



C.M.A.(MD)No.1421 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.07.2023

Pronounced on : 19.07.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.1421 of 2011

Sethu Ramalingam

...Appellant/Claimant

Vs.

1. Masood Avuliya
2. The Correspondent,
Bharat Montessori Matriculation Higher
Secondary School,
Elanchi,
Tenkasi Taluk,
Tirunelveli District.
3. M/s.United India Insurance Company Ltd.,
represented by its the Branch Manager,
Tenkasi.

4. Sulaihal Beevi

...Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow the appeal and modify the award passed in M.C.O.P.No.149 of 2010 dated 13.07.2011 on the file of the Motor Accident Claims Tribunal / Principal Sub Court, Tenkasi, Tirunelveli District.



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For Appellant	: Mr.R.J.Karthick
For R1	: No appearance
For R2	: Mr.K.Prabhu
For R3	: Mr.I.Robert Chandrakumar
For R4	: No appearance

JUDGMENT

This Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.149 of 2010 dated 13.07.2011 on the file of the Motor Accident Claims Tribunal / Principal Subordinate Court, Tenkasi.

2. The appellant/injured, who was awarded with compensation of Rs.33,000/- (Rupees Thirty Three Thousand only) with interest at 7.5% per annum payable by the respondents 1 to 3/respondents 1 to 3 for the disability suffered by him, consequent to an accident occurred on 31.05.2009, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The main contention of the appellant/injured is that since the injuries suffered by the appellant/injured in the accident directly and



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drastically affected the earning capacity of the appellant/injured, the Tribunal ought to have adopted multiplier method for computing the compensation, that the Tribunal, without considering the evidence of medical officer, who was examined as P.W.2 and the disability certificate issued by him under Ex.P.10, has adopted percentage method and granted compensation, which is very much low and that therefore, the injured was constrained to prefer the present appeal.

4. The only point that arises for consideration is whether the quantum of compensation awarded by the Tribunal is just and proper and is in accordance with law?

5. The learned counsel appearing for the appellant/injured would submit that P.W.2-Doctor has given specific evidence that blood flow was very much affected due to the injuries suffered by the appellant/injured, that the appellant/injured was not in a position to walk properly, that the movement of hip got reduced by 9%, that there was stiffness on the appellant/injured right shoulder and that he had fixed the disability at 40%, that the Tribunal, without considering the evidence given by P.W.2



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and the disability certificate issued under Ex.P.10, by taking the opinion given at the Government Hospital that the injuries were simple in nature, has adopted the percentage method and that the Tribunal ought to have adopted the multiplier formula.

6. The learned counsel appearing for the third respondent/insurer would submit that the injuries suffered by the appellant/injured were specifically certified as simple injuries, that P.W.2-medical officer, without any basis, has fixed the disability at 40%, that since the appellant/injured has not suffered any permanent disability, the question of applying multiplier method does not arise and that the Tribunal has rightly adopted the percentage method and granted Rs.20,000/- (Rupees Twenty Thousand only) for the disability.

7. It is seen from Ex.P.2-Accident Register extract that the appellant/injured has suffered 4 types of injury (1) pain over the (R) shoulder, difficulties in raising the (R) UL, (2) abrasion over the dorsum of hand on the dorsum 2cms x 0.5cms, (3) abrasion over the web space between index and middle finger 1cm and (4) pain over the (R) hip joint. The appellant/injured in the claim petition has alleged that right shoulder



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injuries and right hip joint injuries are grievous in nature, but the duty Doctor has given his opinion as simple and that he will prove the nature of injuries at the time of trial through Ortho Doctor.

8. It is further case of the appellant/injured that he is unable to walk, sit and stand without any support, that he is unable to lift his right hand and to take any weighty materials by his hand, that his right shoulder and right hip joint got dislocated, that his hip movement was restricted and that therefore, he was not in a position to do his previous avocation and routine work as before.

9. It is evident from Ex.P.14-Discharge Summary that the appellant/injured was admitted in Government Head Quarters Hospital, Tenkasi on 31.05.2009 and was discharged on 05.06.2009. In Ex.P.2-Accident Register extract, the Assistant Surgeon attached to the Government Head Quarters Hospital, Tenkasi, where the appellant/injured was taking inpatient treatment, has given his opinion that there are no bone injuries and that the injuries suffered by the appellant/injured are simple in nature.



