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C.M.A. No.1138 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2024

CORAM:

THE HONOURABLE MR. JUSTICE K. RAJASEKAR

Civil Miscellaneous Appeal No.1138 of 2021

N.Thangaraj

... Appellant / Petitioner

Vs.

1. V.Selvaraj

2. M/s.National Insurance Company Ltd.,
Division XV,
National Insurance Company Building (1st Floor),
No.8, India Exchange Place,
Kolkatta 700 001.

... Respondents /Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award and Decree dated 30.08.2019 passed in M.C.O.P. No.294 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

For Appellant : Mr. C .Kulanthaivel

For R1 : Exparte

For R2 : Mr. D. Bhaskaran



JUDGMENT

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This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P.No.294 of 2009, dated 30.08.2019 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari.

2. The parties are referred to hereunder according to their litigative status and ranking before the Tribunal.

3. The brief facts leading to filing of this appeal is that on 30.01.2009 at about 3.45 p.m., while the petitioner was riding his two-wheeler namely Yamaha Motorcycle bearing Registration No.TN 34 B 3742 along with one other namely Madhu on the Salem to Coimbatore National Highways (NH-47) while they reached near India Cements Ltd., gate, he stopped the two-wheeler on the left side of the mud road waiting to cross the road, a Lorry bearing Registration No.TN 48 L 0527 came in rash, negligent manner, dashed against the two-wheeler, which resulting in causing grievous injuries to the rider and also the pillionaire. Immediately, he was admitted into National Hospital, Erode for treatment. In this regard, a criminal case



was also registered against the driver of the lorry in Crime No.74 of 2009, under Sections 279 and 338 IPC by the Komarapalayam Police.

Subsequently, the claimant has filed claim petition under Section 166 of the Motor Vehicles Act, claiming compensation of Rs.10,00,000/- for the injuries sustained by him in the road accident.

4. The first respondent is the owner of the vehicle has not contested the claim. The second respondent – Insurance Company filed counter and contended that the injury was not sustained by the claimant as stated by him, they have also disputed the age, avocation, income and disability sustained by the claimant. Hence prays to dismiss the claim.

5. The Tribunal based on the evidences placed on record has held that the accident had happened due to the negligent act on the part of the driver of the first respondent vehicle and the Tribunal has also quantified the compensation, awarded a sum of Rs.2,00,000/- payable by the respondents along with interest at the rate of 7.5% per annum.

6. Aggrieved over the quantum of compensation awarded by the



Tribunal, more particularly, fixing the loss of earning capacity, the claimant has filed this appeal seeking enhancement of compensation.

7. The learned counsel for the claimant has submitted that the claimant has suffered various multiple injuries and the Tribunal has also treated the injury as non-functional disability, awarded a sum of Rs.1,20,000/- as compensation under the head loss of income and the same has not in accordance with the norms followed. More particularly, the Tribunal has miserably failed to note down the injuries and the loss of earning capacity sustained by the claimant herein. He has also relied in the evidence of P.W.2, the Doctor who assessed the disability and also the medical records relating to the claimant. The learned counsel has further submitted that the compensation has not been awarded under some other heads. Hence prays to award compensation under other heads also.

8. Per Contra, the learned counsel for the Insurance Company has submitted that the injuries sustained by the claimant is not properly assessed by the Private Doctor - P.W.2 and he has given a certificate without appreciating the medical records and more particularly, the percentage of



disability of 20% sustained by the claimant which is on the higher side.

Hence prays to dismiss the appeal.

9. Based on the submissions made by both sides, during the pendency of this appeal, this Court has directed the claimant to subject himself for medical examination by the Medical Board. Accordingly, the Medical Board constituted by the Joint Director of Medical Science and Health, Erode District has assessed the disability and submitted a Report directly to this Court.

10. I have considered the rival submissions made on both sides and also perused the records.

11. The Medical Board for assessing the disability of the claimant has relied on the medical records and more particularly, the Discharge Summary – Ex.P3 issued to the claimant herein and it has listed out the injuries sustained by him. Even though, there was several abrasion and lacerated injuries and the following injuries were noted in the Discharge Summary: 1. Abrasion right parietal region.



