



C.M.A.No.1005 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 15.06.2023

PRONOUNCED ON: 14.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.1005 of 2017

E. Murugan

... Appellant/Petitioner

Vs.

1. G. Anandha Mahesh

2. Bharati Axa General Insurance Co. Ltd
second Floor, Metro Plaza,
162, Anna Salai, Chennai 600 002.

... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree dated 21.12.2016 made in M.C.O.P.No.2281 of 2014 passed by the Motor Accident Claims Tribunal (III Small Causes Court), Chennai.

For Appellant	:	M/s. R. Nalliappan
For R1	:	Ex-parte before Tribunal
For R2	:	M/s.V. Menaka



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JUDGMENT

The Civil Miscellaneous Appeal has been filed by the claimant

in M.C.O.P.No.2281 of 2014, for enhancement of compensation awarded by the Motor Accident Claims Tribunal (III Small Causes Court), Chennai, wherein the Motor Accidents Claims Tribunal has awarded a sum of Rs.14,41,400/- as compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

2. For the sake of convenience, the parties are referred to herein according to their litigative status before the Tribunal.

3. On 28.03.2014 at about 12.00 hours, while the petitioner was riding his motor vehicle bearing Registration No.TN.22 AG 1152 on the 200 feet Radial road, Pallavaram, near petrol bunk, a car bearing Registration No. TN 11 D 6970 came from Pallavaram to Thoraipakkan direction in a rash and negligent manner and dashed on the motorcycle thereby the claimant fell down and sustained grievous injuries. For the accident a Criminal case has been registered against the first respondent under Sections 279,338 of I.P.C by the Traffic Investigation Wing, Tambaram. Due to the



accident, amputation was done below the knee in the right leg of the petitioner. Hence, the petitioner claimed compensation for a sum of Rs.21,000,000/- from the Respondents.

4. The first respondent - vehicle owner, remained ex-parte before the Tribunal. The second respondent - Insurance Company filed their counter and they have denied negligence on the part of the first respondent and also contended that the first respondent is not having valid driving license at the time of accident.

5. Before the Tribunal, the claimant examined himself as P.W.1 and one Sub Inspector of Police, Traffic Wing Chrompet was examined as P.W.2 and marked documents as Exs.P1 to P10 and on the side of the respondents, no witness was examined and no documents marked.

6. After considering the evidence placed on record the Tribunal has awarded compensation on the following heads: Loss of Income Rs.1,27,500/-, Attender Charger Rs.61,250/-, Transport to Hospital Rs.20,000/- , Extra Nourishment Rs.30,000/- , Damage to clothing Rs.1,00,000/-, Pain and Suffering Rs.75,000/-, Mental and Physical Shock Rs.25,000/-, Loss of earning in future Rs.11,01,600/- and the total



compensation was arrived at Rs. 14,41,350/-. Further the Tribunal awarded interest at the rate of 7.% per annum from the date of petition till the date of realisation. Aggrieved over the quantum fixed by the Tribunal the claimant have filed this appeal.

7. The learned counsel appearing for the claimant would submit that the notional income of the claimant has not been properly fixed by the Tribunal and the percentage of disability has also been reduced by the Tribunal. Hence in both the points this Court has to enhance the same, otherwise it would cause great prejudice to the claimant. He would further submit that amputation was done to the petitioner below the knee in right leg and Institute of Orthopaedics, Madras Medical College and Rajiv Gandhi Government Hospital has given disability certificate and the same has to be accepted and he also assailed the amounts awarded under various heads and prays to enhance the compensation.

8. Per Contra, the learned counsel appearing for the Insurance company has stated that the Tribunal has properly appreciated each and every heads in which the claimant is entitled for compensation and there is no infirmity in it and prays to dismiss this petition.



9. I have considered the rival submissions on both sides and also perused the materials available on record.

10. The Tribunal has accepted the opinion regarding the Ex.P.6/Disability certificate. The Disability has been assessed at 70% for the amputation done below knee of the Right side leg by the Institute of Orthopaedics, Madras Medical College and Rajiv Gandhi Government Hospital and the Tribunal has also held that 70% disability assessed is with regard to limb of the petitioner and as far as whole body is concerned it may come around 65%. With regard to functional disability is concerned it will affect the future loss of earning capacity of the petitioner at 60%. However, in the Disability Certificate it is not stated that the disability is only with regard to the percentage of disability for the limb or to the whole body .

11. Admittedly the petitioner is a collie worker and his disability of amputation have placed him to the stage, that he would not continue his earlier avocation. In the case of ***RajKumar vs Ajay Kumar reported in 2011(1) SCC 343 the Hon'ble Apex Court*** it has been stated that before applying the disability factor for determination of compensation, the age, avocation i.e of the claimant and circumstances of the case should be considered. In paragraph No.5, heads under which the compensation to be



awarded is summarised as follows:

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“5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.

(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability,



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future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item

(i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability.”

