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CMA No.4353 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2023

PRONOUNCED ON : 21.04.2023

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.4353 of 2019

Srinivasan

.. Appellant/petitioner

Vs.

1. M/s.Ideal Movers Pvt. Ltd.,
No.218, Reddhi Arcade,
2nd Floor, Plot No.857,
Sector KWC, Kalamboli,
Navi Mumbai,
Maharashtra – 410 218

2. M/s. The New India Insurance Company Ltd.,
Divisional Office III,
I Floor, Saifee Building,
Dutch Road, Nanpura,
Gujarat – 395 001.

.. Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 24.01.2018 passed in MCOP No.543 of 2015 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Dharmapuri.



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For Appellant : Mr.S.Sathiaseelan

For Respondents : Mr. C.Sangamithirai (for R2)
No Appearance (For R1)

JUDGMENT

Seeking enhancement of compensation awarded by judgment and decree dated 24.01.2018 passed in MCOP No.543 of 2015 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Dharmapuri, the injured claimant has filed this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties are hereinafter referred to as per their ranking before the claims tribunal.

3. The findings regarding factum of the accident and the manner of accident, were not disputed and hence, the findings of the tribunal are hereby confirmed.

4. Heard the learned counsel on either side and perused the materials available on record.



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5. Before the claims tribunal, the claim petitioner examined himself as PW1 and marked Ex.P1 to Ex.P14. On the side of the respondents, one Suresh Babu, Assistant in the Regional Transport Office, Omalur was examined as RW1 and Ex.R1 to Ex.R3 was marked.

6. Learned counsel for the claim petitioner could content that Ex.P13-Disability Certificate was marked in support of the case of the petitioner. The injured examined himself as PW1. The Doctor, who had examined the injured and issued Ex.P13-Disability certificate was not examined. The trial Court relied upon Ex.P13 disability Certificate and accepted the Ex.P13, in entirety and fixed the permanent disability at 37% and by granting Rs.3,000/- per % of disability, awarded Rs.1,11,000/- as disability compensation.

7. The learned counsel for the petitioner could contend that Ex.P13-Disability Certificate, was not properly issued by the Medical Board and the Doctor who had issued Ex.P13 ought to have considered the guidelines issued under Section 40.2 to 40.2.3 of the Rights of the Persons with Disabilities Act, 2016 and had there been adoption of those guidelines, the



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disability would have been 45.5% and drew my attention to the said provision.

8. As per Ex.P13-Disability Certificate, Ortho Disability is 30%, Dental Disability is 15% and Neuro Disability is 10% and Ex.P13 was issued for 37% permanent disability. Admittedly, it is marked through PW1-claim petitioner and he has not deposed anything against Ex.P13. When the claim petitioner entered the witness box as PW1, deposed and admitted Ex.P13-Disability Certificate by marking the same, he cannot be permitted to agitate the same by taking a different stand in the appellate Court.

9. (a) To the question as to whether a party who filed a document in support of his claim having entered the witness box, adduced evidence in support of the documentary evidence, Ex.P13-Disability in the instant case, having admitted the document, can he be allowed to go back and challenge the validity of the document in the appeal, the answer is certainly in negation.



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(b) In this regard, the person who let in a documentary evidence in support of his pleading in a case, can neither be permitted to challenge the document in appeal nor be allowed to agitate that the same is erroneous in appellate stage. Once a party who had entered the witness box and admitted the document cannot be allowed to turn around and challenge the very same admitted document in appellate Court, by raising a plea that it is adverse to him. Hence, I have no hesitation to hold that, on the facts and circumstances of the case, Ex.P13 cannot be challenged in appeal, since it has been marked by PW1 himself as admitted and he cannot now go back and agitate and raise some legal issue as if an injustice is done to him.

(c) At this juncture, it is worthwhile to refer to the following few judgments on the principles of the '*doctrine of approbate and reprobate*'.

(i) In ***Union of India and others Vs. N.Murugesan, etc.***, reported in **(2022) 2 SCC 25**, the Hon'ble Supreme Court has held as follows:

“27.....

....“A plaintiff is not permitted to ‘approbate and reprobate’. The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election — namely, that no party can accept and reject the same instrument”



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(ii) In ***Premalata @ Sunita Vs. Naseeb Bee, in Civil Appeal***

Nos.2055-2056 of 2022 dated 23.03.2022, the Hon'ble Supreme Court, applying the doctrine of approbate and reprobate and held that a litigant cannot be permitted to take two different / contradictory stands before two different forums.

(iii) In ***Rajasthan State Industrial Development and Investment***

Corpn. Vs. Diamond and Gem Development Corpn. Ltd., reported in (2013) 5 SCC 470 : (2013) 3 SCC (Civ) 153, the Hon'ble Supreme Court has observed as follows:

“15. A party cannot be permitted to “blow hot-blow cold”, “fast and loose” or “approbate and reprobate”. Where one knowingly accepts the benefits of a contract, or conveyance, or of an order, he is estopped from denying the validity of, or the binding effect of such contract, or conveyance, or order upon himself.

