



CMA No.292 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.292 of 2021

Judgment reserved on 27.02.2024	Judgment pronounced on 04.03.2024
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Saravanan

...

Appellant

Vs.

1.Vinothpandi

2.Radhakrishnan

2.The New India Assurance Company Limited

435, D.B. Road, R.S.Puram,

Coimbatore.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 23.06.2020 made in MCOP No.141 of 2017 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Perundurai.

For Appellant : Mr.R.Nalliyappan

For R-1 & R-2 : No appearance

For R3 : Mr.S.Dhakshnamoorthy



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JUDGMENT

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The claim petitioner is the appellant herein seeking enhancement of compensation awarded in MCOP No.141 of 2017 dated 23.06.2020 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Perundurai.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the respondents 1 & 2, vehicle being insured with the third respondent/insurance company and validity of the policy are not in dispute.

3. It remains to be stated that based upon the evidence of appellant as PW1 in the cross examination, the Tribunal has rightly fixed 10% contributory negligence on the part of the appellant for not wearing helmet at the time of accident. Accordingly, the finding rendered by the Trial Court with regard to negligence is hereby confirmed and the appellant is entitled to 90% of the compensation amount.

4. On the point of quantum of compensation, heard the learned counsel for the appellant as well as the third respondent / insurance company and perused the records.



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5. Though notice has been served on the respondents 1 & 2 and their names have been printed in the cause list, there is no representation for them either in person or through counsel.

6. The appellant/claim petitioner has filed the above claim petition claiming compensation for the injuries sustained by him in the road transport accident happened on 05.03.2017. In order to substantiate the claim, the appellant had examined himself as PW1 and marked Exs.P1 to P14. Medical Board Certificate and explanation offered by the Joint Director of Medical Board were marked as Exs.C1 & C2.

7. On perusal of Ex.P5-wound certificate and Ex.P7-discharge summary alongwith Exs.C1 & C2, as stated supra, this Court finds that the Medical Board has assessed the disability as right lower limb 35%, right upper limb 15% and left upper limb 10%. Based upon Ex.C2 - explanation, the Joint Director of Medical Board has assessed the disability as 60% partial permanent disability. Hence, the Trial Court has calculated the disability based upon Ex.C2 as under -

$$a + b \frac{(90-a)}{90} = 45 + 20 \frac{(90-45)}{90} = 55\%$$

8. Admittedly, under Ex.C1 – Medical Board Certificate, the



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appellant has suffered partial and permanent disability. PW1 as described the nature of injuries suffered by him after the accident. He had suffered communitied fracture trochanter right hip, fracture neck of right femur, communitied frature shaft of right femur, fracture right patella, fracture lateral condyle of right tibia, fracture fibula of right leg, communitied fracture shaft of left humerus, fracture right clavicle, fracture 4th and 6th ribs of left side chest, fracture right hands, right side facial injury, mild head injury and soft tissue injury.

9. From the deposition of appellant as PW1, I find that due to the injuries suffered by him, there is loss of reputation and hence it is a partial and permanent disability. Therefore, this Court is of the considered view that the functional disability has to be fixed for the whole body. The Trial Court appears to have calculated the same and fixed the functional disability of the appellant as 30%. Hence, the functional disability fixed by the Tribunal taking into consideration the disability suffered by the appellant for the whole body cannot be termed as meagre and hence the same is hereby confirmed.

10. According to the appellant, at the time of accident he was



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aged 42 years working as an agricultural coolie and was earning a sum of Rs.15,000/- per month. However, the appellant has not proved his avocation and income by producing documentary evidence. In the absence of any documentary evidence, the Tribunal has fixed a sum of Rs.6,500/- per month as notional income of the appellant and the same is meagre. Taking into consideration the avocation and the year of accident, I am inclined to fix the monthly notional income of the appellant at Rs.9000/-. Following the judgment of the Hon'ble Supreme Court in ***SARLA VERMA & OTHER v. Delhi Transport Corporation & Another reported in 2009 (2) TNMAC (1) SC***, the multiplier applicable is 13. As per the judgment of the Hon'ble Supreme Court in ***National Insurance Company Limited v. Pranay Sethi and others reported in 2017 (2) TNMAC 609***, 25% enhancement has to be awarded towards future prospects. Thus, the compensation towards loss of earning capacity is enhanced to Rs.5,67,000/- break-up as follows -

$$9,000 + 2250 (9000 \times 250\%) \times 12 \times 14 \times 30\% = \text{Rs.5,67,000/-}$$



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11. Considering the nature of injuries and the disability suffered by the appellant, the compensation awarded by the Tribunal towards transportation charges, pain & sufferings and extra nourishment is enhanced to Rs.10,000/-, Rs.20,000/- and Rs.15,000/- respectively. The compensation awarded by the Tribunal towards medical expenses as per Exs.P8 & 9 is confirmed. The amount awarded by the Tribunal towards partial permanent disability at Rs.1,65,000/- is hereby set aside. The Tribunal has not awarded any amount towards loss of amenities. Hence, a sum of Rs.10,000/- is awarded towards loss of amenities. Accordingly, the compensation awarded by the Tribunal is enhanced to **Rs.7,65,150/-** break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Partial and Permanent disability	1,65,000/-	-
2.	Loss of earning capacity	4,09,584/-	5,67,000/-
3.	Transportation charges	5,000/-	10,000/-
4.	Pain and Sufferings	15,000/-	20,000/-
5.	Extra Nourishment	10,000/-	15,000/-



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Sl. No	Heads under which the amount is awarded	Amount awarded by the Tribunal – Rs.	Amount awarded by this Court – Rs.
6.	Medical expenses	2,28,134/-	2,28,134/-
7.	Loss of amenities	-	10,000/-
	Total	8,32,718/-	8,50,134/-
	Less : 10% contributory negligence	83,271/-	85,013/-
	Net compensation payable to the appellant	7,49,447/- rounded off to Rs.7,49,450/-	7,65,121/- rounded off to Rs.7,65,150/-

12. In total, the appellant is entitled to a sum of **Rs.7,65,150/-** (Rupees Seven Lakhs Sixty Five Thousand One Hundred and Fifty only) as compensation.

13. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.7,49,450/- to Rs.7,65,150/-**, to the extent indicated above, along with interest @ 7.5% per annum. No costs.

(ii) the third respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.



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(iii) on such deposit being made, the claim petitioner/appellant is permitted to withdraw the entire enhanced award amount, less the award amount if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the appellant is directed to pay the court fee on the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

04.03.2024

rgr

Index : Yes/No

Speaking/Non-speaking order

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Perundurai.

2.The Section Officer,
V.R. Section,
High Court, Madras.



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RMT.TEEKAA RAMAN, J.

rgr

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