



C.M.A. (MD) No. 644 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.09.2023

Pronounced on : 27.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

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R.Panner (Died)

2. Chellammal

3. Pandiya Rajan

4. Dhanalakshmi

5. Kaliyammal

... Appellants

(appellants 2 to 5 are brought on record as LRS of the deceased sole appellant vide Court order dated 23.08.2023 made in CMP(MD)No.10677 to 10679 of 2023 in CMA(MD)No.644 of 2020)

Vs.

1. S.R.Shanthi Shakila

2. National Insurance Company Ltd.,
through its Divisional Manager,
North Veli Street,
Madurai.

... Respondents/
Respondents

(R1 ex parte)



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to enhance the award passed in M.C.O.P.No.532 of 2013 dated 08.08.2014 on the file of the Motor Accidents Claims Tribunal Special Sub Court, Madurai and allow this appeal as prayed for.

For Appellant : Mr.S.M.Mohan Gandhi

For R2 : Mr.N.S.Ramakrishna Dass

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.532 of 2013 dated 08.08.2014 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court for MCOP Cases, Madurai.

2. The claimant, who was awarded with compensation of Rs.1,56,200/- (Rupees One Lakh Fifty Six Thousand and Two Hundred only) with interest at 7.5% per annum for the disability suffered by him, consequent to an accident occurred on 24.06.2013, challenged the quantum of compensation awarded at, by the Tribunal and claimed enhancement of the same.



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3. Pending appeal, the claimant died and his wife, mother, son and daughter got themselves impleaded as appellants 2 to 5.

4. The case of the claimant is that due to the accident, the claimant sustained grievous bleeding injuries, fracture on right hand wrist and hip and contusion on chest, that the claimant was immediately admitted in Government Rajaji Hospital, Madurai, where he had taken treatment for two months as inpatient and has been taking treatment as outpatient continuously, that the claimant was hale and healthy at the time of accident and he was working as a mason and was earning Rs.600/- per day, that due to the disability suffered, the claimant is not in a position to hold any weight on his right hand and unable to bend his hip freely and that the claimant is not in a position to work as before.

5. The second respondent, in their counter statement, has disputed the avocation and income of the claimant and also the disability alleged to have sustained by him.

6. During trial, the claimant has examined himself as P.W.1 and Dr.Shunmugam as P.W.2 and exhibited 10 documents as Ex.P.1 to Ex.P.10.



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The first respondent had remained ex parte. The second respondent has adduced neither oral nor documentary evidence.

7. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has directed the second respondent to pay compensation of Rs.1,56,200/- with interest and costs. Aggrieved by the quantum of compensation, the claimant has preferred the present appeal.

8. 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?

9. The claimant, in order to prove the injuries suffered and the consequent disability sustained and the treatment taken, has examined P.W.2-medical officer and produced the medical records under Ex.P.2 to Ex.P.7, Ex.P.9 and Ex.P.10. It is evident from the records that immediately after the accident, the claimant was admitted in Velammal Medical College Hospital, Madurai on 24.06.2013 and he got himself discharged from the said hospital and that he was admitted in Government Rajaji Hospital,



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Madurai on 25.06.2013 and was discharged on 30.07.2013. It is further evident that the claimant was again admitted in Government Rajaji Hospital, Madurai on 04.04.2014 and was discharged on 12.04.2014. It is also evident from the records that the claimant had undergone surgery on 13.07.2013 and again on 04.04.2014. P.W.2-medical officer, on examining the claimant, has issued the disability certificate under Ex.P.9. Admittedly, P.W.2 has not treated the claimant. P.W.2 would say that the claimant suffered fracture on the left femur, comminuted fracture on the lower part of right radius bone, that surgery was performed on his left femur for fixing metal rod, that another surgery was done on 04.04.2014 for removing the metal rod implanted, that fractured left femur bone and fractured radius bone got mal-united and the ulna lower part is protruding in the wrist and that since the claimant has suffered shortening of leg and movement reduction in the left hip joint and right wrist joint, he has assessed the partial permanent disability at 54%.

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



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“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 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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(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.”*

11. Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic, that the Tribunal is



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duty bound to take into consideration the various factors such as nature of extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

12. In the case on hand also, the claimant has not shown that he has suffered permanent disability or functional disability. Considering the partial permanent disability at 54%, the Tribunal has rightly applied the percentage method, but awarded Rs.2,000/- per percentage and granted Rs.1,08,000/- for disability. As rightly contended by the learned counsel appearing for the appellants, the amount awarded at Rs.2,000/- per percentage is definitely on lower side and considering the accident date and also the disability sustained, this Court is inclined to award Rs.4,000/- per percentage and as such, the claimant has to be awarded Rs.2,16,000/- (Rs.4,000/- x 54) for the disability sustained.

