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CMA.No.238 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM:

THE HON'BLE Mr. JUSTICE KRISHNAN RAMASAMY

CMA.No.238 of 2023

K.Sengodan

... Appellant

-Vs-

1.V.Sivakumar
2.IFFCO TOKIO General Insurance Co., Ltd.
Tulsi Chambers, 3rd Floor,
195, T.V.Swami road (west),
R.S.Puram,
Coimbatore.

...Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgement and decree dated 23.04.2021 made in M.A.C.T.O.P.No.42 of 2016 on the file Motor Accident Claims Tribunal, Erode District at Bhavani, IV Additional District and Sessions Judge at Bhavani.

For Appellant	: Mr.K.V.Muthu Visakan
For R1	: ex-parte
For R2	: Mr.N.Anbumurugan

JUDGMENT



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This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 23.04.2021 made in MACT.OP.No.42 of 2016 on the file of the Motor Accident Claims Tribunal, Erode District at Bhavani, IV Additional District and Sessions Judge at Bhavani.

2.The appellant is the claimant in MACT.OP.No.42 of 2016 on the file of *Motor Accidents Claims Tribunal, Erode District at Bhavani/ IV Additional District and Sessions Judge at Bhavani*. He filed the above said claim petition, claiming a sum of **Rs.30,00,000/-** as compensation for the injuries sustained by him in an accident that took place on 16.08.2015.

3.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the 1st respondent and directed the 2nd respondent, insurance company to pay a sum of **Rs.8,55,500/-** as compensation to the appellant.



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4. Not being satisfied with the amount awarded by the Tribunal, the appellant has come out with the present appeal seeking enhancement of compensation.

5. The learned counsel for the appellant submitted that due to the accident which occurred on 16.08.2015, the claimant sustained '*Head injury with CSF Rhinorrhea (Fracture of Front – Ethmoidal process), Facial Injury (Lefort II Fracture both sides), Chest Injury (Fracture of Right side 5th & 6th Ribs with both lung contusion with Paraseptal, Emphysematous Blebs in Right Lung upper Lobe)/ ARDS, abdominal Blunt injury with paralytic Ileus, Comminuted lateral End clavicle fracture left side, Bilateral Fracture shaft of Femur, Grade III Compound comminuted segmental Fracture bot bones leg (Proximal-MID third) right side, Crush injury right foot, Multiple Irregular lacerated wounds over both forearm left inguinal region, face and skull.*' The claimant was a Mason by avocation and was earning Rs.30,000/- per month. Since he suffered a fracture to his leg, he is not able to continue his avocation. The Medical Board determined his disability as 40% permanent disability. The Tribunal however, adopted the percentage method and awarded



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Rs.4,000/- per every percentage of disability, which is on the lower side.

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He would therefore, contend that the Tribunal ought to have applied the multiplier method instead of applying the percentage method while calculating the compensation under the head 'disability'. Further, he would submit that the compensation awarded by the Tribunal under other heads is also too low. Therefore, he requested this Court to adopt the multiplier method and determine the notional monthly income of the claimant at Rs.12,000/- and thereby, redetermine the compensation awarded by the Tribunal.

5.On the other hand, the learned counsel for the second respondent/insurance company strongly opposed the contentions of the learned counsel for the appellant with regard to application of multiplier method for calculating the compensation under the head 'disability' and in support of his contentions, he relied on the Judgment of the Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar and Ors.*** [MANU SC 1018 2010] and the Judgment of this Court in ***M.Chinnathambi Vs. S.Deepa*** [2020 (1) TN MAC 617]. He would therefore, submit that the Tribunal has awarded a just and fair compensation and that the same may be



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confirmed.

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6.Replying to the same, the learned counsel for the appellant would submit that in the present case the injuries sustained by the claimant are severe in nature and that the appellant lost his opportunity for avocation in entirety and is sitting idle and helping his wife. He therefore pleaded that the disability of the appellant be considered as 100% functional disability and appropriate amount of compensation may be determined.

7.I have given due consideration to the submissions of the learned counsel for the appellant and the second respondent and perused the materials placed on record.

8.The appellant appeared before the Court and submitted that he is unable to perform his work due to the injuries sustained by him in the accident which took place on 16.08.2015.

