



C.M.A.(MD)Nos.543 and 544 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.08.2023

Pronounced on : 22.09.2023

CORAM:

THE HON'BLE MR.JUSTICE **K.MURALI SHANKAR**

C.M.A.(MD)Nos.543 and 544 of 2020

M.Muthu

... Appellant/
Petitioner in
CMA(MD)No.
543 of 2020

K.Vairamuthu

... Appellant/
Petitioner in
CMA(MD)No.
544 of 2020

Vs.

1. K.Chinnadurai

2. Claims Manager

Sriram General Insurance Co. Ltd.,
Door No.66, City Centre Complex
II-Floor, Thirumalaipillai Road
T.Nagar, Chennai 600 017.

... Respondents/
Respondents in
both appeals

COMMON PRAYER : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decretal order dated 18.11.2019 and made in M.C.O.P.Nos.73 of 2019 and 215 of



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2018 (Old M.C.O.P.Nos.21 and 22 of 2017) on the file of Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar District at Srivilliputhur, in so far as it relates to the quantum of compensation granted, allow the above appeals.

(in both appeals)

For Appellant : Mr.N.Tamilmani

For R2 : Mr.N.Shylappa Kalyan

COMMON JUDGMENT

These Civil Miscellaneous Appeals are directed against the common award passed in M.C.O.P.Nos.73 of 2019 and 215 of 2018 dated 18.11.2019 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur.

2. The appellants/claimants, who were awarded with compensation of Rs.2,38,000/- (Rupees Two Lakhs and Thirty Eight Thousand only) and Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) with interest at 7.5% per annum for the disability suffered by them, consequent to an accident occurred on 26.12.2015, challenged the quantum of



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compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The learned counsel appearing for the appellants/claimants would submit that the Tribunal was not justified in granting a sum of Rs.1,50,000/- as compensation under the head of permanent disability without appreciating the nature of injuries and the functional disabilities suffered by the appellants/claimants, that the Tribunal ought to have fixed the notional monthly income on the basis of cost of inflation index issued by the Central Board of Direct Tax, that the amount awarded towards medical expenses is insufficient, that the Tribunal ought to have computed the compensation on the basis of multiplier method, that the amounts awarded under the various other heads like pain and suffering, extra nourishment and transportation are very low and that the total compensation awarded at Rs.2,38,000/- and Rs.2,75,000/- are also very low and the same are liable to be enhanced.

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



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5. The case of the appellant/claimant is that he was aged 27 years at the time of accident, that he was working as a painter and that due to the permanent disability sustained, he is not in a position to work as before.

6. It is evident from the records that the appellant/claimant was admitted in Government Hospital, Kadaiyanallur and after first aid treatment, he was taken to Government Head Quarters Hospital, Tenkasi, that subsequently, he was admitted as inpatient at Government Hospital, Rajapalayam and that he had taken treatment as outpatient at Government Hospital, Rajapalayam. It is further evident that the Medical Board attached to the Government Head Quarters Hospital, Virudhunagar has examined the appellant/claimant and issued the disability certificate under Ex.A.11 and whereunder, considering the fractures sustained by him and the consequent disability suffered by him, they have certified that the appellant/claimant has suffered partial permanent disability at 60%. According to the appellant/claimant, he was admitted in Government Head Quarters Hospital, Tenkasi on 26.12.2015 and thereafter, he was admitted in Government Hospital, Rajapalayam on 18.01.2016 and after conducting



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surgery for implants, was discharged on 03.02.2016. Though the appellant/claimant has taken the entire treatment in Government Hospitals, the Tribunal, taking note of the decision of this Court in **2014 (1) TNMAC 822**, has granted Rs.35,000/- towards medical expenses and as such, the same cannot be found fault with.

7. The Tribunal, has fixed the notional monthly income of the appellant/claimant at Rs.7,500/-. The learned counsel appearing for the appellant/claimant would submit that the Hon'ble Supreme Court in **Syed Sadiq Vs. United India Insurance Company** reported in **2014 (1) TN MAC 459** has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and that the Hon'ble Division Bench of this Court in **Andal and others Vs. Avinav Kannan and another** reported in **2019 1 TN MAC 54 (DB)**, by taking into the amount fixed by the Hon'ble Supreme Court in **Syed Sadiq's case** at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above index, the cost of inflation index for the year 2007-2008 is 129 and for the year 2015-2016 will be 254.



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Hence, the notional income of the appellant/ claimant would be Rs.12,798/- rounded off to Rs.12,800/-, but the appellant/ claimant himself has stated in the claim petition that he was getting monthly income at Rs.10,000/-. Hence, this Court fixes the monthly income of the appellant/claimant at Rs.10,000/-.

8. In the case on hand, as rightly contended by the learned counsel appearing for the second respondent/insurer, the appellant/claimant has neither suffered permanent disability nor functional disability and as such, the question of applying the multiplier formula does not arise at all. The Tribunal, considering the above, has rightly applied the percentage method. The Tribunal has awarded Rs.2,500/- per percentage and granted Rs.1,50,000/-. But as rightly contended by the learned counsel appearing for the appellant/claimant, the amount awarded per percentage is low and hence, this Court is inclined to grant Rs.4,000/- per percentage and the disability compensation comes to Rs.2,40,000/- (Rs.4,000 x 60).

