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C.M.A.No.311 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.07.2023

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.311 of 2017

Anand @ Anandha Raj

...Appellant

Vs

1.C.Muthuvel

2.The New India Assurance Co. Ltd.,
Motor Thirty Party Claims Office,
No.45, Moore Street,
Chennai – 600 001.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.10.2016 made in M.C.O.P.No.3394 of 2014 on the file of the Motor Accidents claims Tribunal, (III Small Causes Court), Chennai.

For Appellant	: Mr.R.Nalliyappan
For R1	: No Appearance
For R2	: Mr.C.Ramesh Babu



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JUDGMENT

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This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 06.10.2016 made in M.C.O.P.No.3394 of 2014 on the file of the Motor Accidents claims Tribunal, (III Small Causes Court), Chennai.

2.The appellant/claimant filed M.C.O.P.No.3394 of 2014 on the file of the Motor Accidents claims Tribunal, (III Small Causes Court), Chennai, claiming a sum of Rs.15,00,000/- as compensation for the injury sustained by him in the accident that took place on 12.05.2014.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 1st respondent and directed the 2nd respondent/Insurance Company to pay a sum of Rs.10,26,300/- along with interest at the rate of 7.5% as compensation to the appellant/claimant under following heads:



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S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income	44,289
2.	Attender Charges	4,329
3.	Transport to Hospital	5,000
4.	Extra Nourishment	20,000
5.	Damage to Clothing	1,000
6.	Medical Expenses	3,15,604
7.	Pain and Suffering	50,000
8.	Damages for Mental and Physical shock	10,000
9	Loss of Earning	5,76,000
	Total	10,26,222

4. Aggrieved over the award passed by the Tribunal, the appellant/claimant filed the present appeal challenging the quantum of compensation.

5. Learned counsel appearing for the appellant/claimant brought the appellant/claimant before this Court as per the order of this Court dated 10.07.2023 and submitted that the appellant/claimant was a Carpenter. Due to the accident that took place on 12.05.2014, the appellant/claimant sustained grievous injuries and he could not speak loudly. He would further submit that the appellant/claimant cannot sit or stand without the help of others for the past 9 years and in future also he needs an attender. Therefore, the disability ought to



have assessed as 100%. However, the Tribunal has awarded compensation only by adopting 30% disability, which is very meager. Hence, he prayed to fix the notional income of the injured at Rs.15,000/-. Further, he prayed to award a sum of Rs.1,00,000/- towards future attender charges and any considerable amount towards future medical expenses.

6.Per contra, learned counsel appearing for the 2nd respondent/Insurance Company would submit that the Tribunal has taken 30% disability and awarded compensation since the Medical Board has not examined the injured and the Doctor who has treated the appellant/claimant has not given disability certificate. Therefore, the compensation awarded by the Tribunal is just and fair.

7.Heard the learned counsel appearing for the appellant/claimant as well as the 2nd respondent/Insurance Company and perused the materials available on record.

8.Taking into consideration the submission made by the learned counsel appearing for either parties and after observing the appellant/claimant, it is clear



that due to the accident that took place on 12.05.2014, the appellant/claimant sustained grievous injuries. Considering the nature of avocation of the injured and the cost inflation index, this Court is inclined to fix the notional income of the injured at Rs.12,000/-. Taking into consideration the nature of injuries and disability sustained by the appellant/claimant, this Court feels that it would be appropriate to adopt 40% disability. Further, the injured was 32 years at the time of accident and for the age of 32 years the multiplier applicable is 16 as held by the Hon'ble Supreme Court in the case of *Sarla Verma & others vs. Delhi Transport Corporation & another* reported in *2009 (2) TNMAC 1 SC*. As held by the Hon'ble Supreme Court in the case of *National Ins. Co. v. Pranay Sethi & others* reported in *2017(2)TNMAC 609 (SC)*, the future prospect for the age group of 32 years is 40% and hence, the loss of earning is computed as follows:

$$\text{Rs.12000/-} + 4800 \text{ (40\% of Rs.12000)} \times 12 \times 16 \times 40\% =$$

Rs.12,90,240/-.

9.The Tribunal has awarded a sum of Rs.4,329/- towards attender charges. Since the appellant/claimant needs an attender to carry out his day-to-



day activities in future, this Court award a sum of Rs.40,000/- towards future attender charges. Under the head of Transportation, the Tribunal has awarded a sum of Rs.5,000/-, which is meager and hence, the same is increased to a sum of Rs.15,000/- and a sum of Rs.44,289/- awarded by the Tribunal towards loss of income is set aside and the compensation awarded by the Tribunal under all other heads are just and fair and the same stands confirmed. Thus, the compensation awarded by the Tribunal is re-determined as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of Income	44,289	set aside
2.	Attender Charges	4,329	4,329
3.	Transport to Hospital	5,000	15,000
4.	Extra Nourishment	20,000	20,000
5.	Damage to Clothes	1,000	1,000
6.	Medical Expenses	3,15,604	3,15,604
7.	Pain and Suffering	50,000	50,000
8.	Damages for Mental and Physical shock	10,000	10,000
9.	Loss of Earning	5,76,000	12,90,240
10.	Future Attender Charges	-	40,000
	Total	10,26,222 rounded off to 10,26,300	17,46,173



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10. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.10,26,300/- is hereby enhanced to Rs.17,46,173/- with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the modified award amount along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight from the date of receipt of a copy of this judgment. Thereafter, the Tribunal is directed to transfer the award amount to the appellant/claimant by way of RTGS to his bank account directly, within a period of three weeks from the deposit being made or from date of furnishing the RTGS particulars by the appellant/claimant, whichever is later. On such deposit, the appellant is permitted to withdraw the entire award amount along with interest. No costs.

14.07.2023

Speaking/Non-speaking order
Index : Yes / No
Neutral Citation : Yes / No
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KRISHNAN RAMASAMY,J.

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To:

The Motor Accident Claims Tribunal
I Additional District and Sessions Judge,
Cuddalore.

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