



C.M.A No.2442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.2442 of 2023

Gurumoorthy

... Appellant

Vs.

1.Kamalakannan

2.The Royal Sundaram Allianz Gen. Ins. Co. Ltd.,
No.45, 46, Whites Road
Chennai - 14
Now running at Motor III Party Claims Office
No.1, Subramaniam Building, 2nd Floor
Club House Road, Anna Salai
Chennai - 2

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to substantially enhance the quantum of compensation as granted under the judgment and decree dated 13.04.2023 in MCOP No.412 of 2016 on the file of Motor Accidents Claims Tribunal (Special Sub Judge II, Court of Small Causes), Chennai.

For Appellant : Mr.K.Sivakumar



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For Respondents : Mr.G.Vasudevan for R2

JUDGMENT

In a road accident that took place on 03.05.2015, the appellant herein suffered injuries to his left femur when a car bearing Registration No.TN-11 J-6654 belonging to the first respondent and insured with the second respondent dashed against the motorcycle which the appellant was riding at that relevant time. In the accident, the appellant suffered two fractures, one to the left femur, and another fracture in the shaft of the same bone. He was hospitalised for 32 days. For the injuries he had suffered, the appellant had moved the Tribunal with MCOP No.412 of 2016, and the Tribunal had fixed the compensation at Rs.2,27,100/-, and after deducting 10% towards contributory negligence, it awarded a total sum of Rs.2,04,400/- to the victim. Aggrieved by the perceived inadequacy of the award, the claimant has preferred this appeal.

2. The learned counsel for the appellant submitted that the appellant was a cook attached to the canteen in the Atomic Centre at Kalpakkam, and was stated to be earning not less than Rs.15,000/- per month at the



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relevant time when the accident had taken place. Now owing to the accident, he could not stand for long hours and hence, he could not go for his job. He required the court to treat the 30% disability that was assessed by the Medical Board as functional disability. He also added that the Tribunal had fixed the notional income of the appellant at Rs.9,500/-, and that it is at a lower end, requires the enhancement of the same. He also submitted that the compensation awarded under non-pecuniary heads by the Tribunal are also unrealistically low.

3. The learned counsel for the respondent contended that there is no proof either about the avocation of the claimant or to suggest his monthly income and he submitted that the approach of the Tribunal is just, fair and reasonable.

4. The Tribunal was constrained to fix notional income essentially only in the absence of any material to suggest the correct income. When a victim of accident belongs to an un-organised sector and also does not belong to any salaried class, it is inescapable that the income cannot be assessed with precision. So far as the nature of avocation is concerned, in the absence of proof to the contrary, the statement made by the claimant has



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to be believed.

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5. The appellant/victim claims to be a cook and since the injuries suffered are to his lower limbs, it would necessarily create certain level of inconvenience to his avocation, as he has to stand for a considerable length of time. Therefore, this court, ceased to treat the disability suffered by the appellant as functional disability. While the Medical Board, by Ext.C1 has determined the permanent disability of the victim at 30%, this court deems it appropriate to limit it to 20%.

6. Turning to the income, it would only be reasonable to expect a cook to make at least 12,000/- rupees in 2015. Now the compensation is reckoned at [Rs.12,000/- + 25% towards future loss of earning power] and the proper multiplier is 13. The value of loss of earning power is determined at Rs.4,68,000/- [Rs.12,000/- +25% x 12 x 13 x 20%]. The Tribunal has awarded Rs.9,600/- towards attender charges and this needs revision. Accordingly, the same is fixed at Rs.15,000/-.

7. Since the claimant did not have any valid and effective driving licence at the time of accident, the Tribunal has apportioned 10% of negligence to the victim. This portion of the Tribunal's award is retained. In all other



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respects, the award of the Tribunal is just and reasonable. The revised compensation is as below:

<i>Sl. No.</i>	<i>Heads of compensation</i>	<i>Amount</i>
1.	Loss of earning capacity (12,000 + 25% x 12 x 13 x 20/100)	Rs.4,68,000/-
2.	Pain and suffering	Rs 35,000/-
3.	Transportation	Rs. 4,000/-
4.	Extra Nourishment	Rs. 10,000/-
5.	Attender charges	Rs. 15,000/-
6.	Loss of earning	Rs. 28,500/-
7.	Loss of amenities	Rs. 20,000/-
	Total	Rs.5,80,500/-
	90% of compensation	Rs.5,22,450/-

8. In conclusion, the appeal is allowed in part. The compensation awarded by the Tribunal is enhanced from Rs.2,04,400/- to Rs.5,22,450/- The second respondent/insurance company had already deposited the sum awarded by the Tribunal and it is now directed to deposit the differential sum with interest at the rate of 7.5% per annum within a period of six weeks from the date of receipt of a copy of this judgment. No costs.



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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accident Claims Tribunal
(Special Sub Judge II, Court of Small Causes), Chennai.

N.SESHASAYEE, J.

Asr



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