IN THE HIGH OF JUDICATURE AT MADRAS

DATED :10.07.2023

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2283 of 2019

Madheswaran ... Appellant

Vs.

1. Madhesh
2. Muthusamy
3. The Divisional Manager, Divisional Office,
   National Insurance Company Ltd.,
   Office Situated at Perundurai Main Road,
   Erode – 638 301. ...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 27.06.2018, made in M.C.O.P.No.379 of 2016, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Erode.

For Appellant : Mr.Ma.P.Thangavel

Respondent-1 &2 : Remained exparte

For Respondent -3 : Mr.S.Vadivel

JUDGEMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present Appeal, seeking for enhancement of compensation.

2. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3. On 10.08.2016, at about 5.20 p.m. when the claimant was riding his two wheeler, Bajaj Caliber, bearing Regn.No.TN-30-Y-8551, on Edappadi to Sankari Main Road, near Periyar University College, a vehicle, belonging to the second respondent, being driven by the first respondent/driver, came from the opposite direction in a rash and negligent manner, and hit against the claimant's vehicle, due to which, the claimant was thrown away on the road, and sustained grievious injuries all over the body. Hence, the claimant, who is an Agriculturist, earning a sum of Rs.20,000/- has made a claim for a sum of Rs.7,00,000/- as compensation.

4. Both the first and second respondents, driver and owner of the vehicle respectively have remained ex parte before the Tribunal.

5. The Claim Petition was resisted by the third respondent/Insurance Company by filing a detailed counter statement contending that, as per the accident registration, the claimant was under the influence of alcohol and hence, he lost control over the vehicle and invited the accident. Thus, by stating so, Insurance Company denied the involvement of the Lorry, bearing Registration No. TN-29-AV-6721 in the accident and sought for dismissal of the claim petition.

6. Before the Tribunal, in order to prove the claim, the claimant examined himself as P.W.1 besides examining one other witness, Dr.Madhu Periyasamy, as P.W.2 and marked 22 documents as Ex.P.1 to Ex.P.22. On behalf of the Insurance Company, no witness was examined, however, three documents were marked as Exs.R.1 to R.3.

7. The Tribunal, after analyzing the entire evidence both oral and documentary, has come to the conclusion that the accident had occurred only due to the rash and negligent act of the driver of the Lorry insured with the 3rd respondent herein/Insurance Company. By coming to such conclusion, the Tribunal has made the calculation under different heads and passed an award for a total compensation amount of Rs.7,00,300/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit. The break up details of the compensation amount awarded by the Tribunal are as follows :-

1) Loss of Income	: Rs.	15,000/-
2) Transportation & Medical Expenses	: Rs.	3,26,300/-
3) Extra Nourishment	: Rs.	6,000/-
4) Damages to Clothes and Articles	: Rs.	500/-
5) Pain & Sufferings	: Rs.	60,000/-
6) Disability and Loss of Earning Power	: Rs.	2,92,500/-
Total	Rs.	7,00,300/-

8. Not being satisfied with the aforesaid compensation, the claimant has filed the present Appeal, as stated supra.

9. Mr.Ma.P.Thangavel, learned counsel appearing for the appellant/claimant has submitted that at the time of the accident, the claimant was a self-employed, doing Agricultural business and earning a monthly income of Rs.20,000/-. However, the Tribunal, while determining compensation towards Loss of Earning Power due to Disability, has taken the monthly income of the injured claimant only at Rs.7,500/-, which is meager. In this connection, learned counsel placed reliance on the decision of the Honourable Supreme Court, in the case of **Syed Sadiq Vs. United India Insurance Company,** reported in **2014 (1) TNMAC 459 (SC),** wherein, the Honourable Supreme Court even for a vegetable vendor, who sustained injuries in the accident occurred during the year 2008, fixed the notional monthly income at Rs.6,500/-. The learned counsel, therefore, submitted that, when the Hon'ble Apex Court took notional income of a vegetable vendor at Rs.6,500/- during the year 2008, the notional income fixed by the Tribunal at Rs.7,500/-, for an Agriculturist, who met with the accident occurred in the year 2016 is meager and prayed to enhance the monthly income to Rs.20,000/-.

9.1 The learned counsel further submitted that, due to the accident, the claimant sustained serious fracture injury on right hand, due to which, his right hand fingers are completely restricted and P.W.2, Doctor, assessed permanent disability at 36.66%, whereas, the Tribunal has taken the disability only at 20%, which has resulted in awarding inadequate compensation under the said head. The learned counsel further submitted even the compensation awarded by the Tribunal under the conventional heads are low and the same requires appropriate enhancement.