13. Though the claimant has alleged that he was working as a mason and was earning Rs.18,000/- per month, he has only produced the Identity Card issued by Construction Workers Federation of India, but not



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produced any evidence to show the income. The Tribunal, taking note of the age of the claimant and the period of accident, has fixed the notional monthly income at Rs.5,000/-. As rightly contended by the learned counsel appearing for the appellants, the monthly income arrived at by the Tribunal is on lower side and considering the nature of the work done by the claimant, his age and the date of accident, this Court fixes the monthly income at Rs.10,000/-. As already pointed out, the claimant has taken inpatient treatment from 25.06.2013 to 30.07.2013 and again from 04.04.2014 to 12.04.2014 and as such, the claimant is entitled to get loss of income for 6 months at Rs.60,000/- (Rs.10,000/- x 6).

14. The Tribunal has also awarded Rs.1,000/- towards transportation, Rs.500/- towards extra nourishment, Rs.2,000/- towards damage to clothing and articles, Rs.10,000/- towards pain and sufferings and Rs.10,000/- towards loss of amenities. As already pointed out, pending appeal, the claimant had died and his legal representatives are now prosecuting the appeal. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in *The Oriental Insurance Company Limited Vs. Kahlon @ Jasmail Singh Kahlon (Deceased) and*



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others reported in **2021 (2) TNMAC 305**, wherein, the Hon'ble Apex Court has held that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal and the relevant passages are extracted hereunder:-

“9. The Act is a beneficial and welfare legislation. Section 166(1)(a) of the Act provides for a statutory claim for compensation arising out of an accident by the person who has sustained the injury. Under Clause (b), compensation is payable to the owner of the property. In case of death, the legal representatives of the deceased can pursue the claim. Property, under the Act, will have a much wider connotation than the conventional definition. If the legal heirs can pursue claims in case of death, we see no reason why the legal representatives cannot pursue claims for loss of property akin to estate of the injured if he is deceased subsequently for reasons other than attributable to the accident or injuries under Clause 1(c) of Section 166. Such a claim would be completely distinct from personal injuries to the claimant and which may not be the cause of death. Such claims of personal injuries would undoubtedly abate with the death of the



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injured. What would the loss of estate mean and what items would be covered by it are issues which has to engage our attention. The appellant has a statutory obligation to pay compensation in motor accident claim cases. This obligation cannot be evaded behind the defence that it was available only for personal injuries and abates on his death irrespective of the loss caused to the estate of the deceased because of the injuries.

10. In Umed Chand (supra), giving a broad liberal interpretation to the provisions of the Act so that legal representatives do not suffer injustice, it was observed that the claim for personal injuries will not survive on death of the injured unrelated to the accident but the legal representatives could pursue the claim for enhancement of the claim for loss of the estate which would include expenditure on medical expenses, travelling, attendant, diet, doctor's fee and reasonable monthly annual accretion to the estate for a certain period. It is trite that the income which a person derives compositely forms part of the expenditure on himself, his family and the savings go to the estate. The unforeseen expenses as aforesaid naturally have to be met from the estate causing pecuniary loss to the estate.

11. In Maimuna Begum (supra) the defence under Section 306 of the Indian Succession Act, 1925 on the old



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English Common Law maxim “actio personalis moritur cum persona” was rejected opining that it would be unjust to non-suit the heirs on that ground.

12. In Venkatesan (supra), the injured claimant preferred an appeal dissatisfied, but was deceased during the pendency of the appeal. Compensation came to be awarded under the Act for loss of estate keeping in mind the nature of the injuries, the treatment, the expenditure incurred and loss of income.

13. In Surpal Singh (supra), Justice K.S. Radhakrishnan, C.J. (as he then was), observed that the Act was a social welfare legislation providing for compensation by award to people who sustain bodily injuries or get killed. The grant of compensation had to be expeditious as procedural technicalities could not be allowed to defeat the just purpose of the act. The Courts in construing social welfare legislations had to adopt a beneficial rule of construction which fulfils the policy of the legislation favorable to those in whose interest the Act has been passed. Judicial discipline demanded that the words of a remedial statutes be construed so far as they reasonably admit so as to secure that relief contemplated by the statute and it shall not be denied to the class intended to be relieved. Rejecting the maxim of “actio personalis moritur cum persona” on the



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premise that it was an injury done to the person and the claim abated with his demise it was observed:

“11. The question as to whether injury was personal or otherwise is of no significance so far as the wrong doer is concerned and he is obliged to make good the loss sustained by the injured. Legal heirs and legal representatives would have also suffered considerable mental pain and agony due to the accident caused to their kith and kin. Possibly they might have looked after their dear ones in different circumstances, which cannot be measurable in monetary terms. We are therefore in full agreement with the view expressed by the learned Single Judge of this Court in Gujarat State Road Transport Corporation’s case (supra) that even after death of the injured, the claim petition does not abate and right to sue survives to his heirs and legal representatives.”