9.There is no dispute with regard to fixation of negligence and fastening the liability. Further, there is no dispute with regard to the



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nature of injuries sustained by the appellant in the accident. This Court is of the considered view that with the disability suffered by the appellant in the accident, he will not be able to work efficiently. Further, the Hon'ble Apex Court in ***Raj Kumar Vs. Ajay Kumar and Ors*** (referred to above) has held that the Tribunal should consider the extent of permanent disability determined by the Medical Board as the functional disability of the injured and if at all the injured was able to continue his avocation, lesser percentage of disability can be considered for the purpose of determining the compensation under the head 'disability'. In the above said case, the Hon'ble Apex Court however, determined the functional disability of the injured lesser than the disability fixed by the medical officer as the disability did not prevent the injured from carrying on his business. Thus, the fixation of disability will differ from case to case, which depends on the ability of the injured to carry on his work. Since the claimant/appellant is not able to carry on his avocation, this Court is inclined to consider the permanent disability as determined by the Medical Board as functional disability and accordingly, award the compensation.



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10.Further, Considering the nature of injuries sustained by the claimant, this Court is inclined to Award the compensation under the head 'permanent disability' by adopting the multiplier method. For the accident of the year 2015, this Court considers that fixing the monthly notional income of the injured appellant at Rs.9,000/- would be appropriate. As the age of the injured at the time of the accident was 44 years, 25% has to be added towards future prospects as per the law lay down by the Apex Court in *National Insurance Co. Ltd Vs. Pranay Sethi & Others* [(2017) 16 SCC 378]. Further, the multiplier which has to be applied is 14. The compensation awarded by the Tribunal towards 'permanent disability' is redetermined as below;

$$9,000 + 2250 = 11,250;$$

$$11,250 \times 40/100 \times 14 \times 12 = 7,56,000/-$$

11.Further no amount of compensation has been awarded towards future medical expenses and towards attender charges. Therefore, this Court now awards a sum of Rs.75,000/- towards future medical expenses and Rs.20,000/- towards attender charges. Further, the compensation awarded by the Tribunal towards 'partial loss of earning' is reduced to



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Rs.32,000/-.

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12.The compensation awarded by the Tribunal under other heads of compensation are just and reasonable and the same stands confirmed.

The award of the Tribunal is redetermined as below;

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced or granted
1.	Pain and suffering	1,00,000/-	1,00,000/-	Confirmed
2.	Partial Loss of earning	54,000/-	32,000/-	Reduced
3.	Transport to Hospital	15,000/-	15,000/-	Confirmed
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Medical Bills	5,13,500/-	5,13,500/-	Confirmed
6.	Towards Permanent Disability	1,60,000/-	7,56,000/-	Enhanced
7.	Damage to Cloths and articles	3,000/-	3,000/-	Confirmed
8.	Future Medical Expenses	Nil	75,000/-	Enhanced
9.	Attender Charges	Nil	20,000/-	Enhanced



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S. N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced or granted
	Total	Rs.8,55,500/-	Rs.15,24,500/-	Enhanced by Rs.6,69,000 /-

13.In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at **Rs.8,55,500/-** is hereby enhanced to **Rs.15,24,500/-** together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd respondent/insurance company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **six weeks** from the date of receipt of a copy of this judgment to the credit of **M.C.O.P.No.42 of 2016** on the file of the Motor Accidents Claims Tribunal, Erode District at Bhavani, IV Additional District and Sessions Judge at Bhavani. On such deposit being made, the Tribunal is directed to transfer the entire award amount to the Bank account of the Appellant/Claimant through RTGS, within a period of **three weeks thereafter**. The appellant/claimant shall pay necessary Court fee, if any,



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on the enhanced compensation. However, it is made clear that if there is any delay in filing the C.M.A. and in case of any earlier order by this Court, depriving interest for the period of delay in question, the interest portion for that period should be excluded for the purpose of granting interest. No costs.

05.03.2024

Tsg

To

- 1.The Motor Accident Claims Tribunal,
Erode District at Bhavani,
IV Additional District and
Sessions Judge at Bhavani.
- 2.The Section Officer,
V.R.Section, High Court, Madras.

KRISHNAN RAMASAMY, J.,

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