



C.M.A.No.1468 of 2021

IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 19.07.2024

CORAM

THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.1468 of 2021

and

Cross Obj.No.99 of 2023

Chinnapaiyan

.. Appellant in CMA.No.1468/21
.. 1st respondent in Cros.obj.No.99/23

Vs

1.S.Sengottaiyan

.. 1st respondent in CMA.No.1468/21
& Cross objector in Cros.obj.No.99/23

2.The Oriental Insurance Company Ltd.,
Divisional Office,
Sevvaipettai,
Salem – 636 002.

.. 2nd respondent in both appeals

Prayer in C.M.A.No.1468/21: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 20.12.2019 passed in M.C.O.P.No.1631 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub-Judge-I, Salem.

Prayer in Cross Obj.No.99 of 2023: This Appeal is filed under Order 41



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Rule 22 of CPC against the decree and judgment dated 20.12.2019 passed in M.C.O.P.No.1631 of 2018, on the file of the Motor Accident Claims Tribunal, Special Sub-Judge-I, Salem.

In C.M.A.No.1468/21

For Appellant : Mr.S.P.Yuaraj
For R1 : Dr.P.Jagadeesan
For R2 : Mr.J.Chandran

In Cross Objection:

For Cross-objector : Dr.P.Jagadeesan
For R1 : Mr.S.P.Yuaraj
For R2 : Mr.J.Chandran

JUDGMENT

This appeal has been filed by the claimant seeking for enhancement of compensation. For better understanding of the case, the parties will be referred to as arrayed in the claim petition.

2. The Tribunal, under the impugned award, directed the second respondent Insurance Company to pay the claimant a compensation of Rs.11,74,521/- as detailed hereunder:-

Pain and suffering -Rs.50,000/-



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Medical expenses	-Rs.1,62,271/-
Transport expenses	-Rs.50,000/-
Nutrition	-Rs.40,000/-
Attender charges	-Rs.40,000/-
Loss of clothing	-Rs.1,000/-
Loss of amenities	-Rs.50,000/-
Artificial leg	-Rs.50,000/-
Loss of income	-Rs.7,31,250/-
Total	-Rs.11,74,521/-

3. The claimant has primarily filed this appeal on the ground that the notional monthly income fixed by the Tribunal is low. According to the claimant, even though he had claimed in his claim petition that he was earning a sum of Rs.20,000/- per month by doing weaving work, the Tribunal has erroneously fixed his notional monthly income at Rs.7,500/- for an accident that happened in the year 2018.

4. The claimant has got his left leg amputated below his knee as a result of the injuries caused by a vehicle insured with the second respondent Insurance Company. The nature of the injuries sustained by the claimant has not been disputed by the Insurance Company as seen from the evidence available on record. The Accident happened on



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13.06.2018. This Court is of the considered view that the Tribunal has committed an error by not taking into consideration the avocation and the year of the accident, while assessing the notional monthly income of the claimant. If the same was taken into consideration, the Tribunal ought to have fixed notional monthly income of the claimant at Rs.13,000/- instead of Rs.7,500/-. Accordingly, this Court enhances the notional monthly income of the claimant from Rs.7,500/- to Rs.13,000/-.

5. After giving due consideration to the age of the claimant, who was 48 years old at the time of the accident, the Tribunal has rightly awarded loss of future prospects at 25% and has also rightly adopted multiplier '13' by fixing the disability of the claimant at 50%. Since the notional monthly income of the claimant is increased to Rs.13,000/-, the compensation payable to the claimant towards loss of income is re-determined as detailed hereunder:-

Monthly income	-- Rs.13,000/-
25% of future prospects	-- Rs.3,250/-
Total	-- Rs.16,250/-
Loss of income	
= 16,250x12x13x50%	-- Rs.12,67,500/-



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6. Insofar as the compensation awarded by the Tribunal under various other heads, namely, pain and suffering at Rs.50,000/-; medical expenses at Rs.1,62,271/-; Transport expenses at Rs.50,000/-; nutrition at Rs.40,000/-; attender charges at Rs.40,000/-; loss of clothing at Rs.1,000/-; loss of amenities at Rs.50,000/-; and fixation of artificial leg at Rs.50,000/-, is a just compensation and there is no scope for further enhancement.

7. During the pendency of C.M.A.No.1468 of 2021 filed by the claimant, a cross objection has been filed by the owner of the transport vehicle, which was responsible for the cause of the accident, in Cross Obj.No.99 of 2023.

8. Under the impugned award, pay and recovery rights has been granted to the second respondent Insurance Company due to the fact that the transport vehicle, which was responsible for the cause of the accident, did not have a valid badge endorsement.

9. Admittedly, the weight of the transport vehicle, which was



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responsible for the cause of the accident, is more than 7500 kgs. as seen from the evidence available on record and as seen from the findings of the Tribunal. Therefore, only in accordance with the settled law, the Tribunal has granted pay and recovery rights to the second respondent Insurance Company. There is no infirmity in the findings of the Tribunal with regard to grant of pay and recovery rights. Therefore, necessarily, cross objection filed by the first respondent has to be dismissed.

10. For the foregoing reasons, the award passed by the Tribunal is re-worked in the following manner:-

Loss of income	-Rs.12,67,500/-
Pain and suffering	-Rs.50,000/-
Medical expenses	-Rs.1,62,271/-
Transport expenses	-Rs.50,000/-
Nutrition	-Rs.40,000/-
Attender charges	-Rs.40,000/-
Loss of clothing	-Rs.1,000/-
Loss of amenities	-Rs.50,000/-
Artificial leg	- Rs.50,000/
Total	- Rs.17,10,771/-
(Rounded off)	- Rs.17,10,800/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed



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and the impugned award passed by the Tribunal in M.C.O.P.No.1631 of 2018, dated 20.12.2019, is modified by directing the second respondent Insurance Company to deposit a sum of Rs.17,10,800/- together with interest at 7.5% per annum from the date of claim petition till the date of realization, to the credit of M.C.O.P.No.1631 of 2018 on the file of Motor Accident Claims Tribunal, Special Sub Court-I, Salem, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said sum along with accrued interest therein through RTGS/NEFT transfer to the bank account of the claimant. However, the pay and recovery order passed by the Tribunal is confirmed. Cross Objection No.99 of 2023 is dismissed. No Costs.

19.07.2024

Index: yes/no
Neutral citation: yes/no
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ABDUL QUDDHOSE,J.

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To

Motor Accident Claims Tribunal,
Special Sub Judge-I,
Salem.

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2021
and
Cross Obj.No.99 of 2023**

19.07.2024