14. This view has subsequently been followed in a decision authored by brother Justice M.R. Shah J., (as he then was) in Madhuben Maheshbhai Patel vs. Joseph Francis Mewan and Others, 2015 (2) GLH 499, holding as follows:



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“12....Considering the aforesaid decision of the Division Bench of this Court in the case of Surpal Singh Ladhumba Gohil (supra); decisions of the learned Single Judge of this Court in the case of Jenabai Widow of Abdul Karim Musa (supra) and in the case of Amrishkumar Vinodbhai (supra); and aforesaid two decisions of the learned Single Judge of the Rajasthan High Court, we are of the opinion that maxim “actio personalis moritur cum persona” on which Section 306 of the Indian Evidence Act (sic Indian Succession Act) is based cannot have an applicability in all actions even in an case of personal injuries where damages flows from the head or under the head of loss to the estate. Therefore, even after the death of the injured claimant, claim petition does not abate and right to sue survive to his heirs and legal representatives in so far as loss to the estate is concerned, which would include personal expenses incurred on the treatment and other claim related to loss to the estate. Under the circumstances, the issue referred to the Division Bench is answered accordingly. Consequently, it is held that no error has been committed by the learned



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Tribunal in permitting the heirs to be brought on record of the claim petition and permitting the heirs of the injured claimant who died subsequently to proceed further with the claim petition. However, the claim petition and even appeal for enhancement would be confine to the claim for the loss to the estate as observed hereinabove.”

15. Similar view has been taken by the Punjab & Haryana High Court in Joti Ram vs. Chamanlal, AIR 1985 P&H 2 and the Madras High Court in Thailammai vs. A.V. Mallayya Pillai, 1991 ACJ 185 (Mad).

16. The view taken in Kanamma (supra) and Uttam Kumar (supra) that the claim would abate is based on a narrow interpretation of the Act which does not commend to us. The reasoning of the Gujarat High Court is more in consonance with aim, purpose and spirit of the Act and furthers its real intent and purpose which we therefore approve.

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18. The Tribunal, on technicalities rejected his claim for salary, medical expenses and percentage of disability and granted a measly compensation of Rupees one lakh only by a cryptic order. We are, therefore, of the opinion that while the



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claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and could be pursued by the legal representatives of the deceased in the appeal.

.....

20. We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, Doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from and depleted the estate of the injured, subsequently deceased.

21. However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and is disallowed. The High Court has not awarded anything towards medical expenses despite hospitalisation for six months being an admitted fact. We therefore award a sum of Rs.1,00,000/- towards medical expenses....”

15. Applying the above dictum laid down by the Hon'ble Supreme Court, the appellants are not entitled to get any amount towards pain and



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sufferings and loss of amenities. But considering the nature of the injuries sustained and inpatient treatment taken and other attending circumstances, this Court is inclined to grant Rs.15,000/- towards transportation, Rs.15,000/- towards extra nourishment and Rs.5,000/- towards damage to clothing and articles. The Tribunal, taking note of the medical bills under Ex.P.4, has rightly awarded Rs.4,700/- towards medical expenses. Considering the above, the appellants are entitled to get total compensation of Rs.3,15,700/- and accordingly, 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.	Loss of earning for 6 months	20,000	60,000	Enhanced
2.	Transport to hospital	1,000	15,000	Enhanced
3.	Extra nourishment	500	15,000	Enhanced
4.	Damage to clothing and articles	2,000	5,000	Enhanced
5.	Pain and sufferings	10,000	Nil	Nil
6.	Medical expenses	4,700	4,700	Confirmed
7.	Loss of amenities	10,000	Nil	Nil
8.	Disability	1,08,000	2,16,000	Enhanced
	Total	1,56,200	3,15,700	Enhanced by Rs.1,59,500/-



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16. 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.

17. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.1,56,200/- (Rupees One Lakh Fifty Six Thousand and Two Hundred only) is hereby enhanced to **Rs.3,15,700/- (Rupees Three Lakhs Fifteen Thousand and Seven Hundred only)**. The second respondent 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.No.532 of 2013 on the file of the Motor Accident Claims Tribunal/Special Subordinate Court for MCOP Cases, Madurai, 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 second appellant is entitled to get **Rs.1,65,700/- (Rupees One Lakh Sixty Five Thousand and Seven Hundred only)** and the appellants 3 to 5 are entitled to get **Rs.50,000/- (Rupees Fifty Thousand only)** each. Accordingly, the appellants 2 to 5 are permitted to withdraw their shares along with interest



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and costs, less amount already withdrawn, if any, on due application before the Tribunal. Parties are directed to bear their own costs. The appellants 2 to 5 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.

27.09.2023

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

1. The Special Subordinate Court for MCOP Cases,
Madurai.
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)No.644 of 2020

Dated : 27.09.2023