



C.M.A. (MD) No. 666 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.08.2023

Pronounced on : 14.09.2023

CORAM:

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

C.M.A.(MD)No.666 of 2020

Jeganathan

... Appellant/
Petitioner

Vs.

1. Chinnadurai

2. Vimalraj

3. M/s.United India Insurance Co. Ltd.,
through its Branch Manager,
D.No.54A, Palani Road,
Dindigul Town,
Dindigul District.

... Respondents/
Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to amend the orders and fair order of the lower Court by enhancing the quantum of compensation and allowing the claim of the appellant as prayed for.



C.M.A. (MD) No. 666 of 2020

WEB COPY

For Appellant : Mr.R.Ramadurai
For R1 & R2 : No appearance
For R3 : Mr.A.Ilango

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.466 of 2018 dated 04.01.2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court, Dindigul.

2. The appellant/claimant, who was awarded with compensation of Rs.15,76,353/- (Rupees Fifteen Lakhs Seventy Six Thousand Three Hundred and Fifty Three only) with interest at 7.5% per annum payable by the third respondent/insurer for the disability suffered by him, consequent to an accident occurred on 28.02.2018, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.

3. The learned counsel appearing for the appellant/claimant would submit that though the appellant/claimant has claimed Rs.50 lakhs as



C.M.A. (MD) No. 666 of 2020

compensation, the Tribunal has erred in granting compensation of Rs.15,76,353/-, that the Tribunal has failed to consider the medical bills under Ex.X.3 and Ex.X.4, that though the appellant/claimant has incurred medical expenses for Rs.24,72,816/-, the Tribunal has failed to award Rs.13,50,853/-, that the appellant/claimant has lost everything in life and has memory loss and had become permanently dependent on others, that the appellant/claimant was given inpatient treatment for more than 100 days in unconscious stage and that the Tribunal instead of applying percentage method ought to have applied multiplier formula.

4. The learned counsel appearing for the appellant/claimant would further submit that the amounts awarded under the heads of pain and suffering, attendant charges, extra nourishment and transportation are very low and that therefore, the appellant/claimant is constrained to file the above appeal seeking enhancement.

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



C.M.A. (MD) No. 666 of 2020

WEB COPY

6. First, let us take the claim of the appellant/claimant with respect to the medical bills. The appellant/claimant has produced the medical bills under Ex.P.5 for Rs.8,46,742/-, Ex.X.3 for Rs.11,80,000/- and Ex.X.4 for Rs.1,60,000/- and according to the appellant/claimant, Star Health Insurance has reimbursed Rs.1,98,000/- under Ex.X.4 and that the Tribunal has only awarded Rs.13,50,853/- as against the claim for Rs.21,86,742/-. The Tribunal, by observing that the appellant/claimant incurred medical expenses of Rs.11,80,000/- and Rs.1,60,000/- under Ex.X.3 and Ex.X.4 bills after reimbursement of Rs.1,98,000/- under Star Health Insurance Scheme and that the appellant/claimant is entitled to get Rs.10,853/- under Ex.P.5, has granted Rs.13,50,853/- for medical expenses. As rightly pointed out by the learned counsel appearing for the appellant/claimant, the total amount under Ex.P.5, Ex.X.3 and Ex.X.4 would come to Rs.21,86,742/- and after deduction under Ex.X.5 as per the Star Health Insurance Scheme at Rs.1,98,000/-, the remaining amount would come to Rs.19,88,742/-. But admittedly, the Tribunal has awarded Rs.13,50,853/- only. The learned counsel appearing for the third respondent/insurer would fairly concede that the Tribunal has failed to consider Ex.P.5 bills for Rs.8,46,742/-. Considering the above, the



C.M.A. (MD) No. 666 of 2020

appellant/claimant is entitled to get Rs.6,37,889/- for medical expenses in addition to the amount of Rs.13,50,853/- awarded by the Tribunal.

7. It is evident from Ex.P.2-Discharge Summary issued by Vadamalayan Hospitals Private Limited, Madurai that the appellant/claimant was admitted on 28.02.2018 and was discharged on 17.06.2018. It is evident from Ex.P.3 that the appellant/claimant was again admitted on 17.06.2018 and was discharged on 21.08.2018. It is further evident from the medical records that the appellant/claimant was diagnosed to have compound comminuted fracture right temporo parietal bone with right fronto temporo parietal acute subdural haemorrhage. During the first inpatient treatment period, they have done the following procedures, (1) right fronto temporo parietal craniectomy and excision of comminuted fragment and evacuation of subdural haemorrhage done on 28.02.2018, (2) elective tracheostomy done on 05.03.2018, (3) scalp necrosis-wound debridement and secondary skin suturing done on 05.03.2018, (4) debridement/local transposition flap and split skin graft done on 12.03.2018, (5) right parieto occipital subdural abscess suction and drainage done on 26.03.2018, (6) pressure sore wound debridement done



