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CMA.No.662 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

CMA.No.662 of 2023

Dhananjayan

Appellant

Vs

1. Ashok Leyland Limited, Chennai-32
2. IFFCO TOKIO General Insurance Company Limited
Mumbai-400050
Respondents

Prayer:- This Civil Miscellaneous Appeal has been filed, against the judgement and decree, dated, 05.01.2023, made in MCOP.No.375 of 2021, by the Subordinate Judge (MACT) Krishnagiri.

For Appellant : Mr.I.Siddiq

For Respondents : Mr.J.Michael Viswasam
R1-No Appearance

JUDGEMENT

1. This Civil Miscellaneous Appeal has been filed, by the claimant, challenging the quantum of compensation, awarded by the judgement and decree, dated, 05.01.2023, made in MCOP.No.375 of 2021, by the Subordinate Judge (MACT) Krishnagiri.
2. The claimant has filed the claim petition before the Tribunal, seeking a compensation of Rs.10,00,000/- on various heads, for the injuries sustained by him in a motor road accident, which took place on 31.10.2019. The 1st Respondent herein/owner of the offending vehicle remained exparte. The claim petition was resisted, on various grounds, by the 2nd Respondent/



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Insurance Company, by filing a counter. On the side of the claimant, PW.1 was examined and Ex.P1 to Ex.P10 were marked. Ex.C1 was marked.

3. Finding that the accident had occurred only due to the rash and negligent driving of the driver of the offending vehicle belonged to the 1st Respondent and insured with the 2nd Respondent, the Tribunal has awarded a total compensation of Rs.5,00,020/-, which is rounded off to Rs.5,00,000/- on various heads, with interest at 7.5% p.a. from the date of the claim petition till the date of realization, to be paid by the 2nd Respondent Insurance Company, as detailed below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Future Earnings Capacity	342720
2	Medical Expenses	48200
3	Pain and Suffering	40000
4	Transportation Expenses	13000
5	Extra Nourishment	15000
6	Damage to Clothes	1100
7	Attendants Charges	10000
8	Loss of Amenities	20000
9	Future Medical Expenses	10000
Total Compensation		500020

Aggrieved by the quantum of compensation, this appeal has been filed by the claimant.

4. This Court heard the learned counsel for the Appellants and the 2nd Respondent Insurance Company, considered their submissions and also perused the entire materials placed on record.
5. Since there is no quarrel over the manner, in which the accident had occurred, negligence aspect and the liability aspect as well and the dispute is only with regard to the quantum of compensation, the findings of the Tribunal



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with respect to the manner of the accident, negligence aspect and liability aspect are confirmed and also it is not necessary to narrate the entire facts in detail in respect of the accident.

6. According to the learned counsel for the Appellant, at the time of the accident, the injured claimant was aged about 35 years old and the accident had occurred in the year 2019 and he was earning a sum of Rs.20,000/- p.m. as a auto driver, which was not in dispute before the Tribunal and hence, the monthly notional income arrived at Rs.8500/- by the Tribunal is not just and proper. The claimant has sustained fracture on left femur, left patelallar sub laxaiting and right ankle fracture dislocation, right talus, right medial malleole and such injuries are severe in nature and for such injuries, he was assessed to 45% permanent disability by the Medical Board. However, the Tribunal assessed the permanent disability at 15% with respect to the whole body, which is not proper and just. Due to such injuries, he was unable to do his avocation as an auto driver, as he was doing prior to the accident. Under these circumstances, the impugned compensation is to be redetermined and enhanced accordingly.

7. The learned counsel for the 2nd Respondent, while not disputing the avocation of the claimant as a driver and the injuries sustained by the injured claimant, would submit that the notional monthly income of the claimant may be fixed at Rs.15,000/- p.m. and accordingly, appropriate orders may be passed in the facts and circumstances of the case.

8. Considering the submissions of the learned counsel on either side, the



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nature of the avocation as claimed by the claimant, which is not in dispute, the year of the accident, i.e. 2019, the age of the injured at the time of the accident, i.e. 35 years, the cost of living due to inflation rate at the relevant point of time, the notional monthly income arrived at by the Tribunal at Rs.8,500/- is not just and proper and hence, it would be just and appropriate to fix the monthly notional income of the deceased at Rs.14,000/-. Considering the nature of injuries suffered by the claimant, which is also not in dispute, the permanent disability could be assessed at 20% in respect of the whole body, instead of 15% as arrived at by the Tribunal. As also, the Tribunal did not add compensation towards future prospects and it is reasonable to fix the same at 40%. After adding 40% towards future prospects, the loss of future monthly income would come to Rs.19,600/-. Since the deceased was aged 35 years old at the time of the accident, the multiplier of 16 adopted by the Tribunal is proper. Thus, the total compensation under the head of loss of future earning capacity is redetermined at Rs.7,52,640/- $(14000 + ((40/100) * 14000)) * 20/100 * 16 * 12$.

9. The compensation amounts awarded under the other heads by the Tribunal, in the opinion of this Court, are reasonable and hence, they are confirmed. In all, the total compensation is redetermined at Rs.9,09,940/- which shall carry interest 7.5% p.a. from the date of the claim petition till the date of realisation.

10. In fine, this Civil Miscellaneous Appeal is partly allowed. In all, the claimant is entitled to a total compensation of Rs.9,09,940/-, (Rupees nine lakhs nine



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thousand nine hundred and forty only) with interest 7.5% p.a. from the date of the claim petition till the date of realisation, as redetermined below:-

S.No	Category	Award Amount (Rs.)
1	Loss of Future Earnings Capacity (14000+((40/100)*14000))*20/100*16*12	752640
2	Medical Expenses	48200
3	Pain and Suffering	40000
4	Transportation Expenses	13000
5	Extra Nourishment	15000
6	Damage to Clothes	1100
7	Attendants Charges	10000
8	Loss of Amenities	20000
9	Future Medical Expenses	10000
Total Compensation		909940

The claimant shall pay proper court fee for the enhanced compensation amount. The 2nd Respondent / Insurance Company is directed to deposit the entire award amount with interest at 7.5% p.a. from the date of the claim petition till the date of deposit, after deducting the amount, if any already, deposited and also the interest for the delay in filing the appeal if any for the enhanced compensation, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer, by way of RTGS, the entire compensation amount, with interest due, directly to the bank account of the claimant, within a period of three weeks thereafter. No costs.

06.02.2024

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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KRISHNAN RAMASAMY, J.



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To

Srcm

1. The Subordinate Judge (MACT) Krishnagiri.
2. The Record Keeper, VR Section, High Court, Madras

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