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C.M.A.No. 61 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.06.2023

Coram:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No. 61 of 2022

Ranjith

... Appellant

Versus

1.R. Kavitha
2.The Branch Manager
United India Insurance Company Limited
Range Building, Peramanoor Road
Near Four Road, Salem-7.

... Respondents

Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 12.05.2020 made in M.C.O.P.No. 687 of 2018 on the file of the Motor Vehicle Accidents Claims Tribunal, Special Subordinate Court, Krishnagiri.

For Appellant	:	Mr.S.P. Yuaraj
For 1 st Respondent	:	Ex-parte before the Tribunal
For 2 nd Respondent	:	Mr.J. Chandran

JUDGMENT

The above appeal is filed by the claimant seeking enhancement of compensation.



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2. On 27.11.2017, while the claimant was travelling in a private bus bearing Registration No. TN-54-D-1501, the driver of the bus drove the vehicle in a rash and negligent manner and hit against the Transport Corporation bus bearing Registration No. TN-23-N-2358. Due to the impact, the claimant suffered amputation of right hand below elbow and sustained grievous injuries. The claimant was aged about 19 years at the time of accident and he was doing II year B.E., Mechanical Engineering at PPG Engineering College. Therefore, the claimant filed the claim petition claiming a sum of Rs.40,00,000/- as compensation.

3. The first respondent remained exparte in the claims tribunal. The 2nd respondent/Insurance Company filed a detailed counter affidavit denying all the averments made in the claim petition, apart from disputing the negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, the claimant examined himself as PW1 and Ex.P1 to Ex.P13 were marked in support of the claim. On the side of the 2nd respondent/Insurance Company, no oral or documentary evidence was adduced. Ex.C1-Disability Certificate issued by the Medical



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Board was marked as court document.

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5. The Claims Tribunal, on an assessment of the entire evidence on record rendered a finding of negligence against the driver of the first respondent, assessed the compensation at Rs.19,84,548/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for enhancement of compensation.

6. The learned counsel for the appellant submitted that the claimant was doing II year B.E., Mechanical Engineering and he was aged about 19 years at the time of accident. The Tribunal erroneously assessed the notional income of the claimant at Rs.9,500/-. The learned counsel for the appellant submitted that considering that the right hand below elbow of the claimant was amputated, the Medical Board rightly assessed the partial permanent disability of the claimant at 80%. According to the counsel, the Tribunal erred in reducing the percentage of disability assessed by the Medical Board from 80% to 50%.



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7. The learned counsel for the second respondent/Insurance Company, on the other hand, submitted that the functional disability of the claimant was 50% and therefore the claims tribunal was justified in reducing the functional disability assessed by the Medical Board from 80% to 50%. The counsel further submitted that the award was fair and reasonable and did not call for any interference in the appeal.

8. I have heard both the learned counsels and perused the materials available on record.

9. It is not in dispute that the claimant was aged about 19 years at the time of accident and he was doing II year B.E., Mechanical Engineering. It is also not in dispute that the right hand below elbow of the claimant was amputated. The Medical Board assessed the partial permanent disability at 80%, but the Tribunal reduced the percentage of permanent disability to 50% holding that the functional disability was only 50%. In my view, the disability reduced by the Claims Tribunal at 50% on the ground that the functional disability was only 50% is unsustainable. The claimant was pursuing B.E., Mechanic Engineering and as the



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claimant's right hand was amputated below elbow. I am of the view that the claimant suffered 100% functional disability. As a mechanical engineer, the claimant would have to use both hands and hence, the amputation in the right hand below the elbow would certainly impact the earning capacity of the claimant.

10. The Tribunal took the monthly income of the claimant at Rs.9,500/- and added 40% towards future prospects. The Tribunal hence fixed the monthly income of the claimant at Rs.13,300/- and adopted multiplier 18. The Tribunal fixed the “loss of earning capacity” at Rs.14,36,400/-. The monthly income, future prospects and the multiplier adopted by the Tribunal are confirmed. Since this Court has assessed the functional disability of the claimant at 100%, the claimant is entitled to Rs.28,72,800/- towards “loss of earning capacity” as calculated below:-

$$\begin{aligned} &= \text{Rs.}9,500 + \text{Rs.}3,800 \text{ (40\% future prospects)} \\ &= \text{Rs.}13,300 \times 12 \times 18 \\ &= \text{Rs.}28,72,800. \end{aligned}$$



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11. The learned counsel for the appellant fairly submitted that the award of the Tribunal at Rs.2,40,000/- ($80\% \times 3000 = \text{Rs.}2,40,000/-$) towards permanent disability deserves to be set aside. As the multiplier method is adopted the amount of Rs.2,40,000/- awarded towards 80% permanent disability is set aside. Further, the claimant shall be entitled to Rs.15,000/- towards nourishment and Rs.15,000/- towards attender charges and the award under the other heads are confirmed.

12. In view of the above discussions, the Award of the Tribunal is modified as follows;-

<i>S.No</i>	<i>Various Heads</i>	<i>Awarded by the Tribunal</i>	<i>Awarded by this Court</i>
1.	Loss of Income	Rs.14,36,400	Rs.28,72,800
2.	Medical Expenses	Rs.55,148	Rs.55,148
3.	Transport Expenses	Rs.10,000	Rs.10,000
4.	Nutrition and Attender Charges	Rs.15,000	Nutrition Rs.15,000 Attender Rs.15,000
5.	Pain and Suffering	Rs.64,000	Rs.64,000
6.	Social Amenities	Rs.64,000	Rs.64,000
7.	Disability ($80\% \times \text{Rs.}3000$)	Rs.2,40,000	---
8.	Loss of future prospects	Rs.1,00,000	Rs.1,00,000
	Total	Rs.19,84,548	Rs.31,95,948



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13. The claimant shall be entitled to Rs.31,95,948/- along with 7.5% interest from the date of the claim petition till the date of deposit. It is submitted by the learned counsel for the second respondent/Insurance Company that the entire award amount along with accrued interest was already deposited before the Tribunal.

14. In view of the above submission, there shall be a direction to the second respondent/Insurance Company to deposit the balance enhanced compensation of Rs.12,11,400/- along with 7.5% interest within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant shall be entitled to withdraw the same by making appropriate application before the Tribunal.

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. There shall be no order as to costs.

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Index:Yes/No

Speaking Order :Yes/No



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Neutral Citation: Yes/No

msm

To

1. The Special Subordinate Court,
Motor Accidents Claims Tribunal, Krishnagiri.
2. The Section Officer,
V.R. Section, High Court, Madras.



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N.MALA.J.,

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