In Paragraph No.10 guidelines given as to ascertainment of the effect of the permanent disability on the actual earning capacity and is summarised as follows:

“10. Ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps. The Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and



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what he could not do as a result of the permanent ability (this is also relevant for awarding compensation under the head of loss of amenities of life). The second step is to ascertain his avocation, profession and nature of work before the accident, as also his age. The third step is to find out whether (i) the claimant is totally disabled from earning any kind of livelihood, or (ii) whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or (iii) whether he was prevented or restricted from discharging his previous activities and functions, but could carry on some other or lesser scale of activities and functions so that he continues to earn or can continue to earn his livelihood. For example, if the left hand of a claimant is amputated, the permanent physical or functional disablement may be assessed around 60%. If the claimant was a driver or a carpenter, the actual loss of earning capacity may virtually be hundred percent, if he is neither able to drive or do carpentry. On the other hand, if the claimant was a clerk in government service, the loss of his left hand may not result in loss of employment and he may still be continued as a clerk as he could perform his clerical functions; and in that event the loss of earning capacity will not be 100% as in the case of a driver or carpenter, nor 60% which is the actual physical disability, but far less. In fact, there may not be any need to award any compensation under the head of 'loss of future earnings', if the claimant continues in government service, though he may be awarded compensation under the head of loss of amenities as a consequence of losing his hand. Sometimes the injured claimant may be continued in service, but may not found suitable for



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discharging the duties attached to the post or job which he was earlier holding, on account of his disability, and may therefore be shifted to some other suitable but lesser post with lesser emoluments, in which case there should be a limited award under the head of loss of future earning capacity, taking note of the reduced earning capacity. It may be noted that when compensation is awarded by treating the loss of future earning capacity as 100% (or even anything more than 50%), the need to award compensation separately under the head of loss of amenities or loss of expectation of life may disappear and as a result, only a token or nominal amount may have to be awarded under the head of loss of amenities or loss of expectation of life, as otherwise there may be a duplication in the award of compensation. Be that as it may.”

In paragraph No.13 guidelines were issued for assessing for loss of earning capacity and the same is as follows:

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).



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(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.

In this case the certificate issued by the Institute of Orthopaedics, Madras Medical College and Rajiv Gandhi Government Hospital has not stated whether the disability assessed at 70% is only with regard to limb. Claimant has suffered amputation of the leg below right knee and he also sustained dislocation of Right hip. He is a coolie worker his injuries incapacitated him from doing any work. His chance of getting any other employment was bleak and even if he got any job, it would be only pittance. Hence reduction of percentage on the ground that the claimant can do other work is not proper and accordingly 70% would be appropriate percentage for the loss of earning capacity by applying the principle laid down in by the Hon'ble Apex Court in the case ***RajKumar vs Ajay Kumar cited above***



12. Accordingly the submission made by the learned counsel for the petitioner that reduction of percentage of disability fixed at 70% by the Tribunal is not proper, and this Court accepts 70% disability and the claimant is entitled for enhanced compensation.

13. The Tribunal has fixed the notional income of the claimant at Rs.9,000/- per month for the accident that occurred in the year 2014. This Court is of the view that fixing notional income at Rs.9,000/- per month for the year 2014 is on lower side and the same is enhanced to Rs.10,500/- and the compensation awarded under the head Loss of Earnings in future is enhanced to Rs.14,99,400/- [Rs.7,350/- (Rs.10,500 x 70%)x12x17]. With regard to loss of income, during the period in which the claimant has undergone treatment as in-patient for 245 days, the Tribunal has granted 425 days as eligible period for loss of Income, accordingly the same is modified as 17 months considering the in-patient and the same is enhanced to Rs.1,78,500/- (Rs.10,500 x 17(months)). The Tribunal has not awarded loss of amenities to the claimant accordingly this Court awards Rs.75,000/- as compensation for loss of amenities. The Hon'ble Apex Court in the case of ***Jagdish Vs. Mohan and others reported in 2018 4 SCC 571*** has held that in



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injury cases also future prospects of 50% will also to be granted.

Considering the age of the petitioner 50% is hereby granted towards future prospects which comes to Rs.7,49,700/- Accordingly, the award passed by the Tribunal under other heads are reasonable and the same is confirmed.

The Enhanced compensation is as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
Pecuniary Loss				
1.	Loss of Income	Rs.1,27,500/-	Rs.1,78,500/-	Enhanced
2.	Attender charges	Rs.61,250/-	Rs.61,250/-	Confirmed
3.	Transport to Hospital	Rs.20,000/-	Rs.20,000/-	Confirmed
4.	Extra Nourishment	Rs.30,000/-	Rs.30,000/-	Confirmed
5.	Damage to Clothing	Rs.1,000/-	Rs.1,000/-	Confirmed
6	Loss of amenities	-Nil-	Rs.75,000/-	
Non Pecuniary Loss				
6.	Pain and Sufferings	Rs.75,000/-	Rs.75,000/-	Confirmed
7.	Mental and Physical shock	Rs.25,000/-	Rs.25,000/-	Confirmed
8.	Loss of Earnings in future	Rs.11,01,600/-	Rs. 14,99,400/-	Enhanced
9	Future Prospectus	-Nil-	Rs.7,49,700/-	Granted
	Total	Rs.14,41,350/-	Rs.27,14,850/-	Enhanced by Rs.12,73,500/-



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15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal is at Rs.14,41,350/- is hereby enhanced to Rs. 27,14,850/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The second 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 six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.2281 of 2014, on the file of the Moto Accident Claims Tribunal (III Small Causes Court), Chennai. On such deposit, the appellant/claimant is entitled to withdraw the amount, now awarded by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant, as laid down by a Division Bench of this Court in the case of *The Divisional Manager, The Oriental Insurance Company Ltd., Kannur vs Rajesh and others in C.M.A.No.428 of 2016, dated 11.03.2016 reported in 2016 (2) LW 561*. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay



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necessary Court fee, if any, on the enhanced compensation. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

14.07.2023

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:

1. The Motor Accident Claims Tribunal,
(III Small Causes Court), Chennai.
2. The Section Officer,
V.R.Section,
High Court, Chennai.



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K.RAJASEKAR,J.

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Pre delivery Judgment made in
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