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C.M.A.No.1469 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1469 of 2019

A.Azhaguraju

(since he is in coma and mentally
and physically incapacitated being
represented by his NF, Guardian
and Wife Poongothai)

(Amended as per order dated 21.03.2017
passed in I.A.No.629/2017)

... Appellant

Vs.

1.S.Tamilarasan

2.M/s.The New India Assurance Company Limited,
92, East Coast Chambers,
1ST Floor, No.92, G.N.Chetty Road,
T.Nagar,
Chennai.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed by the Motor Accidents Claims Tribunal and Principal District Judge, Perambalur by its decree and judgment dated 23.03.2018 made in M.C.O.P.No.684 of 2014.



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For Appellant : Ms.L.Meena
for M/s.C.Vidhusan

For Respondents : R1 – Unclaimed (NA)
Mr.K.Padmanabhan for R2

J U D G M E N T

This appeal has been filed against the judgment and decree dated 23.03.2018 passed by the Motor Accidents Claims Tribunal and Principal District Judge, Perambalur, in M.C.O.P.No.684 of 2014.

2.The brief facts of the case is that on 24.05.2014, at about 12.30p.m., the appellant was riding in a Hero Honda Splendor two wheeler bearing Registration No.TN 46-C-8570 along with his friend one Periyasamy who was travelling as a pillion rider on Chennai – Trichy NH 45 Road from North to South near Karthick House. At that time, a Safari Car bearing Registration No.TN 10 AA 0397 owned by the first respondent and insured with the second respondent came in a rash and negligent manner and dashed against the motorcycle, due to which, the appellant sustained injuries.

3.Thereafter, the injured claimant/ appellant filed claim petition before the Tribunal, claiming compensation of Rs.20 Lakhs. After

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adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.12,18,308/- with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of realisation and costs and directed that the second respondent to deposit the compensation. Aggrieved by the same, the appellant claimant has filed this appeal for enhancement in compensation.

4.The learned counsel appearing for the appellant submitted that the appellant has filed this appeal questioning the quantum of compensation awarded by the Tribunal. The learned counsel further submitted that the Doctor has assessed the disability of the claimant as 60% partial permanent disability and the Tribunal fixed the same for disability, however, due to the accident, the appellant is in coma and mentally and physically incapacitated and is taking only liquid food and has become vegetable. The Tribunal ought to have fixed 100% disability and awarded compensation, instead fixed 60% disability and awarded compensation, which is not sustainable one. Further, the claimant was a self employed driver and would have earned atleast Rs.15,000/- per month, however, the Tribunal fixed the monthly income of the claimant as Rs.6,000/- and awarded a meagre compensation.



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5.The learned counsel appearing for the second respondent Insurance Company submitted that the amount awarded by the Tribunal is just and reasonable and warrants no interference.

6.Heard the learned counsel appearing for the appellant claimant as well as the learned counsel appearing for the second respondent Insurance Company and perused the materials available on record.

7.This appeal has been filed only questioning the quantum of compensation awarded by the Tribunal. The tribunal after elaborately discussing the factual aspects awarded a sum of Rs.6,04,800/- for loss of income, Rs.3,53,908/- for medical expenses, Rs.1,59,600/- for physical medical expenses based on Ex.P.9, Rs.10,000/- for transport expenses, Rs.10,000/- for extra nourishment, Rs.40,000/- for loss of income during the treatment period, Rs.40,000/- for pain and sufferings and arrived at a total compensation of Rs.12,18,308/- with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of realisation.



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8. Admittedly, after the accident, the appellant is in coma and

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mentally and physically incapacitated and is taking only liquid food and has become vegetable. Though the Doctor has assessed the disability of the claimant as 60% partial permanent disability, this Court accepts the plea of the learned counsel appearing for the appellant which was not disputed by the learned counsel appearing for the Insurance Company. Since the appellant has become vegetable, this Court fix the disability of the appellant as 100% functional disability.

