



C.M.A.No.2400 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2023

C O R A M

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

C.M.A.No.2400 of 2018

Vijayakumar

...Appellant

Vs

1.D.C.Elangovan

2.The New India Insurance Company Ltd.,
No.39-C, Bye Pass Road,
Dharmapuri.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.10.2011 made in M.C.O.P.No.1113 of 2009 on the file of the Motor Accidents Claims Tribunal, The Chief Judicial Magistrate, Dharmapuri.

For Appellant : Mr.S.Sathiaselan

For R2 : Ms.R.Sree Vidhya

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the judgment and decree dated 29.10.2011 made in M.C.O.P.No.1113 of 2009 on the file of the Motor Accidents Claims Tribunal, The Chief Judicial Magistrate, Dharmapuri.



2.The appellant/claimant filed M.C.O.P.No.1113 of 2009 on the file of the Motor Accidents Claims Tribunal, The Chief Judicial Magistrate, Dharmapuri, claiming a sum of Rs.10,00,000/-, as compensation for the injuries sustained by him in the accident that took place on 16.10.2009.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent's vehicle and directed the respondents 1 and 2/owner of the vehicle and Insurance Company to pay a sum of Rs.4,15,550/-, jointly and severally, along with interest at the rate of 7.5% as compensation to the appellant/claimant under following heads:

S.No	Description	Amount awarded by Tribunal (Rs)
1.	Loss of Income for 6 months	45,000
2.	Medical Expenses	1,84,050
3.	Extra Nourishment	5,000
4.	Transportation	41,500
5.	Pain and Suffering	40,000
7.	Permanent Disability	1,00,000
	Total	4,15,550



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 accident took place on 16.10.2009. Due to the said accident, the appellant/claimant sustained grievous injuries and took treatment for 84 days as in-patient. At the time of accident, the appellant/claimant was 27 years old and he was doing agricultural and sugarcane crusher work. Though the Doctor has assessed disability at 60%, the Tribunal has reduced the disability to 50% without giving any reasons and fixed a sum of Rs.2,000/- per percentage and awarded a sum of Rs.1,00,000/- as compensation towards permanent disability. The Tribunal fixed the notional income of the injured at Rs.7,500/- and awarded compensation towards loss of income for 6 months.

6. Learned counsel appearing for the appellant/claimant would further submit that due to the said accident, the leg of the injured has shortened about



10 cm and he could not work as agriculturist or sugarcane crusher in future.

Therefore, 100% disability has to be assessed for awarding compensation.

Further, the Tribunal has not awarded any amount towards loss of amenities and future medical expenses.

7.Learned counsel appearing for the 2nd respondent/Insurance Company would submit that a sum of Rs.2,000/- has been fixed per percentage of disability and a sum of Rs.1,00,000/- has been awarded by the Tribunal towards permanent disability, which is just and fair. She would further submit that towards loss of amenities and future medical expenses, this Court may award any considerable amount.

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

9.Taking into consideration the submission made by the learned counsel appearing for either parties and after observing the injuries sustained by the



appellant/claimant, it is seen that the appellant's/claimant's right leg has been shortened about 10 cm, due to the said injury sustained by him in the accident that took place on 16.10.2009, he could not do his day-to-day activities without the help of others. Therefore, this Court feels that the Tribunal has fixed disability at 50% and awarded compensation in a mechanical manner, where multiplier method has to be adopted. Hence, the amount awarded by the Tribunal towards permanent disability is set aside. Taking into consideration the nature of injuries and disability sustained by the appellant/claimant, this Court feels that it would be appropriate to adopt 70% disability. Further, the injured was 27 years at the time of accident and for the age of 27 years the multiplier applicable is 17 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 27 years is 40% and hence, the compensation towards permanent disability is computed as follows:

$$\text{Rs.7500/-} + 3000 (40\% \text{ of Rs.7500}) \times 12 \times 17 \times 70\% =$$

Rs.14,99,400/-.



10. Further, the compensation awarded by the Tribunal towards loss of income for 6 months is set aside and this Court is inclined to award compensation towards loss of income only for the treatment period of the injured as in-patient in the hospital and accordingly, a sum of Rs.22,500/- is awarded towards loss of income. As far as future medical expenses and loss of amenities are concerned, a sum of Rs.50,000/- and 20,000/- is awarded respectively. 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	45,000	22,500
2.	Medical Expenses	1,84,050	1,84,050
3.	Extra Nourishment	5,000	5,000
4.	Transportation	41,500	41,500
5.	Pain and Sufferings	40,000	40,000
6.	Permanent Disability	1,00,000	14,99,400
7.	Future Medical Expenses	-	50,000
8.	Loss of Amenities	-	20,000
	Total	4,15,550	18,62,450



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11. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.4,15,550/- is hereby enhanced to Rs.18,62,450/- 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 respondents 1 and 2/owner of the vehicle and Insurance Company is directed to deposit the modified award amount, jointly and severally, along with interest and costs now determined by this Court, less the amount already deposited, if any, within a period of eight weeks 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.

13.07.2023

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
The Chief Judicial Magistrate, Dharmapuri.

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