10. The petitioner, who is injured has not chosen to examine the Doctor and mark the document through the Doctor, besides he filed the document. In the proof affidavit, he relied upon the document and admitted the extent of disability mentioned in the document. Based upon the



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admission and acknowledgement of the extent and degree of disability, in the proof affidavit, the claims tribunal has accepted the same and awarded the compensation by fixing the disability in the certificate. Having accepted the document and also invited a judgment from the Court, it is not open to the claim petitioner, to revoke his admission in the appellate stage and challenge the document by raising the plea of guidelines from the Rights of Persons with Disabilities Act, 2016 and the same is impermissible in law.

11. Secondly, the learned counsel for the appellant/claim petitioner could rely upon the guidelines of 40.2 to 40.2.3 from Rights of Persons with Disabilities Act, 2016 and could submit that as against 3 disabilities viz., A, B and C, only A and B were taken and hence, all the three disabilities have to be taken into consideration and the disability compensation has to be reworked.

12. This Court has given its anxious consideration to the said contention. At column 15 of the said Disability Certificate, it is specifically mentioned that the patient has multiple disabilities and hence combination formula was followed. For the said purpose they have taken the Neuro



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Disability and Ortho Disability into consideration and arrived at the disability of 37%. Dental disability was not considered and hence, I find that the adoption of the formula as such on the facts and circumstances of the case is just and reasonable and does not warrant, third element for consideration, since, the permanent disability has to be assessed for the whole body and hence, I find that alleged formula projected by the appellant/petitioner is not applicable on facts and circumstances of the case, considering the nature of injuries mentioned at Column No.15 of the Ex.P13-Disability Certificate.

13. As per the Medical Board Disability Certificate which was marked as Ex.P13, taking note of the injuries mentioned therein and the fractures sustained by the petitioner, I find it is a functional disability of 37% and the compensation for functional disability has to be reassessed.

14. For the accident of the year 2014, though the tribunal has arrived at the notional income of the injured/claim petitioner as Rs.6,000/-, future prospects was not considered. The injured was aged 19 years at the time of accident and considering his avocation viz., Auto Driver, a sum of



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Rs.8,000/- is fixed as notional income and adding 40% towards future prospects, as per the decision of our Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi***, reported in **2017 (16) SCC 680**, the monthly income of the deceased is fixed as Rs.11,200/- [Rs.8,000/- + Rs.3,200/-]. Thereafter, by applying '18' multiplier as per the decision of our Hon'ble Supreme Court in ***Sarla Varma Vs. Delhi Transport Corporation Ltd.***, reported in **TNMAC 2009 (2) SC**, the compensation towards loss of income on account of functional disability works out to

$$\text{Rs.11,200/-} \times 18 \times 12 \times 37\% = \text{Rs.8,95,104/-}$$

15. In view of the above, the award of Rs.1,11,000/- awarded under the head 'permanent disability', is replaced with the compensation of Rs.8,95,104/- under the head 'functional disability'. Further, the tribunal has awarded loss of income for a period of three months. Considering the nature of injury sustained, loss of income is awarded for a period of six months. The award under other heads are just and reasonable and hence, the same is confirmed. The compensation, now worked out is as follows:



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Heads	Award by Tribunal Rs.	Now Awarded Rs.	Enhanced
37% permanent disability	1,11,000	-	-1,11,000/-
Pain and suffering	30,000	30,000	
Transportation charges	3,500	3,500	
Attender charges	5,000	5,000	
Extra nourishment	10,000	10,000	
Medical bills	5,43,400	5,43,400	
Future medical expenses	60,000	60,000	
Loss of income	30,000 (for three months)	60,000 (for six months)	30,000
Functional disability		8,95,104	8,95,104
Total	7,92,900	16,07,004	8,14,104

16. It is submitted by the learned counsel for the respondent that the appellant/claim petitioner, himself has restricted the appeal to Rs.15,00,000/- only.

17. In the result, it is ordered as follows:

(i) The judgment and decree dated 24.01.2018 passed in MCOP No.543 of 2015 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Dharmapuri, stands modified to the limited extent that the compensation of Rs.7,92,900/- awarded by the Claims tribunal, is



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enhanced to Rs.16,07,004/- and the interest awarded by the claims tribunal, remains unaltered.

(ii) As the value of the appeal is Rs.15,00,000/- only, additional Court fee on the enhanced compensation, has to be paid by the claim petitioner within a period of four weeks and decree to be drafted after the payment of Court fee.

(iii) The 2nd respondent-Insurance company, is directed to deposit the enhanced compensation amount with proportionate interest and costs, to the credit of MCOP No.543 of 2015 on the file of the Motor Accident Claims Tribunal [Special Subordinate Court], Dharmapuri, less the amount already deposited, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit, the appellant-claim petitioner is permitted to withdraw the enhanced compensation amount, less the amount already withdrawn, by making necessary application.



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18. With the above directions, the Civil Miscellaneous Appeal stands partly allowed. No Costs.

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Index : Yes/No
Speaking/Non-Speaking Order
Neutral Citation : Yes/No.
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RMT.TEEKAA RAMAN,J.,

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To

The Special Subordinate Court,
Motor Accident Claims Tribunal, Dharmapuri.

Pre-delivery Judgment in
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