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C.M.A.No.767 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

C.M.A.No.767 of 2020

P.Vinothkumar

...Appellant

Vs.

1. Periyasamy (*Died*)

(Notice to R1 may be dispensed with,
since he was set exparte in the lower court)

2. M/s. United India Insurance Co. Ltd.,
1, 104A, Peramanur Main Road,
Salem – 7.

3. Alagammal

4. Komadurai

5. Alamelu

6. Sundari

7. Jelalakshmi

(R3-7 impleaded as LR's of the deceased 1st respondent, vide order of this Court dated 22.12.2023 made in CMP.No.20394 of 2022 in CMA.No.767 of 2020)

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, as against the judgment and decree passed in M.C.O.P.No.248 of 2009 dated 10.08.2018 on the file of the Motor Accident Claims Tribunal, Salem (III Additional District Court).



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For Appellant : Mr.R.Sivaraman

For Respondents : Mr.E.Rajadurai,
for M/s. M.B. Gopalan Associates, for R2
: Mr.N.Nathami, for R3, 4, 6 & 7

JUDGMENT

Challenging the judgment and decree passed in M.C.O.P.No.248 of 2009 dated 10.08.2018 on the file of the Motor Accident Claims Tribunal, Salem(III Additional District Court), the claimant has preferred this appeal.

2. The case of the appellant is that, on 02.01.2008 at about 11 am., when the appellant was travelling in his BAJAJ Platinum motorcycle, a Yamaha Crux motorcycle owned by the 1st respondent insured with the 2nd respondent driven by its driven in a rash and negligent manner came in the opposite direction in a high speed without following the traffic rules and dashed against the motorcycle in which the appellant was travelling, as a result of which, the appellant sustained grievous injuries and got admitted in the hospital. Thereby, the appellant filed a claim petition claiming a compensation of Rs.15,00,000/-. After contest, the tribunal, vide impugned



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judgment awarded a compensation of Rs.2,35,533/-. Aggrieved with the said order, the appellant has come up with this appeal, seeking enhancement of the compensation fixed by the tribunal.

3. Learned counsel for the appellant submitted that, the above said accident happened solely due to the rash and negligent driving of the driver of the 1st respondent vehicle, for which, the FIR came to be registered against the driver of the offending vehicle and at the time of accident, the appellant was aged about 24 years and was working as a Manager in a private concern and was earning a sum of Rs.8,000/- per month and due to the injuries sustained by him at the time of accident, he suffered from 30% permanent disability and is unable to continue his avocation which he was carrying on before the accident. While so, instead of adopting multiplier method the tribunal had adopted percentage method and awarded a compensation of Rs.60,000/- which is very meagre and the tribunal had fixed the monthly income of the appellant as Rs.3,500/- only which is wholly erroneous. Further, the compensation awarded by the tribunal under other heads are also on the lower side and the same has to be enhanced.



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4. Per contra, the learned counsel appearing for the respective respondents submitted that, the tribunal, by considering all the relevant documents placed before it, had rightly awarded the compensation in accordance with the ratio laid down by the Hon'ble Apex court in catena of decisions, which does not require any interference of this Court. Accordingly, they prayed for dismissal of this appeal.

5. Heard learned counsel for the appellant and the learned counsel appearing on behalf of the respective respondents and perused the material documents placed on record.

6. The factum and manner of the accident is not disputed by the parties. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant/claimant is with regard to the quantum of compensation awarded. It is claimed by the appellant that though the appellant/claimant sustained 30% permanent disability, which is evident from the disability certificate issued by the Medical board, for which, the appellant is entitled to claim compensation by applying multiplier method,



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however, the tribunal failed to adopt the multiplier method and had awarded only a meagre compensation by adopting percentage method.

7. Though it is claimed by the appellant that the disability sustained by the appellant is functional in nature and that the adoption of percentage method instead of multiplier method by the tribunal is erroneous, however, the said contention cannot be accepted for the reasons that the extent of the disability would not really hamper the appellant/claimant from discharging his work. Therefore, considering the said fact that the Tribunal had adopted percentage method and arrived at the compensation and the procedure adopted by the Tribunal cannot be found fault with and this Court in agreement with the adoption of percentage method. Accordingly, the said compensation is confirmed.

8. Insofar as the monthly income of the appellant fixed by the tribunal is concerned, it has been the view of the Courts that even a housewife is entitled to monthly income to be fixed for the purpose of qualifying their work for the purpose of quantifying the amount receivable by them.



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Therefore, applying the ratio laid down by the Hon'ble Supreme Court in the case of *Syed Sadiq Vs. United India Insurance Company* reported in 2014

(1) *TANMAC 459*, fixing a notional income of the appellant as Rs.6,500/- per month would be appropriate and therefore, the compensation awarded the head “loss of income” stands modified to Rs.45,500/- ($6,5000 * 7 = 45,500/-$).

9. Further, the compensation awarded under the heads Extra nourishment, Pain and sufferings are on lower side and the same are enhanced to Rs.10,000/- and Rs.50,000/- respectively. No compensation has been awarded under the head attender charges and therefore, a sum of Rs.10,000/- shall be awarded under the said head.

10. Insofar as the compensation awarded under other heads are concerned, the said compensation awarded are just and reasonable and no interference is warranted with the award of compensation under the said heads.



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11. In the above circumstances, the compensation awarded by the

Tribunal is modified as under :-

Heads	Awarded by the Tribunal (Amount in Rs.)	Awarded by this Court (Amount in Rs.)
Loss of Income	24,500/-	45,500/- (enhanced)
Pain and suffering	10,000/-	50,000/- (enhanced)
Medical expenses	1,26,033/-	1,26,033/-
Transportation charges	10,000/-	10,000/-
Extra nourishment	5,000/-	10,000/- (enhanced)
Disability	60,000/-	60,000/-
Attender charges	-	10,000/-
Total	Rs.2,35,533/-	Rs.3,11,533/-

12. Accordingly, the appeal stands allowed in part and the impugned award passed by the tribunal stands modified by enhancing the compensation from **Rs.2,35,533/- to Rs.3,11,533/-**. The 2nd respondent/ insurance company is directed to deposit the above compensation awarded by this Court to the credit of M.C.O.P.No.248 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any,



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already deposited, within a period of four weeks (4) from the date of receipt of a copy of this judgment and thereafter, shall recover the same from the 1st respondent in the manner known to law. On such deposit being made, the Tribunal is directed to transfer the said amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter, upon production of necessary proof for payment of court fee for the enhanced compensation by the appellant. No costs.

22.12.2023
(2/2)

skt

NCC : Yes/No
Index : Yes/No
Speaking order : Yes/No

To:

1. The Motor Accident Claims Tribunal, (III Additional District Court), Salem.
2. The Section Officer,
V.R.Section, High Court, Madras.



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skt

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CMP.Nos.20391, 20392 & 20394 of 2022

in

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M.DHANDAPANI, J.

These applications have been filed by the petitioner to condone the delay of 2776 days in filing the petition to set aside the abatement caused due to the death of the 1st respondent, Periyasamy; to set aside the abatement caused due to the death of the 1st respondent and to bring on record the LRs of the deceased 1st respondent in the above Appeal.

2. Heard learned counsel for the petitioner and the learned counsel appearing for the 2nd respondent as well as the proposed respondents 3, 4, 6 & 7 and perused the records available on record.

3. Being satisfied with the reasons stated in the affidavit filed in support of these petitions, the delay is condoned and the petitions are allowed. The Registry is directed to carry out the necessary amendments.

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