



C.M.A(MD)No.403 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.09.2023

Delivered on : 27.09.2023

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.M.A(MD)No.403 of 2018

Arumuga Nainar

: Appellant/Petitioner

Vs.

1.Periyasamy

2.United India Insurance Company Limited,
through its Divisional Manager,
No.I, Post Office Road,
Palayamkottai.

3.Muthuraj

: Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, against the fair and decreetal order, dated 27.06.2014 made in M.C.O.P.No.727 of 2013 on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli and enhance the compensation.

For Appellant : Mr.T.Selva kumaran

For Respondents : Mr.A.Shajahan, for R2.

: No Appearance, for R1 and R3.



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J U D G M E N T

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.727 of 2013, dated 27.06.2014, on the file of the Motor Accident Claims Tribunal (Special Sub Court), Tirunelveli.

2. The appellant/claimant, who was awarded with compensation of Rs.6,79,170/- with interest at 7.5% per annum for the disability suffered by him, consequent to an accident occurred on 19.07.2013, challenged the quantum of compensation awarded at by the Tribunal and claimed enhancement of the same.

3. The case of the claimant is that he was aged 33 years at the time of accident; that due to fracture over the right clavicle, he is not able to stretch or fold his right hand and he is unable to carry any weight on his right hand; that the appellant/claimant is also not able to stretch or fold his right leg due to fracture; that the claimant is unable to sit or squat or stand and that he is not in a position to do any work as before.



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4. The second respondent /Insurer has not disputed the claimant's monthly income and the disability sustained.

5. During enquiry, the claimant has examined himself as P.W.1 and examined Mr.Ramaguru, Doctor as P.W.2 and exhibited 16 documents as Ex.P.1 to Ex.P.16. The first respondent had remained ex-parte. On the side of the respondents, two witnesses were examined as R.W.1 and R.W.2 and four documents were exhibited as Ex.R.1 to Ex.R.4.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment, dated 27.06.2014, directing the second respondent/insurer to pay a sum of Rs.6,79,170/- with interest and cost to the claimant and then to recover the same from the third respondent. Aggrieved by the said award, the insurer has come forward with the present appeal.

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



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8. It is evident from the records that the claimant has suffered the following injuries :

- (i) Fracture over the right leg below the knee,
- (ii) Fracture over the right clavicle,
- (iii) Fracture over the right mandible,
- (iv) Abrasions over the right leg big toe.

9. It is further evident from the discharge summary issued under Ex.P.5 that the claimant was admitted on 20.07.2013 at Sushrushah Hospitals, Nagercoil and he was discharged on 26.07.2013 and that claimant has undergone surgery on 21.07.2013.

10. P.W.2/Doctor, on examining the claimant has issued the disability certificate under Ex.P.15. Admittedly, P.W.2/Doctor has not treated the claimant. P.W.2 would say that the joints remained non-united and that since the claimant is not in a position to stand, walk, sit or squat and for restriction of right knee and ankle movements, he has fixed the partial permanent disability at 65 %.



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11. At this juncture, it is necessary to refer the decision of Honourable Supreme Court in **Raj Kumar Vs. Ajaykumar and another**, reported in **(2011) 1 Supreme Court Cases 343** :

“Para 12:

“12. 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 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



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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.

Para 19:

19. 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.

(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



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14. Considering the medical evidence available on records, the decision of the Tribunal in not applying the multiplier method cannot be found fault with. But the Tribunal while adopting the percentage method has awarded Rs.3,000/- per percentage and granted Rs.1,95,000/- towards partial permanent disability. Considering the disability sustained and the period of accident and treatment, this Court is inclined to award Rs.4,000/- per percentage and as such, the claimant is entitled to get Rs.2,60,000/-.

15. It is the further case of the claimant that he was running Tea stall and also doing agriculture work and was earning monthly income of Rs.15,000/- per month. The claimant has produced the professional tax receipts issued by the Panchayat to show that he was running tea stall and fruit stall. Except the receipt, the claimant has not produced any evidence to show that he was running four stalls and was getting monthly income at Rs.15,000/-.

16. The Tribunal, taking note of the medical records, has fixed the age of the claimant as 35 years at the time of accident. Considering the nature of the work done by the claimant and the period of treatment, the



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notional income fixed by the Tribunal is on lower side and as such, this

Court fixes the monthly income at Rs.10,000/- per month. The Tribunal has rightly awarded loss of income for six months and as such, the claimant is entitled Rs.60,000/- towards loss of income.

17. The Tribunal, taking note of the medical bills has awarded Rs.2,58,170/- and also awarded Rs.10,000/- towards transportation charges; Rs.20,000/- towards extra nourishment; Rs.10,000/- towards attendant charges; Rs.50,000/- towards pain and sufferings and Rs. 1,00,000/- towards loss of convenience. The amount awarded by the Tribunal towards loss of convenience, medical bills and for attendant charges are reasonable and as such, the same are not disturbed.

18. Considering the injuries suffered and the period of inpatient treatment, consequent disability sustained and other attending circumstances, this Court decides that the claimants are entitled to get compensation under the following heads:



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Head of compensation	Amount awarded by the tribunal	Amount confirmed/modified by this Court
Permanent disability	Rs. 1,95,000/-	Rs. 2,60,000/-
Loss of income (Rs.10,000/- x 6)	Rs. 36,000/-	Rs. 60,000/-
Transportation Charges	Rs. 10,000/-	Rs. 15,000/-
Extra Nourishment	Rs. 20,000/-	Rs. 25,000/-
Attendant Charges	Rs. 10,000/-	Rs. 10,000/-
Pain and Sufferings	Rs. 50,000/-	Rs. 60,000/-
Loss of convenience	Rs. 1,00,000/-	Rs. 1,00,000/-
Medical Expenses	Rs. 2,58,170/-	Rs. 2,58,170/-
Total	Rs. 6,79,170/-	Rs. 7,88,170/-

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.

18. In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the tribunal is **enhanced from Rs.6,79,170/- to Rs.7,88,170/-**. The second respondent /Insurer is directed to deposit the modified amount with interest at 7.5% per annum, within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited, at the first instance and thereafter, recover the same



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from the third respondent/owner of the vehicle and on such deposit, the claimant is permitted to withdraw the award amount, less amount already withdrawn, if any, by filing a necessary application before the Tribunal.

The parties are directed to bear their own costs.

27.09.2023

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



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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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