9. The Hon'ble Apex Court in Syed Sadiq case fixed Rs.6,500/- as the notional income of the vegetable vendor in the year 2007. However, the Tribunal has fixed only a sum of Rs.6,000/- as the monthly income of the claimant. The claimant claim that he was a self employed driver and would have earned atleast Rs.15,000/- per month. Hence, this Court fix Rs.12,000/- as the monthly income of the claimant and after deducting 1/3 of the amount towards his personal expenses, the loss of income per month comes to Rs.8,000/- . The age of the claimant at the time of the accident is 43 and the Tribunal has rightly adopted the multiplier 14. Accordingly, the



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actual loss of income works out to Rs.13,44,000/- [Rs.8,000/- X 12 X 14 X 100%].

10.This Court is of the opinion that some amount has to be awarded for future prospects, for future medical expenses, for loss of matrimonial life and for attender charges. Accordingly, this Court awards 25% of actual loss of income for future prospects, which comes to Rs.3,36,000/- [25% of Rs.13,44,000/- = Rs.3,36,000/-], a sum of Rs.50,000/- for future medical expenses, a sum of Rs.50,000/- for loss of matrimonial life and a sum of Rs.20,000/- for attender charges. The amount awarded under the head pain and suffering, in the opinion of this Court is high and this Court is inclined to reduce the amount awarded under the said head. Accordingly, the amount awarded for pain and sufferings is reduced to Rs.25,000/- from Rs.40,000/-. The amount awarded under the heads medical expenses and physical medical expenses based on Ex.P.9 are confirmed. The amount awarded under the other heads, in the opinion of this Court are not necessary and the same are deleted.

11.Accordingly, the compensation amount is re-assessed as



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follows:

S.No.	Description	Amount Awarded by the Tribunal	Amount Awarded by this Court
1.	Loss of income	Rs.6,04,800/-	Rs.13,44,000/-
2.	Medical expenses	Rs.3,53,908/-	Rs. 3,53,908/-
3.	Physical medical expenses based on Ex.P.9	Rs.1,59,600/-	Rs. 1,59,600/-
4.	Transport expenses	Rs. 10,000/-	---
5.	Extra nourishment	Rs. 10,000/-	---
6.	Loss of income during the treatment period	Rs. 40,000/-	---
7.	Pain and sufferings	Rs. 40,000/-	Rs. 25,000/-
8.	Future prospects	---	Rs. 3,36,000/-
9.	Future medical expenses	---	Rs. 50,000/-
10.	Loss of matrimonial life	---	Rs. 50,000/-
11.	Attender charges	---	Rs. 20,000/-
	Total	Rs.12,18,308/-	Rs.23,38,508/-

12.The appellant claimant is entitled to total compensation of Rs.23,38,508/- along with interest at the rate of 7.5% p.a. from the date of filing of the claim petition till the date of realisation.

13.The civil miscellaneous appeal is allowed. The judgment and decree dated 23.03.2018 passed by the Motor Accidents Claims



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Tribunal and Principal District Judge, Perambalur, in M.C.O.P.No.684 of 2014, is modified to the above extent.

14.The second respondent Insurance Company is directed to deposit the modified/ enhanced award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the wife of the appellant/ claimant namely, Poongothai (since the appellant is in coma and mentally and physically incapacitated) is permitted to withdraw the modified/ enhanced award amount, along with accrued interest and costs, after deducting the amount already withdrawn, if any, on making proper and necessary application before the Tribunal and on production of necessary proof of identity.

15.The appellant/ claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal. The appellant/ claimant is directed to pay the requisite Court fee for the enhanced compensation amount, if required. The Motor Accidents Claims Tribunal and Principal District Judge, Perambalur, shall disburse the compensation amount upon production of certified copy showing proof



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of payment of Court fee by the appellant/ claimant.

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16.The civil miscellaneous appeal is allowed. No costs.

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Index: Yes/ No

Speaking Order: Yes/ No

NCC: Yes/ No

To

1.The Motor Accidents Claims Tribunal and
Principal District Judge, Perambalur.



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M.DHANDAPANI,J.
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