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C.M.A.No.1819 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

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**THE HON'BLE MRS. JUSTICE J.NISHA BANU
AND
THE HON'BLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY**

Civil Miscellaneous Appeal No.1819 of 2022

Sathyaraj
S/o Viswanathan

... Appellant

Vs.

1.Natarajan
S/o Anbazhagan

2.The Branch Manager
New India Assurance Company Ltd.,
Kumbakonam Branch 731 101.
No.83, T.S.R. Big Street
Kumbakonam Town, Kumbakonam Tk
Tanjavur Dt.,
Pin 612 001.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, against the Judgment and Award dated 19.03.2020 made in M.C.O.P. No.137 of 2017 on the file of the Motor Accident Claim Tribunal (CJM), Ariyalur.

For Appellant : Mr.S.Kaithamalai Kumaran
For Respondents : Mr.R.Rajesh
for Mr.P.Sankaranarayanan for R2



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J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award of the Motor Accident Claims Tribunal at Ariyalur, dated 19.03.2020 in M.C.O.P.No.137 of 2017, in and by which, the Tribunal has awarded a sum of Rs.8,23,265/-, with further interest at 7.5% p.a., towards the claim made by the appellant/claimant, for the injuries sustained by him in the road accident.

2.The appellant/claimant made a total claim of Rs.40 lakhs stating that he was aged 27 years as of the year 2015 and was working as Driver in a Lorry and he was having a Heavy Vehicle Driving Licence and also earning a sum of Rs.30,000/- per month. While so, on 17.12.2015 when the appellant/claimant was travelling as a pillion rider in a motor cycle, bearing Registration No.TN 61 E 8408, at about 1.30 pm., the insured two wheeler having ridden in a rash and negligent manner from the opposite direction, hit against the vehicle of the appellant/claimant and due to which he sustained grievous injuries, resulting to the amputation of the right foot of the appellant/claimant and hence he preferred the claim petition.



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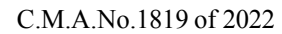
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3.Before the Tribunal, the claim petition was resisted by the 2nd respondent/Insurance Company.

4.During the course of trial, the claimant examined himself as P.W.1 and marked exhibits Ex.P.1 to 42. During the trial, the claimant was referred to Medical Board and his disability was assessed as 65% by the Medical Board, which is marked as Ex.C.1. Even though the permanent disability of the claimant was assessed by the Medical Board as 65%, the Tribunal without adopting the multiplier method, adopted the percentage method and granted disability compensation of Rs.3,25,000/- and after awarding another sum of Rs.3,52,735/- for medical expenses, a total sum of Rs.1,45,500/- was awarded by the Tribunal, under the head 'Transportation charges'.

5.Aggrieved by the quantum, the appellant/claimant is before this Court.

6.The learned counsel appearing for the appellant/claimant by filing a calculation sheet would submit that the claimant was aged only



7. Resisting the said submissions, the learned counsel appearing on behalf of the 2nd respondent/Insurance Company would submit that firstly, though the multiplier method could have been adopted, still in this case, the appellant/claimant had not proved his income by examining any employer. Therefore, only notional income of the appellant/claimant can be taken and with regard to the 65 % of the disability as assessed by the Medical Board, as he is able to function in some other work, even in the multiplier method, disability of the appellant/claimant can be assessed as 65 %.

8. We have considered the rival submissions made on either side.

9. Firstly, the subject is no longer *res integra*. The Hon'ble Supreme Court in the Judgment of ***Sarala Varma and others vs. Delhi Transport***



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*Corporation and another*¹, has categorically held that in cases of these nature, where the injured claimant suffers from permanent disability, only the multiplier method can be adopted and not the percentage method. Therefore, the award of the Tribunal needs interference.

10.Now, coming to the multiplier method, it is seen that the appellant/claimant marked his Driving Licence – Ex.P.39, which shows that he is having the licence to drive the heavy vehicles, thus, it can be concluded that the appellant/claimant was a Driver. No contra evidence has also been let in on behalf of the 2nd respondent/Insurance Company.

11.In that view of the matter, when it is proved that the appellant/claimant is the holder of the Heavy Vehicle Driving Licence and when the nature of injury is amputation of one foot, it comes without saying that even though the over all permanent disability is only 65 %, taking into consideration of the fact that the the appellant no longer be able to drive the vehicle, functional disability can be fixed as 100%. Therefore, we take the permanent disability at 100%. Though, no proof of income has been furnished, we extend the provision laid down in the

¹ (2009) 6 SCC 121



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case of *National Insurance Co., Ltd., Vs. Pranay Sethi and others.*,²

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and that the notional income can be taken for the relevant period a sum of Rs.15,000/-, as he is employed as per paragraph No.56.4 of the *Pranay Sethi's* case. Further, an addition of 40% can be granted as future prospectus and which comes to Rs.15,000/- + (15000 x 40 %) x 100 % x 17 x 12 = Rs.42,84,000/-

12.We are also inclined to allow the following other expenses:

Medical allowances	:	Rs.3,52,735/-
Attendant charges	:	Rs.15,000/-
Pain and suffering	:	Rs.1,00,000/-
Total	:	Rs.47,51,735/-

13.Since the claim is made for a sum of Rs.40,00,000/- before the Tribunal as well as before this Court, we restrict the total compensation to Rs.40,00,000/-.

14.This Civil Miscellaneous Appeal is partly allowed with the

² 2017 (16) SCC 680



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following directions:-

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(i) The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court, along with interest at 7.5% p.a., 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.

(ii) On such deposit, the appellant is permitted to withdraw entire award amount, along with interest and costs, less the amount already withdrawn, if any, by making necessary applications before the Tribunal.

(iii) No costs.

(J.N.B,J.)

(D.B.C,

J.)

Index : Yes / No

26.06.2023

Internet : Yes / No

Speaking order/Non-speaking order

Neutral citation : Yes / No

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To

The Section Officer

V.R.Section

High Court of Madras.

J. NISHA BANU, J.

and



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D.BHARATHA CHAKRAVARTHY,J.

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