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C.M.A Nos.926 & 927 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. Nos.926 & 927 of 2022

Parasuraman

... Appellant in C.M.A.
No.926 of 2022

Elumalai

... Appellant in C.M.A.
No.927 of 2022

Vs.

1.The Precision Profile India
No.2/293, Dr.R.Avenue
Audco Nagar Back side
Kattupakkam
Sriperumpudur
Tamil Nadu - 600 056

2.The Divisional Manager
HDFC Ergo General Insurance Company Limited
New No.528, Old No.559,
Annasalai, Teynampet
(Opposite A.G. Office)
Chennai

... Respondents in both
C.M.As.



C.M.A Nos.926 & 927 of 2022

Prayer : Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, 1988 against the common judgment and decree dated 30.09.2019 made in M.C.O.P. Nos.681 & 787 of 2017 on the file of Motor Accident Claims Tribunal and Special Court, Thiruvannamalai.

For Appellant in : Ms.M.Malar
both CMAs

For Respondents in : Mr.N.Somasundar for R2
both CMAs No Appearance for R1

COMMON JUDGMENT

These twin appeals are preferred by the rider and the pillion rider of a motorcycle who had suffered injuries to their person in an accident that had taken place on 01.03.2017, when the motorcycle in which they were riding was knocked down by an Innova car bearing Registration No.TN-20 CY-7722. Seeking compensation, the rider of the motorcycle laid M.C.O.P. No.681 of 2017, while the pillion rider had filed M.C.O.P. No.787 of 2017. Both the cases came to be enquired jointly by the tribunal and vide its common order dated 30.09.2019, the Tribunal had awarded Rs.5,87,688/- for the rider of the motorcycle and Rs.2,21,146/- for the pillion rider. Aggrieved by the perceived



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inadequacy of compensation, these victims are now before the court.

C.M.A. No.926 of 2022 :

2. This appeal is preferred by the rider of the motorcycle in question and arises out of M.C.O.P. No.681 of 2017. In the accident, the claimant was found to have suffered 40% permanent disability vide Ext.C1 - certificate of the Medical Board. His injuries were surgically corrected in a Government Hospital and the victim was an in-patient for 23 days in two spells. The Tribunal has awarded compensation for permanent disability at Rs.3,000/- for every percentage of disability. After providing for other conventional heads, the Tribunal has passed an award for Rs.5,87,688/-. The break-up is as below:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Compensation awarded by the Tribunal</i>
1	Permanent Disability	Rs.1,20,000/-
2	Pain and suffering	Rs. 40,000/-
3	Loss of amenities	Rs. 25,000/-
4	Nourishment and loss of articles	Rs. 25,000/-
5	Attender charges	Rs. 20,000/-
6	Medical Expenses	Rs.3,18,688/-
7	Loss of Income (4 months)	Rs. 24,000/-
8	Transportation Expenses	Rs. 15,000/-
	Total	Rs.5,87,688/-



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This is now under challenge.

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3. When the matter came up before this court on an earlier occasion, the learned counsel for the claimant/appellant informed the court that the victim was an agricultural labourer and had suffered foot drop of the right foot and as such he will not be even able to stand and work with requisite balance. She submitted that the approach of the tribunal is far too unrealistic, given the nature of disability the appellant has suffered. This court, therefore, directed the appellant to appear before the Medical Board yet again and to require the Medical Board to ascertain the functions which the appellant can perform and cannot perform with ease. Accordingly, the claimant had appeared before the Medical Board, pursuant to which the latter had made available the disability certificate dated Nil. This certificate is now taken on record and admitted in evidence as Ext.C3. The Medical Board has noted:

<i>"1 Standing on both legs</i>	<i>- able to do</i>
<i>2 Standing on affected leg</i>	<i>- not able to do</i>
<i>3 Walking on plain surface</i>	<i>- able to do</i>
<i>4 Walking on slope</i>	<i>- able to do with difficulty</i>
<i>5 Climbing stairs</i>	<i>- able to do with difficulty</i>
<i>6 Taking turns</i>	<i>- able to do</i>
<i>7 Squatting on floor</i>	<i>- able to do with difficulty</i>
<i>8 Kneeling</i>	<i>- able to do with difficulty</i>



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9 Sitting cross leg - able to do"

4. Heard both sides and perused the materials available on record. Given the fact that the appellant is an agricultural labourer and given the fact that he has a foot drop, it is imperative that his disability is to be treated as functional disability. Accordingly, this court reckons his functional disability at 25%. Reckoning his monthly income notionally at Rs.8,000/- and given the fact that he is 40 years old at the relevant time, this court adds another 25% towards his future prospects of increase in income, applies 15 as the multiplier and reduces the same arrived at to 25% and determines the compensation payable under the head functional disability at Rs.4,50,000/-. This court also suitably modifies other conventional heads of compensation at appropriate rates and it is shown below:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Compensation modified/awarded by this Court</i>
1	Permanent Disability	Rs.4,50,000/-
2	Pain and suffering	Rs. 40,000/-
3	Loss of amenities	Rs.1,25,000/-
4	Extra nourishment	Rs. 25,000/-
5	Attender charges	Rs. 25,000/-
6	Medical Expenses	Rs.3,18,688/-
7	Transportation Expenses	Rs. 15,000/-
	Total	Rs.9,98,688/-



