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CMA No.1695 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

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

C.M.A.No.1695 of 2021

Judgment reserved on 23.02.2024	Judgment pronounced on 25.03.2024
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S.M.Ganapathy ... Appellant

Vs.

1.P.Viswanathan

2.The National Insurance Company Limited,
T.P.Cell, No.46, Moore Street,
Chennai - 1. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 19.03.2020 made in MCOP No.4154 of 2017 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.K.Varadha Kamaraj

For R-1 : No appearance

For R2 : Mr.J.Michael Visuvasam

JUDGMENT



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The claim petitioner is the appellant herein seeking enhancement of compensation awarded in MCOP No.4154 of 2017 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver where the vehicle belongs to the first respondent and the vehicle being insured with the second respondent/insurance company and the injuries sustained by the appellant in the road accident are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.

3. The learned counsel appearing for the appellant/claim petitioner contended that considering the nature of injuries sustained by the appellant/claim petitioner, the Tribunal ought to have adopted multiplier method and hence prayed for enhancement of compensation.

4. On the other hand, the learned counsel appearing for the second respondent/insurance company made his submissions in support of the award passed by the Tribunal.

5. On the point of quantum of compensation, heard both the



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learned counsel appearing for the appellant as well as the second respondent/insurance company and perused the materials on record.

6. Before the Tribunal, the appellant/claim petitioner examined himself as PW1 and marked Exs.P1 to P14. The disability certificate issued by the Government Kilpauk Medical College Hospital, Chennai was marked as Ex.X1.

7. The learned counsel appearing for the appellant contended that the injured was a driver. Due to the injuries sustained by him in the road transport accident, he suffered a functional disability and it resulted in loss of earning capacity.

8. Per contra, the learned counsel for the Insurance Company draw my attention to Ex.P6 - Driving License that, after the accident, his driving license was initially suspended for a period of time. Subsequently, the driving license was renewed after a course and hence could contend that since the driving license of the injury/claim petitioner was now renewed, he can do and earn the job of the driver as he was used to do before at the accident.

9. On perusal of the same, I find that the license was renewed for general category but was not renewed for the badge. Be that as it may.



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10. Since the driving license was renewed it cannot be termed as loss of earning capacity and the injuries sustained in the road transport accident cannot be termed as loss of earning capacity and accordingly the trial Court has rightly come to the conclusion that the ratio laid down in the "Rajkumar's case" is not applicable and accordingly rightly refused the adoption of multiplier method and hence on the above factual position, I am not unable to uphold the contention of the learned counsel for the claim petitioner that the injuries sustained were resulted in loss of earning capacity.

11. Further it is to be stated that the notional income was fixed at Rs.15,000/-

12. Taking into consideration the nature of work and the accident has taken place in the year 2017, the notional income of Rs.15,000/- fixed by the Tribunal is just and fair. Considering the nature of injuries he sustained and the disability he suffered, and the other circumstances, it could be presumed that the claim petitioner is unable to go for work, and would have lost income, for five months. Therefore,



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Rs.15,000x5=Rs.75,000/-)

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13. Taking into consideration that the avocation of the appellant/claim petitioner, the nature of injuries that was found in the discharge summaries as reflected in the medical report and percentage of disability assessed by the Medical Board, I find that the injuries has caused functional disability to the appellant / claim petitioner. Accordingly, I hold that the ratio laid down by the Hon'ble Supreme Court in RAJKUMAR's case has been satisfied and hence multiplier method has to be adopted for computing loss of earning capacity to the appellant.

14. According to the appellant/claim petitioner, at the time of accident, he was working as an Oil Tanker Lorry Driver and was earning a sum of Rs.15,000/- per month.

15. Considering the year of accident and nature of work, the notional income is fixed at Rs.15,000/- per month and the same is hereby enhanced to Rs.20,000/- (Rs.20,000x5=Rs.1,00,000/-)

16. The Tribunal has awarded a sum of Rs.4,800/- is enhanced to Rs.25,000/- towards attender charges. The amounts awarded by the Tribunal



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under other heads are just and reasonable and hence those are confirmed.

Accordingly, the compensation awarded by the Tribunal is enhanced from

Rs.3,77,500 /- to Rs.4,52,700 /-, 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.	Disability	Rs. 2,00,000/-	Rs.2,00,000/-
2.	Medical Expenses	Rs. 700/-	Rs. 700/-
3.	Loss of Income	Rs. 45,000/-	Rs. 1,00,000/-
4.	Pain and Sufferings	Rs. 40,000/-	Rs. 40,000/-
5.	Transportation expenses	Rs. 20,000/-	Rs. 20,000/-
6.	Additional Nourishment	Rs. 25,000/-	Rs. 25,000/-
7.	Damages to clothes	Rs. 2,000/-	Rs. 2,000/-
8.	Attender charges	Rs. 4,800/-	Rs. 25,000/-
9.	Loss of Amenities	Rs. 40,000/-	Rs. 40,000/-
	Total	Rs. 3,77,500/-	Rs.4,52,700/-

17. In total, the appellant / claim petitioner is entitled to a sum of Rs.4,52,700/- (Rupees Four Lakhs Fifty Two Thousand and Seven Hundred only).

18. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed,

enhancing the award amount from Rs.3,77,500 /- to Rs.4,52,700 /- to the



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extent indicated above, along with 7.5% interest per annum. No costs.

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(ii) the second 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.

(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 claim petitioner/appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

25.03.2024

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Index : Yes/No

Speaking/Non-speaking order

To

1.The IV Small Causes Court,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer,
V.R. Section,



High Court, Madras.

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RMT.TEEKAA RAMAN, J.

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