



C.M.A.No.515 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on 12.12.2022	Pronounced on 05.01.2023
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THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.No.515 of 2017

P.Arumugam,
Son of Perumal,
Residing at Karaiyanpudur,
Pappinakenpatty Post,
Namakkal District.

... Appellant

Vs.

1.B.Amutha,
Wife of R.Balachandar,
No.7/82, Nallaiya Goundan Pudur,
Saniyasikaradu,
Namakkal District.

2.M/s.United India Ins. Co. Ltd.,
No.2, Dr.Sankaran Road,
Namakkal District.

... Respondents

Prayer: Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree dated 21.12.2012 made in MCOP.No.82 of 2011 on the file of the MACT/Additional District Court at Namakkal, with interest and cost.



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For Appellant : Mr.Ma.P.Thangavel

For Respondents : Ms.I.Malar (for R2)

R1 - Exparte

J U D G M E N T

The Appeal has been filed against the Award and Decree dated 21.12.2012 made in MCOP.No.82 of 2011 on the file of the MACT/Additional District Court at Namakkal.

2.The claim Petitioner is the Appellant herein. For the sake of convenience, the parties are referred to as per their ranking before the trial Court.

3.The claim Petitioner filed the above Appeal, seeking compensation for the injuries sustained by him in a road traffic accident on 29.01.2011. The Tribunal has awarded a sum of Rs.2,70,000/- with interest at the rate of 7.5 % and costs. Aggrieved against the same and seeking enhancement, he has preferred this Appeal.



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4.During the trial, on the side of the claim Petitioner, PW1 and PW2 were examined, Ex.P1 to Ex.P.11 were marked and on the side of the Respondents, none was examined and no documents were marked.

5.The factum of the accident, manner of the accident, rash and negligent driving on the part of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are not under challenge in this Appeal. Accordingly, the finding rendered by the trial Court that the accident taken place due to the rash and negligent driving of the driver of the 1st Respondent's vehicle, insured with the 2nd Respondent are hereby confirmed.

6.Heard the learned counsel for the claim Petitioner and the learned counsel for the Insurance Company, on the point of quantum of compensation.

7.The claim Petitioner/Injured person was doing Tinkering work in Ramavilas Body Builders, Namakkal, earning Rs.7,500/- per month. At the time of accident, the claim Petitioner was aged 24 years. The Hon'ble Supreme



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Court in the judgment rendered in *Syed Sadiq Vs. United India Insurance Company*, reported in *2014 (1) TNMAC 459*, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident, which occurred in the year 2008. In the present case, since the accident occurred during 2011, a sum of Rs.7,000/- is fixed as monthly income of the claim Petitioner.

8.In the accident taken place on 29.01.2011, the claim Petitioner was suffered multiple grievous injuries on shoulder, both legs and both hands and there was a fracture in the left hand side of the head (kabalam) and crush injury on the brain and there was bleeding over the brain. PW2/Doctor has assessed permanent disability at 40%. The Tribunal has not awarded compensation as per Ex.P.11/disability certificate, however, granted a sum of Rs.40,000/- towards disability and a sum of Rs.80,000/- towards loss of earning power.

9.On perusing the evidence of PW2/Doctor and Ex.P.11/disability certificate, I find that after the accident, the claim Petitioner was taking treatment as inpatient for 10 days and there was severe damage to the skull,



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resulting which, he lost his hearing, suffered by giddiness and unable to maintain equilibrium and hence, the whole body disability of the claim Petitioner is fixed at 20%. Since, the disability is permanent in nature, following the ratio laid down by the Hon'ble Supreme Court in the case of ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2011 (1) SCC 343***, multiplier method has to be adopted, as per the age of the claim Petitioner at the time of accident, ie., 24 years, 18 multiplier is adopted. Future prospects is fixed at 40%, following the ratio laid down by the Constitution Bench's judgment of the Honourable Apex Court in the case of ***National Insurance Company Limited V. Pranay Sethi and others***, reported in ***2017 (2) TN MAC 609 (SC)***, and in the case of ***Erudhaya Priya Vs. State Express Transport Corporation Ltd.***, reported in ***2020 (2) TN MAC 303 (SC)***. Accordingly, the loss of earning power suffered by the claim Petitioner fixed at Rs.8,46,720/- which is calculated as follows:

$$\text{Rs.7,000/-} + 40 \% \text{ of } 7000 = \text{Rs.9,800/-}$$

$$\text{Rs.9,800/-} \times 12 \times 18 \times 20 \% = \text{Rs.4,23,360/-}$$

10.In this case, the Tribunal has awarded a sum of Rs.6,000/- towards



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transportation, Rs.30,000/- towards nutrition and extra nourishment, Rs.32,000/- towards medical expenses, Rs.38,000/- towards pain and sufferings, which are just and proper and the same are hereby confirmed and hence, the award passed by the Tribunal is partly modified as follows:

<i>S.No.</i>	<i>Heads</i>	<i>Amount (Rs.)</i>
1	Loss of earning capacity	423360
2	Transportation	6000
3	Extra nourishment	30000
4	Medical expenses	32000
5	Pain and sufferings	38000
	Total	529360

In total, the claim Petitioner is entitled to a sum of Rs.5,29,360/- (Rupees five lakh twenty nine thousand three hundred and sixty only) with interest at the rate of 7.5% per annum from the date of Petition till date of realisation. The Appeal was filed with the delay of 618 days and while allowing the condone delay petition in M.P.No.2 of 2015, this Court had held that the claim Petitioner will not be entitled to interest for the default period.

11. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award



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from Rs.2,70,000/- to Rs.5,29,360/- to the extent indicated above. No Costs.

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(ii) the Insurance company is directed to deposit the enhanced award amount (excluding the interest for the default period) with interest and costs before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) on such deposit being made, the claim Petitioner is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) The claim Petitioner is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

05.01.2023

Index : Yes/No

Internet : Yes/No

Speaking Order/Non-Speaking Order

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RMT.TEEKAA RAMAN.J,

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To
The Additional District Judge,
Motor Accident Claims Tribunal,
Namakkal.

Pre-delivery Judgment made in

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Dated: 05.01.2023