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5. This appeal arises out of an award passed in M.C.O.P. No.787 of 2017 on the file of the Motor Accident Claims Tribunal and Special Court, Thiruvannamalai, where the victim is a pillion-rider. The medical board has determined his disability at 35% permanent disability vide Ext.C2. The Tribunal has reckoned and awarded compensation at Rs.3,000/- for every percentage of disability and granted Rs.1,05,000/-. After providing for other conventional and non-pecuniary heads of compensation, it arrived at Rs.2,21,146/-. The break-up is as below:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Compensation awarded by the Tribunal</i>
1	Permanent Disability	Rs.1,05,000/-
2	Pain and suffering	Rs. 30,000/-
3	Loss of amenities	Rs. 20,000/-
4	Extra nourishment and loss of articles	Rs. 15,000/-
5	Attender charges	Rs. 10,000/-
6	Medical Expenses	Rs. 7,146/-
7	Loss of Income (4 months)	Rs. 24,000/-
8	Transportation Expenses	Rs. 10,000/-
	Total	Rs.2,21,146/-



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6. The learned counsel for the appellant submitted that the appellant is both a flower vendor and an agricultural labourer and that the Tribunal had gone wrong in not treating his disability as a functional disability. Since Ext.C2 did not throw much information to enable the court to appreciate the arguments of the learned counsel for the appellant, this court again referred the appellant to Medical Board and required the Medical Board to ascertain the functions which the appellant can perform and cannot perform with ease. Accordingly, the claimant had appeared before the Medical Board pursuant to which the latter had made available the disability certificate dated Nil. This certificate is now taken on record as admitted in evidence as Ext.C4. As per Ext.C4, the Medical Board has examined the appellant clinically and noted the following aspects:

<i>"1 Standing on both legs</i>	<i>- able to do</i>
<i>2 Standing on affected leg</i>	<i>- not able to do</i>
<i>3 Walking on plain surface</i>	<i>- able to do</i>
<i>4 Walking on slope</i>	<i>- able to do with difficulty</i>
<i>5 Climbing stairs</i>	<i>- able to do with difficulty</i>
<i>6 Taking turns</i>	<i>- able to do</i>
<i>7 Squatting on floor</i>	<i>- not able to do</i>
<i>8 Kneeling</i>	<i>- able to do</i>
<i>9 Sitting cross leg</i>	<i>- not able to do"</i>



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7. Heard both sides and perused the materials available on record. He has suffered fracture - right neck of fibula and it is surgically corrected and he was an in-patient for 13 days. Given the fact that the victim in the accident is also an agricultural labourer, taking into consideration Ext.C4, this court deems it appropriate to treat the disability of the victim as functional disability and fixes it at 20%. Reckoning Rs.8,000/- as notional monthly income and given the fact that the victim was around 45 years at the relevant time, this court chooses to add another 25% towards future prospects of increase in income and applies multiplier '14' as reasonable and reduces the same arrived at by 20% and determines the compensation payable for functional disability at Rs.3,36,000/-. This court also interferes with certain non-pecuniary heads of compensation and it is indicated in the tabulation below:

<i>Sl. No.</i>	<i>Heads of Compensation</i>	<i>Compensation modified/awarded by this Court</i>
1	Functional Disability	Rs.3,36,000/-
2	Pain and suffering	Rs. 40,000/-
3	Loss of amenities	Rs. 25,000/-
4	Extra nourishment and loss of articles	Rs. 20,000/-
5	Attender charges	Rs. 10,000/-
6	Medical Expenses	Rs. 7,146/-
7	Transportation Expenses	Rs. 15,000/-



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Sl. No.	Heads of Compensation	Compensation modified/awarded by this Court
	Total	Rs.4,53,146/-

8. In fine, both the appeals are partially allowed in the manner indicated below:

(a) C.M.A. No.926 of 2022 is partly allowed and the compensation is enhanced from Rs.5,87,688/- to Rs.9,98,688/-.

(b) C.M.A. No.927 of 2022 is partly allowed and the compensation is enhanced from Rs.2,21,146/- to Rs.4,53,146/-.

(c) In both the cases, the second respondent is directed to deposit the entire compensation amount awarded in the appeal with interest @ 7.5% per annum less interest for 53 days delay in filing C.M.A. No.926 of 2022 and 54 days delay in filing C.M.A. No.927 of 2022, less any amount already deposited by the insurance company, within a period of twelve weeks from the date of receipt of a copy of this judgment. The appellant/claimant is now required to pay additional court fee on the enhanced value of compensation, as ordered by this court. The appellants in both the appeals are entitled to withdraw the entire compensation amount, and

(d) No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

N.SESHASAYEE, J.

Asr

To

The Motor Accident Claims Tribunal and Special Court,
Thiruvannamalai.

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Dated : 20.12.2023