10. On the other hand, Mr.S.Vadivel, learned counsel for the third respondent/Insurance Company submitted that, when it comes to determination of compensation towards functional disability, normally, out of the total disability assessed by the Doctor, who examines the injured, only 1/3rd disability has to be taken into consideration for the purpose of computing compensation, however, the Tribunal, regardless of the said principle, taken the disability sustained by the claimant at 20%, which has resulted in awarding exorbitant sum of Rs.2,92,500/- towards Loss of Earning Power due to disability and prays that the same calls for interference of this Court. Insofar as the compensation awarded by the Tribunal under all other heads are concerned, the same is just and fair and requires no interference.

11. I have given due consideration to the submissions made by the learned counsel for the appellant and the learned counsel for the third respondent/Insurance Company and perused the materials available on record.

12. The injured claimant is a Self-employed (Agriculturist) and earning Rs.20,000/- per month. The Tribunal, while determining the compensation towards Loss of Earning Power fixed the notional income of the injured at Rs.7,500/- and awarded compensation. However, this Court is of the view that fixation of Rs.7,500/- towards the notional monthly income of the injured, who met with the accident in the year 2016 is low. In fact, the Hon'ble Apex Court, in the case of ***Syed Sadiq's*** case (cited supra) fixed the notional monthly income even for a vegetable vendor at Rs.6,500/-, who sustained injuries in the accident occurred in the year 2008, in the absence of any proof for income.

12.1 In the present case, the claimant was an Agriculturist and aged about 48 years at the time of the accident, i.e. on 10.08.2016. Therefore, this Court deems it fit to fix the notional monthly income of the injured claimant at Rs.11,000/-. Insofar as compensation towards disability is concerned, as rightly pointed out by the learned counsel for the third respondent/Insurance Company, out of the total disability assessed by the Doctor, the Tribunal has to take into account only 1/3rd of disability. In the present case, the disability sustained by the injured is assessed at 36.66%. However, this Court, taking into consideration of the nature of injuries sustained by the claimant, is of the view that, it would be appropriate to fix functional disability at 15%. Accordingly, the functional disability sustained by the claimant is fixed at 15%.

12.2 Thus, by fixing the notional monthly income of the injured at Rs.11,000/-; adding 25% towards future prospects; and by applying right multiplier of '13' (since the injured is aged 48 years), and fixing the disability at 15%, the compensation towards Loss of Earning Power of the claimant is calculated as under:-

Notional Monthly income + 25% future prospects x Multiplier '13' x 15% disability

(i.e. Rs.11,000/- + Rs.2,750/-)=Rs13,750 x 12 x 13 x 15%
= Rs.3,21,750/-

12.3 Consequently, the sum of Rs.2,92,500/- awarded by the Tribunal under the head of 'Loss of Earning Power due to Disability' is hereby modified and enhanced to Rs.3,21,750/-.

12.4 It is seen that the Tribunal has failed to award compensation towards Loss of Amenities, and therefore, this Court awards a sum of Rs.30,000/- under the said head. The Tribunal has awarded only a sum of Rs.15,000/- towards Loss of Income and the same is modified and enhanced to Rs.30,000/-. Insofar as compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and is hereby confirmed.

12.5 Thus, the total compensation payable to the claimant under various Heads is as hereunder:-

S.No	***Head***	***Amount granted***
1.	Loss of income	Rs. 30,000/-
2.	Transportation & Medical Expenses	Rs. 3,26,300/-
3.	Extra Nourishment	Rs. 6,000/-
4.	Damage to clothes	Rs. 500/-
5.	Pain and Sufferings	Rs. 60,000/-
6	Disability and Loss of Earning Power	Rs. 3,21,750/-
7	Loss of Amenities	Rs. 30,000/-
Total		**Rs.7,74,550/-**

13. Thus, the total compensation amount of Rs.7,00,300/- awarded by the Tribunal is hereby modified and enhanced to Rs.7,74,550/-, which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

14. In the result, the Civil Miscellaneous Appeal is partly allowed on the following terms:-

(i) The third respondent, National Insurance Company Ltd., is directed to deposit the entire amount awarded by this Court equally along with interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Insurance Company, the Tribunal shall transfer the amount to the claimant's respective bank account through RTGS within a period of three weeks thereon or from date of furnishing the RTGS particulars by the claimants, whichever is later.

(iii) The claimant is entitled to withdraw the entire award amount by making necessary application before the Tribunal.

iv) The claimant is directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(v) However, there shall be no order as to costs.

10.07.2023

To

The Special Sub Judge,
Motor Accident Claims Tribunal, Erode.

Krishnan Ramasamy,J.,

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