



C.M.A(MD)No.1171 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.M.A(MD)No.1171 of 2023

B.Sankar Raja

... Appellant

.VS.

1.Lingam

2.M/s.National Insurance Co.Ltd.,
through its Branch Manager,
Hero Vertical, No.101, 106, BMC House,
NI Connaught Place,
New Delhi 110 001.

3.M/s.National Insurance Co.Ltd.,
through its Branch Manager,
Karaikudi Town,
Sekkalai,
Sivagangai District.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the M.V.Act, 1988, to enhance the compensation to the tune of Rs.3,00,000/- in additional to the compensation awarded by the Tribunal by modifying the fair and decreetal order passed in MCOP.No.80 of 2014 dated 24.08.2018 on the file of the Sub Court, (MACT), Devakottai.



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For Appellant :Mr.S.M.Kadhar
For R2 and R3 :Mr.D.Sivaraman

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JUDGMENT

This appeal is filed challenging the award passed in MCOP.No.80 of 2014 on the file of the Sub Court (MACT), Devakottai on the ground that the learned Tribunal has not considered the permanent disability suffered by the appellant despite production of disability certificate. In the said circumstances, this appeal is filed for enhancement of compensation by including the compensation for the permanent disability suffered by the appellant.

2.The appellant filed the claim petition seeking compensation of Rs.20,00,000/- for the injuries suffered by him in a road accident that had happened on 14.09.2013. There is no dispute with regard to the accident and the liability on the part of the second respondent/Insurance Company to pay the compensation. The only question that arises for the consideration is whether the appellant is entitled for enhancement of compensation for the reason that despite production of disability certificate as Ex.P9, the learned Tribunal failed to grant compensation under the head of permanent disability.



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3.Perusal of the record ie., the daily status of the Court proceedings in Sub Court, Devakottai, shows that the medical report ie., the disability certificate, was received by the Court on 04.06.2018. This medical report was received in evidence as Ex.P5 with the consent of other side. However, it is patent that the learned Tribunal has not considered Ex.P9, while awarding the compensation. The learned Tribunal had passed the award only on the basis of Ex.P1 to Ex.P8 documents.

4.From the medical records produced, especially the wound certificate and the treatment record, it is seen that the appellant suffered the following injuries:

“Tiny extra dural hemorrhage EDH of size 15 x 7 mm seen in the right temporal region with adjacent fracture of right greater wing of sphenoid.

Multiple extra axial air pockets seen in the right frontal and temporal regions.

Fracture of orbital plate of right frontal bone with fracture of anterior and posterior wall of right frontal sinus.

Fracture of postero lateral and medial wall of right orbit.



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Communitied displaced fracture of anterior, medial and posterior walls of right maxillary sinus with fracture of maxillary alveolus.

Right maxillary and periorbital soft tissue swelling with emphysema seen.”

5.As per the disability certificate issued by the District Medical Board, Government Medical College and Hospital, Sivagangai, the appellant suffered 30% of visual impairment. However, the learned Tribunal has not considered the disability certificate and has not awarded the compensation under the head of permanent disability. The following sums were awarded under different heads:-

“1) மருத்துவ பில்படி	-	ரூ.20,228/-
2) போக்குவரத்து செலவு	-	ரூ.15,000/-
3) சத்தான உணவு செலவு	-	ரூ.15,000/-
4) வலி துன்பத்திற்காக	-	ரூ.25,000/-
மொத்தம்	-	ரூ.75,228/-”

6.In the said circumstances, it is no doubt that the appellant is entitled for compensation under the head of permanent disability.



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7. With regard to the quantum of compensation to be fixed on the ground of disability, it is submitted by the learned counsel appearing for the appellant that a sum of Rs.4,000/- each for 30% disability may be awarded. This is opposed by the learned counsel appearing for the respondents 2 and 3/Insurance Company stating that in 2013, only a sum of Rs.3,000/- was taken for computing the compensation under the head of permanent disability.

8. Considered the rival submissions and perused the records.

9. It is not in dispute that the appellant is entitled for compensation under the head of permanent disability for his visual impairment to the extent of 30% on his right eye. As already stated, he suffered fracture injuries. These injuries coupled with disability would certainly impact the functional efficiency of the appellant. In the said circumstances, this Court is of the considered view that a sum of Rs.3,500/- each per percentage of disability would be just and appropriate for computing the compensation under the head of permanent disability.



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10.In this view of the matter, a sum of Rs.1,05,000/- (Rs.3,500/- x 30/100) is awarded towards permanent disability. The learned Tribunal awarded a sum of Rs.25,000/- towards pain and suffering. However, considering the fracture injuries, the sum of Rs.25,000/- awarded under the head of pain and suffering is enhanced to Rs.35,000/-. The compensation awarded under other heads are retained.

11.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation is fixed as under:-

S.No	Head	Award of the Tribunal	Awarded by this Court	Difference
1	Medical Bill	Rs.20,228/-	Rs.20,228/-	-
2	Transportation	Rs.15,000/-	Rs.15,000/-	-
3	Nutritional food	Rs.15,000/-	Rs.15,000/-	-
4	Pain and Sufferings	Rs.25,000/-	Rs.35,000/-	Rs.10,000/-
5	Permanent Disability	-	Rs.1,05,000/-	Rs.1,05,000/-
Total		Rs.75,228/-	Rs.1,90,228/-	Rs.1,15,000/-

The respondents 2 & 3 shall deposit the entire award amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the appellant is permitted to



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withdraw the amount, by filing appropriate petition before the Tribunal.

The other terms and conditions as fixed by the Tribunal for pay and recovery and rate of interest from the date of petition till the date of deposit remain unaltered. No costs.

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

20.11.2023

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To

The Subordinate Judge,
Devakottai.



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G.CHANDRASEKHARAN,J.

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