonanza. At the same time the concept of 'just compensation' obviously suggests application of fair and equitable principles and a reasonable approach on the part of the Tribunals and Courts. This reasonableness on the part of the Tribunal and



Court must be on a large peripheral field. Both the Courts and Tribunals in the matter of this exercise should be guided by principles of good conscience so that the ultimate result become just and equitable.

14.From a perusal of the observations of the Hon'ble Apex Court, if a person suffers from permanent disability either partial or total, after the period of treatment and recuperation and if it affects his performance in attending his duties and bodily functions, depending upon the age, work or avocation and the impact and effect of the disability, etc., the Tribunal / Court is justified in invoking multiplier method while calculating compensation.

15.This Court is also conscious of the fact that the object of the Act is ordering of just compensation. In the course of said exercise, the compensation should neither be bonanza nor should it be pittance (or) modicum.

16.Considering the nature of injuries sustained by the appellant, evidence of P.W.2/Doctor and nature of work done by him, this Court is of the considered opinion that multiplier method need not be invoked.



17.The accident had taken place in the year 2016. The appellant claims that a sum of Rs.3,000/- awarded by the Tribunal per percentage of disability is on the lower side. This Court in the judgment reported in **2020 (1) TN MAC 617 [M. Chinnathambi Vs. S.Deepa and another]**, fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident is of the year 2016. In view of the same, considering the nature of injuries and fractures suffered by the appellant, a sum of Rs.5,000/- is awarded per percentage of disability. Thus, the compensation awarded by the Tribunal towards disability is modified to Rs.1,85,000/- (Rs.5,000/- X 37% disability).

18.Considering the period of treatment and nature of injuries sustained by the appellant, towards pain and sufferings and extra nourishment, amount of compensation is enhanced to Rs.30,000/- and Rs.25,000/- respectively.

19.The Tribunal, in addition to awarding compensation towards loss of income for three months, also awarded compensation for mental agony and



loss of earning capacity and the same is not proper. Hence, the compensation towards mental agony and loss of earning capacity is hereby set aside.

20.In other aspects, the amounts awarded by the Tribunal appears to be reasonable and hence, the same needs no interference. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,11,000/-	1,85,000/-	Enhanced
2.	Medical bills	3,26,445/-	3,26,445/-	Confirmed
3.	Medical bills	26,300/-	26,300/-	Confirmed
4.	Loss of income	54,000/-	54,000/-	Confirmed
5.	Pain and sufferings	20,000/-	30,000/-	Enhanced
6.	Extra nourishment	20,000/-	25,000/-	Enhanced
7.	Mental agony and loss of earning capacity	20,000/-	-	Set aside
8.	Attendant charges	10,000/-	10,000/-	Confirmed
	Total	Rs.5,87,745/-	Rs.6,56,745/-	Enhanced by Rs.69,000/-

21.In the result,

21(i).This Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,87,745/- is hereby enhanced to Rs.6,56,745/- together with interest at the rate of 7.5% per annum from the



date of petition till the date of deposit.

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21(ii).The 2nd 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 eight weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.66 of 2017 on the file of the Motor Accidents Claims Tribunal, Sub Court, Jayankondam, at the first instance and recover the same from the 1st respondent.

21(iii).On such deposit, the appellant / claimant 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 filing necessary cheque application before the Tribunal. No costs.

22.06.2023

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Index : Yes
Internet : Yes / No
Neutral Citation : Yes / No

R.KALAIMATHI, J.



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To

- 1.The Subordinate Judge,
Motor Accidents Claims Tribunal,
Jayankondam.
- 2.The Section Officer,
VR Section,
High Court,
Madras.

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