



CMA(MD).No.637 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2023

PRONOUNCED ON : 12.04.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.637 of 2020

The National Insurance Company Limited
Through its Branch Manager
Door No.2A, 1st Floor
Thirumakkulam North Street
Tallakulam
Madurai City & District

....Appellant

Vs

1.V.Murugan

2.V.Palanivel

....Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the award dated 09.01.2020 in MCOP.No.13 of 2018 on the file of the Principal Sub Court, Srivilliputhur and allow this appeal.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.R.Ragavendran

For R2 : No appearance



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JUDGMENT

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The above appeal has been filed by the Insurance Company challenging the award of the Motor Accident Claims Tribunal in MCOP.No.13 of 2018 on the ground of quantum.

2.The injured claimant had filed a claim petition contending that he is a self-employed and running a rice business. Out of which, he is earning a sum of Rs.30,000/- per month. He had contended that due to the accident that had happened on 12.01.2018, his right leg below the knee has been amputated. He had suffered fracture in the hip region and injuries in the head and all over the body.

3.According to the claimant, he is not able to stand, walk or perform any work as before. In view of the fracture in the hip bone, he is not able to maintain himself and he requires assistance of an attender through out his life. The injured claimant was an inpatient for 16 days. Hence, he prayed for a compensation of Rs.77,50,000/-.

4.The Insurance Company had filed a counter disputing their liability and quantum of compensation.

5.The Tribunal after considering Exhipit C1 which is the certificate issued by the medical board, had arrived at a finding that the injured



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claimant had sustained 70% disability. After taking notional income at Rs.9,000/- and applying 25% for future prospects, arrived at a loss of income at Rs.13,23,000/-.

6.The Tribunal has awarded a sum of Rs.2,00,000/- towards pain and suffering, Rs.4,00,000/- towards loss of amenities, Rs.1,00,000/- towards future attender charges and Rs.1,00,000/- towards future medical expenses. The amount awarded under these heads are under challenge in the present appeal by the insurance company.

7.A perusal of the ground of appeal indicates that the company has admitted the liability to an extent of Rs.18,36,577/- and they have disputed the liability only to the extent of Rs.7,00,000/-. Therefore, this Court is not going into the issue of negligence or liability.

8.The learned counsel for the appellant/insurance company had contended that the injuries sustained by the claimant is not to an extent of warranting application of multiplier method. The Tribunal has taken a monthly income at Rs.9,000/- even though the claimant has not produced any records whatsoever for running a rice business. He had further contended that the Tribunal had awarded a sum of Rs.4,00,000/- towards loss of amenities which is highly excessive. The future attender charges



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has been awarded at Rs.1,00,000/- and a further sum of Rs.1,00,000/- has been awarded towards future medical expenses which are not legally sustainable. Hence, he prayed for allowing the appeal to the extent as stated above.

9.Per contra, the learned counsel appearing for the respondent/claimant had contended that the right leg of the claimant has been amputated below the knee and his hip bone has sustained fracture and therefore, the claimant is not in a position to act independently and he requires assistance of an attender throughout his life. Therefore, the Tribunal has awarded a sum of Rs.4,00,000/- towards loss of amenities, Rs.1,00,000/- towards future attender charges and Rs.1,00,000/- towards future medical expenses.

10.The learned counsel for the respondent had relied upon the judgment of the Hon'ble Supreme Court reported *in (2023) 3 SCC 439 (Sidram Vs. Divisional Manager, United India Insurance Company Limited and another)* to contend that the Hon'ble Supreme Court has applied multiplier method with regard to the calculation of loss of income and has taken a sum of Rs.8,000/- as notional income for an accident that has taken place in the year 2012. He had further contended



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that the Hon'ble Supreme Court has followed the multiplier method in calculating the attender charges in the said judgement. Hence, he prayed for confirming the award passed by the Tribunal.

11.I have considered the submissions made on either side and perused the materials available on record.

