



C.M.A.No.466 of 2022

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 19.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.466 of 2022

Ponnusamy

... Appellant

Vs.

1. V.Alamelu

2. M/s. New India Assurance Company,
registered Office at No.185,
SPS Building, Anna Salai,
Chennai -636 002.
Branch Office at Sethu Krishna Trade Center,
Near Rajasabari Theatre, Tiruchi Main Road,
Tiruchi Main Road, Salem.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 25.08.2021, made in M.C.O.P.No846 of 2016, on the file of the Motor Accident Claims Tribunal/Special Sub Court No.1 Salem.



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For Appellant : Mrs.J.Prithivi
Respondent-1 : Notice served No appearance
Respondent-2 : Mr.R.Sivakumar

JUDGEMENT

Questioning the quantum of compensation awarded by the Tribunal, the present Appeal has been preferred by the appellant/claimant.

2. On 08.11.2015, at about 12.30 p.m., when the claimant was riding a two wheeler, bearing Regn.No. TN 27 H 2266, at Kanavaikadu Mudiyanoor Road, Veppilai pattay Post, Salem District, the rider of the two wheeler, bearing Regn.No.TN 77 Y 1971, belonging to the first respondent came from the opposite direction in a rash and negligent manner, and dashed against the claimant's two wheeler, and caused the accident. In the said accident, the claimant sustained serious injuries on the right leg and injuries all over the body. Hence, the claimant filed a Claim Petition seeking a sum of Rs.50,00,000/- as compensation.

3. The Tribunal, on consideration of oral and documentary



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evidence held that the accident occurred due to rash and negligence on the part of the rider of the two wheeler, bearing Regn.No.TN 77 Y 1971 and hence, directed the second respondent/Assurance Company to pay a compensation of Rs.4,71,074/- 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. The break up details of the award passed by the Tribunal under various heads are as follows:-

Pain and sufferings	: Rs. 30,000/-
Loss of Income during treatment	: Rs. 36,000/-
Medical Expenses	: Rs. 2,34,074/-
Transportation to Hospital	: Rs. 15,000/-
Extra-Nourishment	: Rs. 15,000/-
Attender Charges	: Rs. 15,000/-
Damages to Clothes	: Rs. 1,000/-
Loss of Amenities	: Rs. 25,000/-
Permanent disability	: Rs. 1,00,000/-
Total	: <u>Rs.4,71,074/-</u>

4. Not being satisfied with the award of compensation passed by



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the Tribunal, the claimant has filed the present appeal.

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5. Mrs.J.Prithivi, learned counsel appearing for the appellant would submit that on account of the accident, the claimant sustained major crush injury on his right foot and he was treated as in-patient from 08.11.2015 to 03.12.2015, (i.e. nearly 1 month) at Kovai Ganga Hospital; that the Medical Board, though assessed the disability sustained by the claimant as 25%, due to the said disability, he lost his Lorry Driver work and he cannot also do the Agricultural work, which, he did before the accident.. Therefore, it is contended by the learned counsel that permanent disability of the injured appellant/claimant has to be taken at 100%. The learned counsel further submitted that the Tribunal while determining compensation towards 'Permanent Disability, failed to apply multiplier method which has resulted in awarding such an inadequate sum of Rs.1,00,000/-.

5.1 The learned counsel appearing for the appellant/claimant further submitted that the Tribunal, while awarding compensation towards Medical Expenses, refused to grant Rs.50,000/-, viz., the medical expenses



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incurred towards treatment at the Kovai Ganga Hospital on the ground that the appellant has not produced the original bills and hence, the learned counsel prayed that the said sum may also be taken into consideration. The learned counsel also fairly admitted that the compensation awarded by the Tribunal under other heads is just and fair and hence, submitted that the same may be confirmed.

6. Despite service of notice on the first respondent, viz., the owner of the offending vehicle and her name is printed in the cause list, neither she has appeared in person nor duly represented through any other Counsel.

7. Mr.R.Sivakumar, the learned counsel appearing for the second respondent/Assurance Company would submit that the Tribunal by taking into consideration of Ex.C.1, Disability Certificate, wherein, the disability sustained by the appellant/claimant has been assessed at 25%, proceeded to award compensation by adopting percentage method. However, as regards the application of multiplier method, the learned counsel fairly submitted



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that the same may be adopted, if the Court deems it fit.

