



C.M.A.No.4293 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.03.2023

PRONOUNCED ON : 26.05.2023

CORAM:

THE HONOURABLE Mrs. JUSTICE R.KALAIMATHI

C.M.A.No.4293 of 2019

Karthikeyan

... Appellant

vs.

1.Ramasamy

2.Iffco Tokio General Insurance Co. Ltd.,
Tulsi Towers,
105, T.V.Samy Road,
West R.S.Puram,
Coimbatore-2.

3.Reliance Insurance Company Limited,
2nd Floor, Kandaswama Megha Mall,
Saradha College Road,
Salem-7.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against judgment and decree dated 29.07.2010 passed in M.C.O.P.No.81 of 2008 on the file of Motor Accident Claims Tribunal, Salem.

For Appellants : Mr.K.Kuppusamy

For Respondents : Mrs.K.Saraswathi [R2]
for Mr.C.R.Krishnamurthy
R1-Experte



C.M.A.No.4293 of 2019

R3- No Appearance

WEB COPY

JUDGMENT

The sole appellant/claimant herein has preferred this appeal questioning the compensation awarded by the Motor Accident Claims Tribunal, Salem in M.C.O.P.No.81 of 2008, dated 27.07.2010 for enhancement of compensation.

2. The Tribunal has passed an award for an amount of Rs.1,11,598/- with interest at 7.5% p.a., from the date of filing of claim petition till the date of realisation.

3. The learned counsel for the appellant would contend that the appellant having sustained grievous injuries on his left frontal region based on Exs.P1 to P13, compensation awarded by the Tribunal is insufficient. The amount awarded under the head of loss of earning is also very low. On account of the accident, the claimant having suffered speech and ear impairment, the disability of 60% which was fixed by the Tribunal is incorrect and the sum awarded towards permanent disability is also not sufficient.



C.M.A.No.4293 of 2019

WEB COPY 4. Per contra, the learned counsel for the Insurance Company would vehemently put-forth that the Tribunal having taken into account the oral and documentary evidence available on record, passed an award for an amount of Rs.1,11,598/- is well reasoned order, which need not be interfered.

5. The manner in which the accident had taken place is not in dispute. It could be seen from Ex.P4, namely discharge summary (issued by Bharat Neuro Centre, Erode) that the claimant herein had taken treatment from 19.05.2007 to 25.05.2007, the date of accident is 19.05.2007. After five days of the accident, the claimant got admitted in the above said Hospital complaining of difficulty in closing eye and deviation of mouth to right side and double vision of right eye. As he has sustained head injury, it was diagnosed as he was suffering from LMN, 7th nerve palsy, right 3rd nerve palsy (complete). He had haematoma in the right arterial temporal region and haemaregia contusion in the left temporal region and left cerebral peduncle. Only on 01.06.2007, it was found out that he



C.M.A.No.4293 of 2019

suffered fracture of lateral orbital valve. Based on the medical records, the Doctor who was examined as PW2 has given evidence to the effect that claimant's left ear totally lost its hearing capacity. Therefore, the Doctor has fixed the disability at 60% based on the above said medical records. Ex.P13 Audiogram Report also confirms the said fact. The visibility certificate issued by the Dr.Selvakalangium-PW2, to the effect that he was suffering from moderate mixed hearing loss of his right side ear and suffered severe hearing loss on left side ear.

6. The learned Tribunal has accepted the same, based on the guideline for disability assessment (Gazzette of India / Speech and ear disability). Therefore, placing reliance on the medical evidence (PW2) and the above said documents discussed supra, justice will be met if Rs.1,500/- per percentage is ordered. Thus, an amount of Rs.30,000/- is ordered for the disability occurred in addition to the amount already awarded.

7. Based on the medical records as mentioned supra, taking into account of the disability suffered by the claimant, an amount of



C.M.A.No.4293 of 2019

Rs.4,000/- is awarded in addition to the amount already awarded under the head of transportation. The claimant who was aged about 40 years, suffering from hearing loss of left ear, under the head of pain and sufferings an amount of Rs.10,000/- is granted in addition to the amount already granted under this head.

8. The learned Tribunal has awarded Rs.6,000/- for loss of income, by fixing his income as Rs.3,000/- p.m., calculated for two months. Taking into account of the fact that the claimant had sustained fracture over the head and was suffering from severe hearing loss on the left side ear and moderate mixed hearing loss of his right side ear, it is reasonable to award loss of income for three more months. It is the evidence of PW1 that he was working as a Manager in a book company and earning a sum of Rs.10,000/- per month. No documentary evidence was filed to substantiate the said details. However, the Hon'ble Supreme Court in **Syed Sadiq v. Divisional Manager, United India Insurance Co.Ltd.,** reported in **2014 (1) TN MAC 459 (SC)**, fixed the monthly income of the vegetable vendor at Rs.6,500/- for the accident occurred in the year



C.M.A.No.4293 of 2019

2008. Following the law laid down by the Apex Court, in the interest of justice, the monthly income of the claimant is fixed at Rs.6,000/-.

Therefore, the amount of Rs.24,000/- is granted in addition to the amount already granted under the head of loss of income. In all other aspects, the award of the Tribunal appears to be reasonable and I see no reason to interfere with the same. Therefore, the Compensation awarded by the Tribunal is reworked as tabulated below:

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
1	For Transportation	Rs. 1,000/-	Rs. 5,000/-	Enhanced
2	Extra Nourishment	Rs. 5,000/-	Rs. 5,000/-	Confirmed
3	Pain and Sufferings	Rs. 15,000/-	Rs. 25,000/-	Enhanced
4	Medical Expenses	Rs. 19,598/-	Rs. 19,598/-	Confirmed
5	Loss of Amenities	Rs. 5,000/-	Rs. 5,000/-	Confirmed
6	Disability	Rs. 60,000/-	Rs. 90,000/-	Enhanced



C.M.A.No.4293 of 2019

S.No.	Description	Amount awarded by Tribunal	Amount awarded by this Court	Award confirmed or enhanced or granted or reduced
7	Loss of Income	Rs. 6,000/-	Rs. 30,000/-	Enhanced
	Total	Rs.1,11,598/-	Rs.1,79,598/-	

9. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,11,598/- to **Rs.1,79,598/-** which would carry interest at the rate of 7.5% per annum from the date of petition till the date of realisation.

10. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,11,598/- to **Rs.1,79,598/-**.

(iii) The 2nd respondent / Insurance Company is directed to deposit the enhanced compensation amount i.e., **Rs.1,79,598/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.81 of 2008 on the file of Motor



C.M.A.No.4293 of 2019

Accident Claims Tribunal, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the appellant / claimant is at liberty to withdraw the same as per the Orders passed by the Tribunal after following due process of law. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant.

26.05.2023

Index : Yes/No
Speaking / Non-speaking order
ssn

R.KALAIMATHI, J.,

ssn

To:

1. The Motor Accident Claims Tribunal,
Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,



Chennai.

WEB COPY



C.M.A.No.4293 of 2019

Pre-delivery judgment in
C.M.A.No.4293 of 2019

26.05.2023