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CMA No. 2065 / 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 2065 of 2022
Mohamed Haneef ... Appellant

Versus

- 1.SRM Transport India P.Ltd., SRM Nagar,
Kattankulathur, Chengalpattu,
Kancheepuram District – 603203.
- 2.The New India Assurance Company Ltd.,
Micro Office, No.77/156, Cuddalore main Road,
Vridhachalam – 606001. ... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 59 of 1988 seeking to allow this appeal by enhancing the award passed by the Tribunal in M.C.O.P. No. 148 of 2019 dated 29.03.2022.

For Appellant : Mr. S. Udhayakumar.

For Respondents : Mr. P. Kandasamy for R2.

No appearance for R1.

J U D G M E N T

The appeal has been filed by the petitioner challenging the quantum of compensation awarded by the Tribunal in M.C.O.P. No. 148



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of 2019 dated 29.03.2022.

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2.The appellant / petitioner had filed a claim petition stating that on 21.01.2018 at about 14.15 hrs, while the petitioner was driving his Auto-rickshaw bearing Registration No.TN-15-D-2068 towards Sheik Hussainpet from Ulundhurpettai with passengers in Chennai – Trichy NH Road, the first respondent's bus bearing registration No.TN-19-D-3416 driven in a rash and negligent manner and hit the auto from behind as a result of which one passenger died on the spot and the petitioner and the other passenger sustained grievous injuries and thus he is entitled for compensation.

3.The second respondent filed a counter denying all the averments made in the claim petition and stated that in any case, the claim was excessive.

4.The first respondent, owner of the bus remained ex-parte before the tribunal.

5.The appellant examined himself as PW1 and marked Ex.P.1 to Ex.P.31. No witness was examined on the side of the respondents and



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Ex.R.1 viz., MVI Report has been marked through PW1. The disability certificate issued by the Medical Board was marked as Ex.C.1.

6.The Tribunal after considering the oral and documentary evidence awarded a compensation of Rs.23,26,000/- to the appellant to be paid by the second respondent. Aggrieved by the said quantum of compensation, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre considering the nature of injury suffered by the appellant and his avocation prior to the accident. Though the Tribunal had applied the multiplier method, the notional income fixed by the Tribunal at Rs.10,000/- per month is not just. The learned counsel further submitted that the appellant was in the hospital for 33 days and had suffered grievous injuries in the spine and the Attender charges at Rs.10,000/- is meagre.

8.Though notice has been served on the first respondent, none has entered appearance on behalf of them.



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9.The learned counsel for the second respondent, per contra, submitted that the Tribunal had awarded a just compensation and the same need not be interfered with. Further, the learned counsel submitted that the Tribunal having awarded compensation under the head loss of income by adopting multiplier method, ought not to have awarded compensation under the head physical disability by using percentage method. Hence, in any case, the award passed by the Tribunal is excessive and the same has to be reduced.

10.This Court on perusal of the records finds that the appellant was owner cum driver of an auto-rickshaw. The Tribunal found that the accident took place due to the rash and negligent driving of the driver of the bus belonging to the first respondent. There is no dispute with regard to the finding on negligence. It is seen from the records that the appellant took treatment as in patient in JIPMER Hospital from 20.01.2018 to 23.01.2018 and at SIMS Hospital from 24.01.2018 to 07.02.2018 and at Manakula vinayagar Medical college from 07.02.2018 to 19.02.2018 and again at JIPMER Hospital from 31.03.2018 to 01.04.2018. The hospital records shows that the appellant suffered fracture in three bones in the spinal cord and surgery was conducted to



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treat the said fractures. The appellant had also during his examination explained the nature of difficulty and hardship faced by him on account of injuries. PW1, in his evidence, had stated that he is in a vegetative state and his legs and hips are paralysed; and that because of the disc compression and the neurological defect, his body from hip to toe is paralysed; that he is unable to carry on his regular activities; and that he needs constant support and assistance to take care of his daily needs. There is no evidence to the contrary. In such circumstances, this Court is of the view that the Tribunal was right in adopting the multiplier method. However, the Tribunal had not taken into account the future prospects. The Tribunal had taken Rs.10,000/- as notional income for the accident that took place in the year 2018. The evidence of PW1 shows that he was a owner cum driver of an auto-rickshaw. Considering the nature of the job pursued by the appellant and the year of the accident, this Court is of the view that notional income of the deceased has to be fixed at Rs.15,000/- per month. Having regard to the fact that the appellant had sustained grievous injuries and on account of the injuries he is now reduced to vegetative state as stated earlier and cannot pursue his avocation any more, he is entitled to future prospects as well. Since he was aged 28 years, he was entitled to future prospects at 40%. Further,



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the attendant charges awarded by the Tribunal at Rs.10,000/- is meagre and the same is enhanced to Rs.50,000/- as he is in a vegetative state.

The physical disability in relation to his whole body is assessed at 70%.

In the facts and circumstances of the case, the disability assessed by the Medical Board has to be treated as functional disability for the purpose of calculating the loss of income by multiplier method. However, the compensation under the head 'Permanent disability' is not warranted and hence omitted. Thus, the loss of income is calculated as follows;
$$\text{Rs.15,000/-} + 40\% = \text{Rs.21,000} \times 17 \times 12 \times 70/100 = \text{Rs.29,98,800/-}.$$

The compensation under the other heads are just and the same are confirmed. Further, the appellant is entitled to loss of earnings during the period of treatment. Thus, $\text{Rs.15,000/-} \times 12 = \text{Rs.1,80,000/-}$ is awarded towards loss of earnings. 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.	Loss of income	14,28,000	29,98,800	Enhanced
2.	Permanent disability	2,10,000	---	Deleted
3.	Pain and sufferings	1,00,000	1,00,000	Confirmed



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4.	Transportation	1,52,000	1,52,000	Confirmed
5.	Extra Nourishment	15,000	15,000	Confirmed
6.	Cost of Attendant	10,000	50,000	Enhanced
7.	Medical bills	4,11,000	4,11,000	Confirmed
8.	Loss of earnings	----	1,80,000	granted
	Total	23,26,000	39,06,800	Enhanced by Rs.15,80,800/-

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.23,26,000/- is hereby enhanced to Rs.39,06,800/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent / Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee if any on the enhanced award amount. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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SUNDER MOHAN, J

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To
The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Vridhachalam.

C.M.A. No. 2065 of 2022

Dated: 18.07.2023