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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A(MD)No.699 of 2022

Rajasekar

:Appellant/Petitioner

.vs.

1.M/s.Sundaravel Roadways,
Sundaravel Marketing Company(P)Limited,
No.09, A.S.K.T.Road,
Sivakasi Town and Taluk,,
Virudhunagar District.

2.M/s.The New India Assurance Company,
Branch Office,
No.77/78, North Car Street,
Sivakasi,
Virudhunagar District.

:Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act against the judgment and decree made in M.C.O.P.No.386 of 2016, dated 22.11.2021, on the file of the Motor Accidents Claims Tribunal (Sub-Court), Kulithalai, seeking enhancement of compensation of Rs.9,41,882/-.

For Appellant

:Mr.N.Sudhagar Nagaraj

For Respondent-1

:Remained ex-parte before
the Tribunal

For Respondent-2

:Mr.C.Deepak



JUDGMENT

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This Civil Miscellaneous Appeal is filed by the claimant for enhancement of compensation.

2.The facts of the case are that on 19.08.2016, at about 7.00 p.m., while the appellant/claimant was driving his lorry on Madurai-Dindigul Highways, the lorry belonging to the first respondent and insured with the second respondent, driven by its driver in a rash and negligent manner, hit his lorry, as a result of which, the claimant was thrown out of the lorry and sustained fracture and other grievous injuries. The appellant/claimant was admitted to the hospital and was treated for his injuries. According to the claimant, due to the injuries sustained by him in the accident, he was not able to carry on his avocation as a Driver. The claimant, therefore, filed a claim petition claiming a sum of Rs.16 lakhs as compensation.

3.The first respondent remained exparte before the Tribunal and the second respondent filed a counter affidavit generally denying all the averments in the claim petition and particulars questioning the claim of the claimant on the quantum, negligence and liability. Before the claims Tribunal, the claimant examined



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himself as P.W.1 and marked Ex.P1 to Ex.P10. The second respondent did not mark any documents and also did not examine any witness. The Disability Certificate issued by the Medical Board was marked as Ex.C1.

4.On consideration of the entire evidence on record, the Tribunal on its finding on negligence against the driver of the first respondent/lorry, awarded a sum of Rs.6,58,118/- along with interest at the rate of 7.5% p.a., mulcting the liability on the Insurance Company.

5.Aggrieved by the compensation awarded by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal for enhancement of compensation.

6.The learned counsel for the appellant/claimant submitted that the Tribunal erred in not adopting the multiplier method, as the Medical Board, under Ex.C1, had assessed the disability at 40% and further, as the claimant was a driver by profession, the nature of injuries sustained by the claimant reveals that he could not continue his avocation, as before. Therefore, the learned counsel submitted that the assessment of compensation towards



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disability at Rs.1,20,000/- was very meagre and sought for enhancement of the same. The learned counsel further submitted that the compensation awarded under the other heads like loss of income, pain and suffering, extra nourishment, attendant charges and transportation charges were also meagre and the same needed to be enhanced.

7.The learned counsel for the second respondent, on the other hand, submitted that in the absence of any finding that the disability sustained by the claimant was permanent in nature, the Tribunal had rightly held that the multiplier method could not be adopted. According to the learned counsel, the compensation awarded by the Tribunal was fair, reasonable and just and did not call for any interference by this Court.

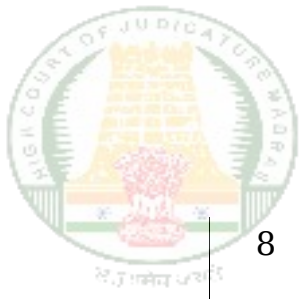
8.I have heard both the learned counsels and I am in agreement with the learned counsel for the second respondent. This is not a fit case for adopting the multiplier method for assessing the compensation towards disability. The Medical Board has assessed the disability at 40% and has not said whether it is permanent or partial in nature and therefore, I am of the view that the unit method adopted by the Tribunal is fair and the same is to



be sustained. I am of the further view that the compensation under the other heads are very meagre considering the fact that the claimant was hospitalized on four occasions for a total period of 49 days. Even the injuries sustained by the claimant, as borne out by the photographs, makes it clear that the injuries were grievous in nature and therefore, I am of the view that the compensation under the other heads needs to be revised.

9. Accordingly, the award of the Tribunal is modified as follows:-

S.No.	Award under the heads	Awarded by the Claims Tribunal	Awarded by this Court	Remarks
1	For loss of disability	Rs. 1,20,000/-	Rs. 1,20,000/-	same
2	For medical expenses as per Ex.P8	Rs. 4,75,118/-	Rs. 4,75,118/-	same
3	For loss of income	Rs.18,000/-	Rs.27,000/-	enhanced
4	For pain and suffering	Rs.25,000/-	Rs.50,000/-	enhanced
5	For extra nourishment	Rs.10,000/-	Rs.10,000/-	same
6	For Attendant charges	Rs.5,000/-	Rs.10,000/-	enhanced
7	For transport charges	Rs.5,000/-	Rs.10,000/-	Enhanced



8	Total	Rs. 6,58,118/-	Rs. 7,02,118/- (rounded off to Rs. 7,02,200/-)	enhanced
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10. Accordingly, the Civil Miscellaneous Appeal is allowed-in part, enhancing the compensation from Rs.6,58,118.00/- to Rs. 7,02,118/-(rounded off to Rs.7,02,200/-)with interest at the rate of 7.5% p.a., from the date of claim petition till the date of realisation. It is stated that the second respondent/Insurance Company has not deposited the award amount till date. Therefore, the Second Respondent/Insurance Company is directed to deposit the entire award amount of Rs.7,02,200/- together with accrued interest and costs to the credit of the Claims Tribunal. On such deposit being made, the claimant is at liberty to withdraw the same, by filing necessary application before the Tribunal. There will be no order as to costs.

21.02.2023

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



To

1. The Motor Accidents Claims Tribunal,
(Sub-Court),
Kulithalai.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.MALA.,J.

vsn

JUDGMENT MADE IN
C.M.A(MD)No.699 of 2022

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