



C.M.A(MD)No.868 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.06.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.868 of 2015

Arokia Dhas

... Appellant/Petitioner

Vs.

1.Babu Angel Hallow Blocks,
No.10, Ambethinkalai,
Edaikode,
Vilavancode,
Kanyakumari.

2.Royal Sundaram Alliance Insurance Company Ltd.,
Through its Branch Manager,
No.176, D&E Trivandram Road,
Vannarpettai,
Tirunelveli.

... Respondents/ Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to allow this appeal and enhance the award amount in M.C.O.P.No.561 of 2013 on the file of the Motor Accident Claims Tribunal, (Special Sub Court) Tirunelveli, dated 19.03.2014.

For Appellant : Mr.T.Selvakumaran

For R1 : No Appearance

For R2 : Mr.M.Jerin Mathew



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JUDGMENT

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The present appeal has been filed by the claimant seeking enhancement of the compensation awarded by the Motor Accident Claims Tribunal, Tirunelveli in M.C.O.P.No.561 of 2013.

2. In the accident that took place on 19.02.2013, the injured claimant who was a salesman in a TASMAC shop is said to have sustained 46% disability. He was admitted to a hospital between 19.02.2013 and 11.03.2013 as per the discharge summary marked as Exhibit P.14.

3. The tribunal has reduced the disability mentioned in Exhibit P.7 disability certificate from 46% to 35% and has chosen to award a sum of Rs.3,000/- per percentage of disability. According to the learned counsel appearing for the appellant, the tribunal ought not to have reduced the disability certified issued by a qualified doctor and the tribunal ought to have awarded a sum of Rs.4,000/- per percentage in view of the judgment of the Hon'ble Division Bench in *C.M.A(MD)No.113 of 2018 (Cholamandalam MS General Insurance Company Limited Vs. Sivasankaran & Another)*, dated 20.08.2018.



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4. The learned counsel for the appellant had further contended that in view of the fact that the claimant was an in-patient for nearly 3 weeks, the tribunal ought to have awarded a sum of Rs.2,00,000/- towards pain and suffering. He relied upon a judgment of the Hon'ble Supreme Court reported in **2020 (2) TN MAC 303 (Erudhaya Priya Vs. State Express Transport Corporation Ltd.,)** wherein the Supreme Court has awarded a sum of Rs.2,00,000/- towards pain and suffering for the disability of 31.1% to the whole body. Hence, he prayed for enhancement of the compensation under these two heads.

5. Per contra, the learned counsel appearing for the respondent had contended that the tribunal after considering the oral and documentary evidence, has awarded just compensation at the rate of Rs.3,000/- per percentage of disability. Considering the fact that the claimant continues to be employed as a TASMAL sales person, the tribunal has reduced the disability from 46% to 35% which cannot be said to be illegal. He further contended that the tribunal has already awarded a sum of Rs.25,000/- towards pain and suffering which is reasonable and the same may not be enhanced.



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6. I have carefully considered the submissions made on either side.

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7. A perusal of Exhibit P.7 which is the disability certificate issued by an Ortho Doctor indicates that the movement of the right wrist and fingers are restricted and there is a deformity in the right finger and thumb. He has also found loss of sensation in the right hand. The doctor has further found that weakness of right wrist turn in fingers and the pain continues in the right wrist hand and fingers. The doctor has divided the percentage among the various disabilities sustained by the injured claimant and totally, arrived at the partial permanent disability at 46%.

8. A perusal of the order passed by the tribunal clearly indicates that without assigning any reasons, the tribunal has reduced the disability from 46% to 35%. Therefore, this Court is inclined to arrive at a finding that the disability sustained by the claimant is 46%. As rightly pointed out by the learned counsel for the appellant, the Division Bench in a judgment reported in *C.M.A(MD)No.113 of 2018 (Cholamandalam MS General Insurance Company Limited Vs. Sivasankaran & Another)*, dated 20.08.2018, for an accident that has taken place on 25.03.2011 has awarded Rs.4,000/- per percentage. In the present case, the accident has



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taken place on 19.02.2013. Therefore, this Court is inclined to enhance the same from Rs.3,000/- to Rs.4,000/- per percentage of disability.

9. As far as the prayer for enhancement of compensation under the head of pain and suffering is concerned, the tribunal has already awarded a sum of Rs.25,000/-. However, considering the fact that the claimant was admitted to hospital for nearly 3 weeks, this Court is inclined to enhance the same to a sum of Rs.50,000/-.

10. In view of the above said deliberations, the award of the tribunal is modified to the following effect:

Partial permanent disability 46x4,000	: Rs.1,84,000/-
Loss of income	: Rs. 10,000/-
Transport expenses	: Rs. 5,000/-
Extra nourishment	: Rs. 15,000/-
Attender charges	: Rs. 5,000/-
Medical expenses	: Rs.1,08,620/-
Pain and suffering	: Rs. 50,000/-
Loss of amenities	: Rs. 25,000/-

Total	: Rs.4,02,620/-



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11. The award of the tribunal is enhanced from Rs.2,98,620/- (Rupees Two Lakh Ninety Eight Thousand Six Hundred and Twenty only) to Rs.4,02,620/- (Rupees Four Lakh Two Thousand Six Hundred and Twenty only). The award will carry the interest at 7.5% from the date of claim petition. The insurance company is directed to deposit the enhanced amount within a period of eight (8) weeks from the date of receipt of a copy of this order.

12. The Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

22.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal,
(Special Sub Court),
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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