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10. Though the appellant/injured in the claim petition has alleged that subsequent to the discharge from the Government Hospital, he had taken inpatient treatment in Subbulakshmi Hospital, Shencottah and he was given intensive treatment care for 3 days in the said hospital, admittedly, the appellant/injured has not produced the discharge summary or any other medical records to show that he had taken inpatient treatment in Subbulakshmi Hospital, Shencottah, subsequent to his discharge from the Government Head Quarters Hospital, Tenkasi. Though the appellant/injured has filed the present appeal seeking enhancement, he has not chosen to file the said medical records nor taken any steps to send for the same.

11. It is pertinent to note that P.W.2-medical officer has not treated the appellant/injured and that he has examined the appellant/injured only for the purpose of issuing the disability certificate. No doubt, P.W.2 in his chief examination evidence would say that the appellant/injured hip movement was restricted by 9%, that the movement of right shoulder got reduced by 30% due to the blood clot and that he had fixed the disability at 30% for the restricted hip movement and 10% for the restricted right



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shoulder movement, totally 40%. In his cross-examination, he would admit that injuries suffered by the appellant/ injured were certified as simple injuries, that the said injuries are not simple and that since the blood flow was reduced, he has fixed the disability. He would further admit that he has not produced the records. As rightly observed by the learned trial Judge, P.W.2-medical officer, without any medical records and without any basis, has certified that the appellant/ injured has suffered 40% disability.

12. The appellant/injured in his cross-examination would say that the injuries suffered by him were already cured, but the effects are still subsisting. Though the appellant/injured has alleged that the effects of injury are still subsisting, he has not elaborated anything further. It is not the case of the appellant/claimant that he has been taking further treatment for the alleged issues.

13. As rightly contended by the learned counsel appearing for the respondents 2 and 3, the appellant/injured has not produced any iota of material to show that he was suffering from the impacts due to the injuries sustained and that he has been taking treatment for the same. In the



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absence of any evidence, the Tribunal has rightly refused to accept the finding of P.W.2-medical officer that the appellant/injured has suffered permanent disability at 40%.

14. Considering the above facts and circumstances and also taking note of the nature of the injuries suffered and the opinion given by the Assistant Surgeon attached to the Government Head Quarters Hospital, Tenkasi and in the absence of any evidence to show that the appellant/injured has suffered permanent disability and consequent loss of earning power, the question of adopting multiplier method does not arise at all. The learned trial Judge, considering the evidence available on record, has fixed the disability at 20% and by adopting percentage method, has awarded Rs.20,000/- (Rupees Twenty Thousand only) for the disability and as such, the same cannot be found fault with.

15. The Tribunal has also awarded Rs.5,000/- (Rupees Five Thousand only) towards pain and suffering, Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment and Rs.3,000/- (Rupees Three Thousand only) towards medical expenses, all totally Rs.33,000/- (Rupees Thirty Three Thousand only).



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16. Considering the nature of injuries and the period of treatment, this Court is inclined to award Rs.15,000/- (Rupees Fifteen Thousand only) for pain and suffering, Rs.15,000/- (Rupees Fifteen Thousand only) for extra nourishment, Rs.5,000/- (Rupees Five Thousand only) for attendant charges and Rs.5,000/- (Rupees Five Thousand only) for transport expenses. Hence, the appellant/injured is entitled to get total compensation of Rs.63,000/- (Rupees Sixty Three Thousand only) and the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability	20,000	20,000	Confirmed
2.	Pain and suffering	5,000	15,000	Enhanced
3.	Extra nourishment	5,000	15,000	Enhanced
4.	Medical expenses	3,000	3,000	Confirmed
5.	Attendant charges	Nil	5,000	Granted
6.	Transport expenses	Nil	5,000	Granted
	Total	33,000	63,000	Enhanced by Rs.30,000/-



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17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.33,000/- (Rupees Thirty Three Thousand only) is hereby enhanced to **Rs.63,000/- (Rupees Sixty Three Thousand only)** together with interest at 7.5% per annum and costs. The third respondent/Insurer is directed to deposit the modified award amount with accrued interests and costs to the credit of M.C.O.P.No.149 of 2010 on the file of Motor Accident Claims Tribunal / Principal Subordinate Court, Tenkasi, Tirunelveli District, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/injured is permitted to withdraw the award amount with accrued interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs.

19.07.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
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To:

1. The Motor Accident Claims Tribunal / Principal Subordinate Court,
Tenkasi, Tirunelveli District.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.1421 of 2011

Dated : 19.07.2023