C.M.A.(MD)No.666 of 2020

WEB COPY

on 14.04.2018 and (7) sacral pressure sore – debridement with rotation advancement flap cover done on 15.05.2018. When the appellant/claimant was admitted for the second time, tracheostomy closure done on 27.07.2018. The Medical Board attached to the Government Rajaji Hospital, Madurai on examining the appellant/claimant has issued disability certificate under Ex.P.6, whereunder, it has been certified that the appellant/claimant has suffered neurosurgical disability at 50%. The Tribunal, taking note of the fact that the appellant/claimant has appeared before the Tribunal and gave evidence and as there is no evidence on record to show that the appellant/claimant has sustained functional disability, has applied the percentage method.

8. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another*** reported in ***2011 (1) SCC 343***,

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the



C.M.A.(MD)No.666 of 2020

evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

....

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.



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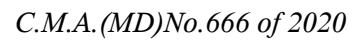
C.M.A.(MD)No.666 of 2020

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

9. Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of



10. In the case on hand, as rightly observed by the learned trial Judge, the appellant/claimant has not proved that he had sustained permanent disability nor functional disability and as such, the question of applying multiplier formula does not arise at all. No doubt, the Tribunal has granted Rs.3,000/- per percentage, but as rightly contended by the learned counsel appearing for the appellant/claimant, the same is very low. Considering the date of accident and the attending circumstances, this Court is inclined to grant Rs.5,000/- per percentage of the disability and as such, the appellant/claimant is entitled to get disability compensation at Rs.2,50,000/- (50 x Rs.5,000/-).

11. The Tribunal has awarded Rs.30,000/- for pain and suffering, Rs.5,000/- for attendant charges, Rs.3,000/- for transport charges and



C.M.A. (MD) No. 666 of 2020

WEB COPY

Rs.15,000/- for extra nourishment. Considering the nature of the injuries sustained and also the period of inpatient treatment from 28.02.2018 till 21.08.2018 and the consequent disability sustained, the amounts awarded by the Tribunal are on lower side and hence, this Court is inclined to award Rs.75,000/- for pain and suffering, Rs.20,000/- for attendant charges, Rs.15,000/- for transport charges and Rs.30,000/- for extra nourishment.

12. Though the appellant/claimant has alleged that he was doing agricultural work and brick kiln work, he has not produced any evidence to prove the avocation and the income. The Tribunal has fixed the notional income at Rs.6,500/- and granted loss of income for 3 months at Rs.19,500/-. Considering the period of inpatient treatment, this Court is inclined to grant loss of income for 8 months and as such, the appellant/claimant is entitled to get loss of income at Rs.52,000/- (Rs.6,500/- x 8). Considering the above, the appellant/claimant is entitled to get total compensation of Rs.24,33,742/- (Rupees Twenty Four Lakhs Thirty Three Thousand Seven Hundred and Forty Two only) and the compensation awarded by the Tribunal is modified as follows:-



C.M.A. (MD) No. 666 of 2020

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability	1,50,000	2,50,000	Enhanced
2.	Medical expenses	13,50,853	19,88,742	Enhanced
3.	Pain and suffering	30,000	75,000	Enhanced
4.	Attendant charges	5,000	20,000	Enhanced
5.	Loss of personal belongings and clothings	3,000	3,000	Confirmed
6.	Loss of income	19,500	52,000	Enhanced
7.	Transport charges	3,000	15,000	Enhanced
8.	Extra nourishment	15,000	30,000	Enhanced
	Total	15,76,353	24,33,742	Enhanced by Rs.8,57,389/-

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

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.15,76,353/- (Rupees Fifteen Lakhs Seventy Six Thousand Three Hundred and Fifty Three only)



C.M.A. (MD) No. 666 of 2020

WEB COPY

is hereby enhanced to **Rs.24,33,742/- (Rupees Twenty Four Lakhs**

Thirty Three Thousand Seven Hundred and Forty Two only). The

third respondent/Insurer is directed to deposit the modified enhanced

amount with interest at 7.5% per annum from the date of petition till the

date of realization to the credit of M.C.O.P.No.466 of 2018 on the file of

Motor Accident Claims Tribunal/ Special Subordinate Court, Dindigul,

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/claimant is 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/claimant is **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.

14.09.2023

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

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C.M.A. (MD) No. 666 of 2020

To:

1. The Motor Accident Claims Tribunal/
Special Subordinate Court,
Dindigul.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD)No.666 of 2020

K.MURALI SHANKAR,J.

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Pre-Delivery Order made in
C.M.A.(MD)No.666 of 2020

Dated : 14.09.2023