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C.M.A.No.687 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 30.01.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

CM.A.No.687 of 2023

V.Venkatachalam

... Appellant

Vs.

1. R.Nandakumar

2. The New India Assurance Company Ltd.,
Sethukrishna Trade Centre 2nd Floor,
No.133/31-A, Trichy Main Road,
Gugai, Salem – 636 006.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 21.01.2019 made in M.C.O.P.No.1427 of 2015, on the file of the Motor Accident Claims Tribunal/Special Subordinate Court No.2, Salem.

For Appellant : Mr.S.Sankar for M/s.C.Thangaraju
Respondent-1 : No appearance
For Respondent-2 : Mr.G.Anandan

JUDGEMENT

Questioning the quantum of compensation awarded by the



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Tribunal, the present Appeal has been preferred by the appellant/claimant.

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2. On 23.05.2015 at about 09.30 p.m, when the claimant was walking in a Road on Karumathampatty to Annanoor Road, Axis Bank, ATM near, Karamathampatty, the rider of the two wheeler, viz., Bajaj CT 100 rode the vehicle in a rash and negligent manner and dashed against the claimant, due to which, the claimant sustained injuries all over the body. Hence, the claimant filed a Claim Petition seeking a sum of Rs. 25,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the rider of the two wheeler, and hence, directed the second respondent/Assurance Company to pay a compensation of Rs.2,46,240/- to the claimant together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of realization and to recover the same from the first respondent, owner of the offending Vehicle.

4. Not being satisfied with the award of compensation passed by the Tribunal, the claimant has filed the present appeal.



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5. Mr.S.Sankar, learned counsel appearing on behalf of appellant/claimant submitted that due to the accident, the deceased sustained left tibia injury, head injury and apart from injuries all over the body ; that the Medical Board issued a Disability Certificate, which has been marked as Ex.C.1, wherein, the disability was assessed at 18%; that however, the Tribunal, while determining compensation under the head, 'Loss of Income due to Disability' by adopting multiplier mother, taken the disability only at Rs.6% and fixed the notional monthly income of the appellant/claimant at Rs.7,500/-, which has resulted in awarding an inadequate compensation of Rs.87,750- under the said head. Hence, the learned counsel prayed that disability as well as the notional monthly income of the injured appellant may be revised.

6. Despite service of notice on the first respondent, viz., the owner of the offending vehicle and his name is printed in the cause list, he has not appeared. Hence, the first respondent is set ex parte.



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7. Mr.G.Anandan, learned counsel for the second respondent/Assurance Company submitted that the award passed by the Tribunal is just and fair and requires no interference.

8. Heard the learned counsel for the appellant/claimant and the learned counsel for 2nd respondent and perused the materials on record.

9. On perusal of the Tribunal's award, it appears that the Medical Board assessed the disability sustained by the injured appellant at 18% and issued a Disability Certificate in that regard and the same was marked as Ex.C.1. However, the Tribunal proceeded to award compensation towards 'Loss of Future Income due to Disability' by taking the disability only at 6% and also fixed a lesser amount towards the notional monthly income of the injured appellant, i.e at Rs.7,500/- p.m.

9.1 Therefore, this Court, taking into consideration of the age (51 years) occupation of the appellant (Agricultural Coolie) and year of the accident (2015) suggested as to whether a sum of Rs.13,000/- shall be fixed



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as notional monthly income of the deceased, to which, Mr.G.Anandan, learned counsel for the second respondent/Assurance Company submitted that some lesser amount may be fixed as notional monthly income of the injured appellant, which may be below than Rs.9,000/-. Therefore, this Court is inclined to fix a sum of Rs.9,000/- as notional monthly income of the appellant, which would be just and reasonable.

9.2 Similarly, this Court is inclined to take the disability sustained by the injured appellant at 9% instead of 6% as that was wrongly taken by the Tribunal. Thus, by fixing the notional monthly income of the deceased at Rs.9,000/-; adding 25% towards future prospects; applying right multiplier of '13' (since the injured was aged 51 years), the compensation towards 'Loss of Future Income due to Disability' is calculated as under:-

Notional Monthly income + 25% future prospects x 13 Multiplier x 12 x 9% Disability)

$$\text{Rs.9,000/-} + \text{Rs.2,250/-} \times 13 \times 12 \times 9/100 = \text{Rs.1,57,950/-}$$



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9.3 Consequently, the sum of Rs.87,750/- awarded by the Tribunal under the head of 'Loss of Future Income due to Disability' is hereby modified and enhanced to **Rs.1,57,950/-**.

9.4 So far as the compensation awarded by the Tribunal towards 'Pain and Sufferings' at Rs.10,000/- and 'Damages to Clothes' at Rs.500/- is concerned, the same is modified and enhanced to Rs.15,000/- and Rs.2,000/- respectively.

9.5 Except the modification made under three heads, viz., i) Loss of Future Income due to Disability', ii) Pain and Sufferings and ii) 'Damages to Clothes', the award of compensation passed by the Tribunal under other heads remain unaltered as the same appear to be just and reasonable. As far as the pay and recover theory ordered by the Tribunal is concerned, the same also stands confirmed.

10. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-



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<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Future Income due to Disability	Rs.1,57,950/-.
2	Pain and Sufferings	Rs.15,000/-
3	Loss of Amenities	Rs.10,000/-
4	Medical and Transportation expenses	Rs.1,25,490/-
5	Extra Nourishment	Rs. 5,000/-
6	Attender's Charges	Rs. 7,500/-
7	Damages to Clothes	Rs. 2,000/-
Total		Rs.3,22,940/- rounded off Rs.3,23,000/-

10.1 Consequently, the total compensation amount of **Rs.2,46,240/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.3,22,940/-**, **which is rounded of to Rs.3,23,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

11. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-



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(i) The second respondent, Assurance Company is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the Assurance Company, the Tribunal shall transfer the amount directly to the claimant's respective bank accounts through RTGS within a period of three weeks thereon.

(iii) The appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) The appellant/claimant is directed to pay the Court fee for the enhanced compensation, if any.

v) Since this Appeal has been filed with a delay of 234 days, the



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appellant/claimant shall forgo the interest for the delay period, as already stated by this Court while condoning the delay, in its order, dated 02.03.2023, made in C.M.P.No.12708 of 2022 in C.M.A.Sr.No.19069 of 2020.

vi) There shall be no order as to costs.

30.01.2024

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To

The Special Subordinate Judge No.2,
Motor Accident Claims Tribunal, Salem.



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Krishnan Ramasamy,J.,
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