12.Admittedly, there is no dispute with regard to the negligence or liability. The appeal is preferred by the Insurance Company only to challenging the quantum of compensation awarded by the Tribunal. It is the specific case of the claimant that he is running a rice business and earning a sum of Rs.30,000/- per month through the said business. The claimant has chosen to file Exhibits P30 and P31 which are property tax receipts and electricity bill for the building in which he is running the shop. The claimant has examined his landlord as PW2. Though the claimant contends that he is running a wholesale rice shop, he has not produced any official records like license or tax receipts to indicate that he is running the said business. Therefore, this Court is of the view that the claimant has not established that he is running a rice business or his income is Rs.30,000/- per month. Therefore, this Court is constrained to arrive at the notional income of the injured claimant.



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13.As rightly pointed out by the learned counsel for the respondent that for the accident that has taken place in the year 2012, the Hon'ble Supreme Court has taken Rs.8,000/- as notional income in the absence of documentary evidence. In the present case, the accident has taken place in the year 2018. Therefore, this Court does not find any illegality or infirmity in the order of the Tribunal in fixing the notional monthly income at Rs.9,000/- per month. The Tribunal has added 25% towards future prospects and has arrived at a total monthly income of Rs.11,250/-.

14.The learned counsel for the appellant had contended that the Tribunal was not right in applying multiplier method in a case of injury where the claimant has not established functional disability. It is an admitted case that the right leg of the claimant has been amputated below the knee and his hip bone has sustained fracture. Therefore, it is clear that the claimant would not be in a position to walk, stand or perform any function as before. In the judgement cited supra, the Hon'ble Supreme Court has applied multiplier method for the disability of 45%. Therefore, this Court is not inclined to interfere in the application of multiplier in Paragraph No.16 of the judgement. The learned counsel for the appellant



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had further contended that the award of Rs.15,000/- towards attender charges during the hospitalization and Rs.1,00,000/- towards future attender charges are on the higher side and it should be reduced to Rs. 1,00,000/-.

15.The Hon'ble Supreme Court in the judgement cited supra, in Paragraph No.73 of the said judgment has adopted multiplier method for arriving at a compensation under the head of attender charges by fixing Rs.2,000/- per month. If the multiplier method is adopted in the present case, the award will be as follows:

Rs.2000X 12X14= Rs.3,36,000/-

16.Therefore, the award under the heard of attender charges is hereby enhanced to Rs.3,36,000/-. The Tribunal has awarded a sum of Rs.2,00,000/- towards pain and suffering for 70% disability with 16 days hospitalization. This Court finds that a sum of Rs.1,00,000/- would be reasonable under the head of pain and suffering. Therefore, the award of Rs.2,00,000/- towards pain and suffering is hereby modified and reduced to Rs.1,00,000/-.



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17.Considering the fact that the claimant has lost his right leg and sustained fracture in the hip, this Court is not inclined to interfere in the award of the Tribunal with regard to the fixation of Rs.1,00,000/- towards future medical expenses.

18.In view of the above said discussions, the compensation is awarded under the following heads:

(i). Medical bill expenses	Rs. 2,69,277/-
(ii).Blood Bank Bill	Rs. 7,000/-
(iii).Artificial limb fixation bill	Rs. 66,300/-
(iv).Pain and suffering	Rs. 1,00,000/-
(v).Loss of income	Rs. 13,23,000/-
(vi).Loss of amenities	Rs. 1,00,000/-
(vii).Extra nourishment	Rs. 15,000/-
(viii).Attender charges	Rs. 3,36,000/-
(ix). Transport charges	Rs. 40,000/-
(x).Loss of estate	Rs. 1,000/-
(xi).Future medical expenses	Rs. 1,00,000/-

Total	Rs.23,57,577/-



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19.The award of the Tribunal is modified and reduced from Rs.25,36,577/- to Rs.23,57,577/-. The excess amount, if any deposited, shall be refunded to the Insurance Company with accrued interest. This Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

12.04.2023

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

1. The Principal Subordinate Judge,
Srivilliputhur
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Pre-delivery Judgement made in
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