9. Considering the nature of injuries, period of inpatient treatment and the consequent disability sustained and the other attending circumstances, this Court is inclined to grant Rs.50,000/- for pain and



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suffering, Rs.10,000/- for transport expenses, Rs.20,000/- for extra nourishment and loss of income for 4 months at Rs.40,000/- (Rs.10,000/- x 4). Hence, the appellant/claimant is entitled to get total compensation of Rs.3,95,000/- (Rupees Three Lakhs and Ninety Five 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.	Medical expenses	35,000	35,000	Confirmed
2.	Loss of income	30,000	40,000	Enhanced
3.	Pain and suffering	40,000	50,000	Enhanced
4.	Disability	1,50,000	2,40,000	Enhanced
5.	Transport charges	5,000	10,000	Enhanced
6.	Extra nourishment	15,000	20,000	Enhanced
	Total	2,75,000	3,95,000	Enhanced by Rs.1,20,000/-

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10. The case of the appellant/claimant is that he was aged 35 years at the time of accident and that he was working as a coolie and was getting monthly income at Rs.10,000/-.



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11. It is evident from the records that the appellant/claimant was admitted in Government Hospital, Kadaiyanallur and after first aid treatment, he was taken to Government Head Quarters Hospital, Tenkasi, that subsequently, he was given treatment in Tirunelveli Government Medical College Hospital and that thereafter, he had taken outpatient treatment at Government Hospital, Rajapalayam. It is further evident that the Medical Board attached to the Government Head Quarters Hospital, Virudhunagar has examined the appellant/claimant and issued the disability certificate under Ex.P.11 and whereunder, considering the fractures sustained by him and the consequent disability suffered by him, they have certified that the appellant/claimant has suffered partial permanent disability at 60%. Though the appellant/claimant has taken the entire treatment in Government Hospitals, the Tribunal, taking note of the decision of this Court in **2014 (1) TNMAC 822**, has granted Rs.30,000/- towards medical expenses and as such, the same cannot be found fault with.

12. The Tribunal, has fixed the notional monthly income of the appellant/claimant at Rs.6,000/-. The learned counsel appearing for the



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appellant/claimant would submit that the Hon'ble Supreme Court in ***Syed Sadiq Vs. United India Insurance Company*** reported in **2014 (1) TN MAC 459** has fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008 and that the Hon'ble Division Bench of this Court in ***Andal and others Vs. Avinav Kannan and another*** reported in **2019 1 TN MAC 54 (DB)**, by taking into the amount fixed by the Hon'ble Supreme Court in ***Syed Sadiq's case*** at Rs.6,500/-, has applied the cost of inflation index issued by the Central Board of Direct Tax and fixed the notional monthly income of the deceased. As per the above index, the cost of inflation index for the year 2007-2008 is 129 and for the year 2015-2016 will be 254. Hence, the notional income of the appellant/ claimant would be Rs.12,798/- rounded off to Rs.12,800/-, but the appellant/ claimant himself has stated in the claim petition that he was getting monthly income at Rs.10,000/-. Hence, this Court fixes the monthly income of the appellant/claimant at Rs.10,000/-.

13. In the case on hand, as rightly contended by the learned counsel appearing for the second respondent/insurer, the appellant/claimant has



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neither suffered permanent disability nor functional disability and as such, the question of applying the multiplier formula does not arise at all. The Tribunal, considering the above, has rightly applied the percentage method. The Tribunal has awarded Rs.2,500/- per percentage and granted Rs.1,50,000/-. But as rightly contended by the learned counsel appearing for the appellant/claimant, the amount awarded per percentage is low and hence, this Court is inclined to grant Rs.4,000/- per percentage and the disability compensation comes to Rs.2,40,000/- (Rs.4,000 x 60).

14. Considering the nature of injuries, period of inpatient treatment and the consequent disability sustained and the other attending circumstances, this Court is inclined to grant Rs.30,000/- for pain and suffering, Rs.15,000/- for transport expenses, Rs.15,000/- for extra nourishment and loss of income for 3 months at Rs.30,000/- (Rs.10,000/- x 3). Hence, the appellant/claimant is entitled to get total compensation of Rs.3,60,000/- (Rupees Three Lakhs and Sixty Thousand only) and the compensation awarded by the Tribunal is modified as follows:-



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S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Medical expenses	30,000	30,000	Confirmed
2.	Loss of income	18,000	30,000	Enhanced
3.	Pain and suffering	20,000	30,000	Enhanced
4.	Disability	1,50,000	2,40,000	Enhanced
5.	Transport charges	10,000	15,000	Enhanced
6.	Extra nourishment	10,000	15,000	Enhanced
	Total	2,38,000	3,60,000	Enhanced by Rs.1,22,000/-

15. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs and the above point is answered accordingly.

16. In the result, these Civil Miscellaneous Appeals are partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.73 of 2019 at Rs.2,38,000/- (Rupees Two Lakhs and Thirty Eight Thousand only) is hereby enhanced to **Rs.3,60,000/- (Rupees Three Lakhs and Sixty Thousand only)** and the compensation awarded by the Tribunal in



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M.C.O.P.No.215 of 2018 at Rs.2,75,000/- (Rupees Two Lakhs and Seventy Five Thousand only) is hereby enhanced to **Rs.3,95,000/- (Rupees Three Lakhs and Ninety Five Thousand only)**. The second respondent/Insurer is directed to deposit the modified enhanced amount with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.Nos.73 of 2019 and 215 of 2018 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Virudhunagar at Srivilliputhur, 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 appellants/claimants are permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. The appellant in both the appeals are **directed to pay the court fee** for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

22.09.2023

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

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Virudhunagar at Srivilliputhur.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)Nos.543 and 544 of 2020

Dated : 22.09.2023