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2. Abrasion 10x5cm with central laceration with skin loss of 2x2cm over right occipital region.
3. Abrasion right ear with laceration of right ear lobe with skin loss exposing the cartilage. Abrasion forehead and eyebrow.
4. Abrasion right shoulder
5. Abrasion 15x5cm with central laceration and skin loss 1x1cm left elbow.
6. Abrasion left hand and left index finger.
7. Abrasion 25x10cm lateral aspects left leg with wound 7x2x1cm with Abrasion left knee.
8. Abrasion over the dorsum of left foot 20x10cm with skin loss 5x3cm.
9. Lacerated wound 2x1x1cm right frontal.
10. Lacerated wound 3x1cm and exposing the bone of left great toe.
11. Abrasion right leg.

12. Further in the CT Scan Report, 3 more injuries have also been noted as follows:

1. Left cerebral hemorrhagic contusion.
2. Mild compression of 4th verticle.
3. Right Frontal cerebral contusion.



13. Based on the diagnosis, the following procedure was undergone by the claimant as follows:

1. On (31.01.2009) Under KA wound debridement done there is a loss interior flow of right ear skin loss over elbow, leg dorsum foot first and second toes left Vaseline gauze applied. Planed for secondary suturing.
2. On (8.02.2009) Under GA wound debridement SSG done to left Elbow, left leg, left great toe, 2nd toe and foot scalp ear done, K-wire fixation 1st and 2nd toe.
3. On (17.02.2009) repeat ct
Left cerebral temporal contusion resolving.

14. The Discharge Summary was taken up for consideration by P.W.2 who was originally assessing the disability. The Discharge Summary also shows that there were injuries on the left foot, head, neck and also on the ear lobe. The learned counsel for the claimant mainly relied on the CT Scan Report, which states that there was a cerebral temporal contusion, which resulted that the claimant could not do his work of driver with concentration since heavy vehicle driving requires good mental condition and good physiq. He further submitted that there was a fracture on the left toe and cervical fracture was noted.



15. The Tribunal after ascertaining the evidence of P.W.2, the

Doctor who was assessed the disability, held that P.W.2 assessed the disability with regard to the cerebral injury and disbelieved the evidence with regard to the injury on the ear. It is also admitted by P.W.2 before the Tribunal that he has not conducted any examination on brain by adopting CT Scan procedure. After rejecting the evidence of P.W.2, the Tribunal has notionally fixed the loss of income and awarded compensation of Rs.1,20,000/- under the head loss of income. The Medical Board had considered the Discharge Summary produced before the Tribunal and has noted the injury on the foot cervical region and head and thereafter given opinion that the claimant has sustained Permanent Disability of 79.5% and it has been rounded to 80%.

16. Ex.P3 - Discharge Summary refers the injury that “left cerebral temporal contusion is resolving”. Thereafter, there was no subsequent document to show that the impression of cerebral region. However, the medical records shows that there was a fracture on the left 1st and 2nd toe and it is also malunited. Further there was a wound debridement done to left elbow and left leg and left toe. The Medical Board has further



stated that due to the injury, i.e., the injury on right pinna is a permanent disability having contains deformity on ear lobe.

17. The learned counsel for the Insurance Company has submitted that the claimant has renewed his driving licence continuously and he has also produced the copy of driving licence to contend that the regular renewal of licence is sufficient to show that the claimant has not sustained any functional disability. The claimant has renewed his heavy vehicle driving licence and there is no dispute regarding the same. The Hon'ble Apex Court in *Raj Kumar vs. Ajay kumar & Another [AIR Online 2010 SC 125 : AIR Online 2010 SC 144]* has given various guidelines in deciding the disability and awarding compensation and it is categorically held that the loss of earning capacity has to be assessed based on the avocation and the nature of injuries sustained by him and the major issue to be decided while assessing loss of earning capacity is whether the claimant/injured would be in a position to continue his earlier avocation without any assistance. In this case, the claimant is a heavy vehicle driver and has sustained fracture on his big toe and second toe on the left leg and it has been malunited. He has also sustained injuries on his cervical region and it has also been healed. Apart



from that, he has sustained contusion on the cerebral region, it has been resolved. Apart from that, he has also sustained injury on ear lobe and separately it has been assessed as permanent disability to the extent of 5% by the Medical Board.

