



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.2496 of 2023

M.Ezhumalai

.. Appellant

Vs.

1.G.Anandan

2.The Manager,
Reliance General Insurance Co. Ltd.,
Rais Tower, Plot No.2054, 2nd Avenue,
Anna Nagar,
Chennai- 600 040.

.. Respondents

(No relief sought against the 1st respondent.)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 20.12.2019 made in M.C.O.P.No.242 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge,Kanchipuram.

For Appellant : Mr.M.Sivakumar

For Respondents : Notice Dispensed with (R1)
Mr.G.Vasudevan (R2)



JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 20.12.2019 made in M.C.O.P.No.242 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Kanchipuram.

2.The appellant is the claimant in M.C.O.P.No.242 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Kanchipuram. He filed the above said claim petition, claiming a sum of Rs.15,00,000/- as compensation on account of the injuries sustained by him in the accident that took place on 07.06.2012.

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 Tipper Lorry bearing Registration No.TN-73-X-2898 who is the first respondent herein and directed the 2nd respondent-Insurance Company to pay a sum of Rs.5,48,600/- as compensation to the appellant.



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

5. The learned counsel appearing for the appellant contended that due to the aforesaid accident, the appellant sustained injury in the right femur and fracture in the left eye and though the Medical Board assessed disability of the claimant @ 60% and issued Ex.P21, the Tribunal without considering the same has fixed disability only @ 40%. He further submitted that the claimant was an agriculturist and was earning a sum of Rs.10,000/- per month and Claims Tribunal has fixed the notional income of the injured only at Rs.6,000/- per month and awarded meager compensation towards Loss of Income. He further submitted that amount of compensation awarded towards other heads are also very low and hence prayed for enhancement of compensation.

6. The learned counsel appearing for the 2nd respondent-Insurance Company submitted that the Claims Tribunal, taking into consideration of the fact that disability of the claimant, cannot be said to be permanent in nature and based on the age, prevailing, continuing ailments and hardship of the



claimant, has rightly fixed disability at 40% and as there was no proof for monthly income of the claimant, the Tribunal has rightly fixed a sum of Rs.6,000/- per month as notional monthly income of the claimant. He further submitted that the Claims Tribunal after considering oral and documentary evidence has rightly awarded compensation under various heads and therefore the same does not warrant any interference

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd respondent-Insurance Company and perused the entire materials on record.

8. It is no doubt true that due to the injuries sustained by the Claimant, he could not walk properly and carry any agricultural activities for six months, therefore the percentage of disability can be considered even as 100% for the purpose of determining the compensation. But as the Medical Board has assessed 60% disability, which is not permanent in nature, the Claims Tribunal on considering the age, prevailing, continuing ailments and hardship of the claimant, has rightly fixed disability at 40% and therefore this Court is not inclined to interfere with the same. It is the case of



the appellant that at the time of accident, the injured was earning a sum of Rs.10,000/- per month, but the Tribunal has fixed the income of the appellant at Rs.6,000/- which in the opinion of this Court is very low. The accident took place in the year 2012. The cost of living has been increased enormously and salary of even unskilled workers being increased substantially. Hence, a sum of Rs.9,000/- per month is fixed as notional income of the deceased. Therefore, by fixing a sum of Rs.9,000/- per month and by taking the disability @40% and by adopting the multiplier 9, compensation towards Loss of Income comes to **Rs.3,88,800/-** (9000x12x40/100x9) and therefore a sum of **Rs.3,88,800/-** is awarded towards Loss for Income.

9. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, 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
1.	Loss of income	2,59,200/-	3,88,800/-	Enhanced
2.	Medical Expenses	2,70,000/-	2,70,000/-	Confirmed
3.	Attender charges	2,400/-	2,400/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
4.	Pain and Sufferings	5,000/-	5,000/-	Confirmed
5.	Extra nourishment	5,000/-	5,000/-	Confirmed
6.	Transportation	5,000/-	5,000/-	Confirmed
7.	Cloth damages	2,000/-	2,000/-	Confirmed
	Total	Rs.5,48,600/-	Rs.6,78,200/-	Enhanced by Rs.1,29,600/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,48,600/- is hereby enhanced to Rs.6,78,200/- 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.242 of 2012 on the file of the Motor Accident Claims Tribunal, Additional Subordinate Judge, Kanchipuram. On such deposit being made, the Tribunal is directed to transfer the Award amount directly to the Bank account of the Appellant/Claimant through RTGS, within a period of **two weeks**. The



claimant is directed to pay necessary Court fee, if any 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.

04.01.2024

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Index : Yes / No
Internet : Yes / No

To

1. The Manager,
Reliance General Insurance Co. Ltd.,
Rais Tower, Plot No.2054, 2nd Avenue,
Anna Nagar,
Chennai- 600 040.
2. The Motor Accident Claims Tribunal,
Additional Subordinate Judge,
Kanchipuram.
3. The Section Officer,
VR Section,
High Court,
Madras.



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KRISHNAN RAMASAMY, J.
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