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8. I have given due consideration to the submissions made by the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Assurance Company and perused the materials on record.

9. It is the case of the appellant that due to the accident, he sustained the following injuries "major crush injury right foot with open comminuted fracture of 1st, 2nd, 3rd, and 4th metatarsals, proximal and middle phalanx of 4th toe and proximal phalanx of 5th toe with soft tissue skin loss over dorsum of right foot", of left hand upto shoulder, owing to which, he can neither continue his avocation as a Lorry Driver nor he could do the Agricultural Job, as he did before the accident.

9.1 In fact, this Court saw the photograph produced by the learned counsel appearing for the appellant/claimant, and on perusal of the same, it could be seen that due to the accident, the appellant's right foot was entirely



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crushed and there is also lump/swelling measuring about 5inch on the right foot. Therefore, it is clear that person, who having been sustained with such disability cannot drive any Vehicle, particularly, Lorry, insofar as present case is concerned. Hence, as rightly submitted by the learned counsel appearing for the appellant, the Tribunal while determining the compensation towards 'Permanent Disability' has failed to apply the multiplier method and proceeded to determine compensation by adopting percentage method, which is not a proper. Therefore, this Court is setting aside the award passed by the Tribunal with respect to 'Permanent Disability' and is proceeding to determine compensation towards the said head based on multiplier method.

9.2 Though it is the claim of the appellant/claimant that he was earning Rs.35,000/- per month as a lorry driver and marked Ex.p.8, Salary Certificate and also examined P.W.2, the Employer, who issued Ex.P.8, Salary Certificate, this Court, taking into consideration of the age (55 years), avocation (Lorry Driver) and year of the accident (2015), is inclined to fix a sum of Rs.15,000/- as monthly income of the appellant.



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9.3 Thus, by fixing the monthly income of the injured at Rs.15,000/- ; adding 10% towards future prospects; applying right multiplier of '9' (since the injured was aged 55 years) and taking disability at 25%, the compensation towards 'Permanent Disability' is calculated as under:-

Monthly income + 10% future prospects x 9 Multiplier x 12 x 25% Disability)

$$\text{Rs.15,000/-} + \text{Rs.1,500/-} \times 9 \times 12 \times 25/100 = \text{Rs.4,45,500/-}$$

9.4 Consequently, the sum of Rs.1,00,000/- awarded by the Tribunal under the head of ' Permanent Disability' is hereby modified and enhanced to **Rs.4,45,500/-**.

9.5 So far as the compensation awarded by the Tribunal towards 'Medical Expenses' is concerned, though the expenditures incurred to medical treatment for a sum of Rs.50,000/- was omitted to be added by the Tribunal on account that Medical Bills were not original, this Court is



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inclined to consider the same, for the reason that bills adduced by the appellant are none other than the bills issued by the Hospital, where, the claimant undergone treatment. However, it is contended by the learned counsel for the second respondent/Insurance Company that after deducting the Travel Bill, the claimant is entitled to only a sum of Rs.38,005/-. Therefore, the award passed by the Tribunal towards Medical Expenses at at Rs.2,34,074/- is modified and enhanced to Rs.2,72,079/-.

9.6 Except the modification made under two heads, viz., i) Permanent Disability' and ii) Medical Expenses, 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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1)	Pain and sufferings	: Rs. 30,000/-
2)	Loss of Income during treatment	: Rs. 36,000/-
3)	Medical Expenses	: Rs. 2,72,079/-
4)	Transportation to Hospital	: Rs. 15,000/-
5)	Extra-Nourishment	: Rs. 15,000/-
6)	Attender Charges	: Rs. 15,000/-
7)	Damages to Clothes	: Rs. 1,000/-
8)	Loss of Amenities	: Rs. 25,000/-
9)	Permanent disability	: Rs. 4,45,500/-
Total		: Rs.8,54,579/-

10.1 Consequently, the total compensation amount of **Rs.4,71,074/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.8,54,579/-** 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.



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v) There shall be no order as to costs.

19.02.2024

To

The Special Sub Court No.1 Salem,
Motor Accident Claims Tribunal,



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Krishnan Ramasamy,J.,
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