18. Under the said circumstances, this Court is of the view that combined effect of the above injuries would have definitely caused hindrance in doing his regular work of the claimant herein and he could not have continued his avocation more effectively, after the injury sustained by him. Hence this Court is of the view that the disability sustained by him would have caused minimum 50% functional disability to the claimant. Accordingly, this Court is inclined to modify the disability as 50% loss of earning capacity.

19. Considering the date of accident i.e., 30.01.2009, a sum of Rs.6,000/- is fixed as notional income of the claimant. The claimant is aged about 30 years at the time of accident, hence as per the Judgment of the Apex Court in *Sarla Verma and others Vs. Delhi Transport Corporation and others* [2009 ACJ 1298 SC : 2009 (6) SCC 121] multiplier '17' is fixed.



Accordingly, a sum of Rs.6,12,000/- [6000 x 12 x 17 x 50%] is awarded under the head Loss of Earning Capacity. The claimant is also entitled to 40% future prospects as held by the Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation [AIR 2020 SC 4284]***. Accordingly, a sum of Rs.2,44,800/- [40% of Rs.6,12,000/-] awarded under the head 'Future Prospects'.

20. The Tribunal has not awarded compensation under the head Pain and Sufferings and Extra Nourishment and this Court is of the view that considering the injuries sustained, the petitioner shall be awarded a sum of Rs.30,000/- under the head pain and sufferings and also a sum of Rs.15,000/- is awarded under the head Extra Nourishment. The Tribunal has not awarded compensation under the head loss of amenities and this Court is inclined to grant a sum of Rs.15,000/- under the head Loss of amenities and also a sum of Rs.6,000/- is granted under the head Attender charges, since the claimant has taken in-patient treatment for 20 days, one month income of Rs.6,000/- awarded as attender charges. This Court is inclined to grant a sum of Rs.1,000/- for the head Damages to clothes and the Medical expenses incurred by the claimant for a sum of Rs.65,228/-. The Tribunal has



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awarded compensation of Rs.10,000/- under the head Transportation Charges and this Court is also inclined to accept the same.

21. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1.	Loss of Earning Capacity	Rs.1,20,000/-	Rs.6,12,000/-	Enhanced
2.	Transport Expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
3.	Medical Expenses	Rs.70,000/-	Rs.65,228/-	Reduced
4.	Future Prospects	---	Rs.2,44,800/-	Granted
5	Pain and Sufferings	---	Rs.30,000/-	Granted
6	Extra Nourishment	---	Rs.15,000/-	Granted
7	Loss of Amenities	---	Rs.15,000/-	Granted
8	Attender Charges	---	Rs.6,000/-	Granted
9	Damages to Clothes	---	Rs.1,000/-	Granted
	Total Compensation	Rs.2,00,000/-	Rs.9,99,028/-	Enhanced by Rs.7,99,028/- -

22. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,00,000/- is hereby enhanced to Rs.9,99,028/- [Rupees Nine Lakhs Ninety Nine Thousand and



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Twenty Eight only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit, excluding the default period, if any. The second respondent – Insurance Company is directed to deposit the amount now awarded 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.294 of 2009 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the appellant/claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

11.01.2024

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Index:Yes/No

Speaking Order:Yes/No



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Neutral Citation Case: Yes/No

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K. RAJASEKAR, J.

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To:

1. The Sub Judge,
Motor Accident Claims Tribunal,
Sankari.
2. The Section Officer,
V.R.Section,
High Court,
Chennai.

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