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C.M.A.No.2473 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.01.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.No.2473 of 2023

Jeeva, aged about 25 years  
S/o.Sankar  
No.1/870, Rajaji Street  
Vazhuthareddy, Villupuram District  
Now presently residing at  
No.62/82 A, Mariyamman Koil Street  
Kalasthambadi  
Thiruvannamalai Taluk and District

...Appellant

Vs

1.Dean Jones, S/o.Baskaran  
No.958 E, Bharathi East Street  
Thiyagaraya Nagar  
Palaiyamkottai, Thirunelveli District

2.The Divisional Manager  
The New India Assurance Company Limited  
No.106, First Floor  
Big Street, Tiruvannamalai

3.The Divisional Manager  
The New India Assurance Company Limited  
No.1, Commercial Complex, CSI Building  
2<sup>nd</sup> Floor, Office Line  
Krishna Nagar  
Vellore 632 001

... Respondents



C.M.A.No.2473 of 2023

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Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance and to set aside the award dated 27.07.2022 made in MACTOP.No.632 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja

For Respondent : R1 & R3 -Notice dispensed with  
R2 – Ms.A.Salomi

### J U D G M E N T

This Civil Miscellaneous Appeal has been filed to enhance and to set aside the award dated 27.07.2022 made in MACTOP.No.632 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

2.The case of the Appellant was that on 10.08.2019 at 05:30 pm, while the Appellant was riding his two wheeler bearing Reg. No.TN 32 AP 8258 from West to East direction in order to cross the Eliss Samudiram Bye pass road, a



C.M.A.No.2473 of 2023

Volkswagen car bearing Registration No.TN 72 BM 2279 came in a rash and negligent manner and dashed against him. Due to which the Appellant, sustained grievous injuries. Hence, considering all the aspects, the Tribunal had awarded the compensation to the injured Appellant. Challenging the fixation of liability and for enhancement of compensation awarded by the Tribunal, the present Appeal has been filed.

3.The learned counsel for the appellant would submit that while awarding compensation, the Tribunal had fastened liability to the extent of 15% against the rider of the two wheeler. The accident was occurred on 10.08.2019, whereby the car bearing Reg.No.TN 72 BM 2279 dashed against the two wheeler bearing Reg.No.TN 32 AP 8258, whereby the Appellant sustained grievous injuries and his right leg below knee was amputated. The Medical Board determined the disability at 60%. The Tribunal fixed the monthly income as Rs.8,000/- only. Hence, he requests this Court to re-determine the compensation awarded under the aforesaid heads as per the law laid down by the Hon'ble Apex Court.



C.M.A.No.2473 of 2023

WEB COPY

4.The learned counsel for the second Respondent/Insurance Company would submit that the Tribunal has taking into consideration the law laid down in the *Syed Sadiq Vs.United India Insurance Company*, reported in **2014 (1) TNMAC 459** and fixed a sum of Rs.8,000/- as notional income.

5.Heard the learned counsel for the Appellant and the second respondent and also perused the materials available on record.

6.PW2/injured was the eyewitness, who deposed that due to the rash and negligent driving of the driver of the car, the accident was occurred. The Appellant did not possess the license and not having insurance policy for the two wheeler. It is the finding of the Tribunal that there was no negligence and also there was no contribution on the part of the rider of the two wheeler for the accident. On the other hand, it came to the conclusion that due to the rash and negligent driving on the part of the driver of the car only the accident was occurred. Having come to the said conclusion, the Tribunal should not have fastened 15% contributory negligence for the reason that the rider of the two



C.M.A.No.2473 of 2023

wheeler did not possess driving license. Therefore, to that extent, the finding of the Tribunal is liable to be set aside. Accordingly, the finding of the Tribunal with regard to liability to the extent of 15% on the Appellant is hereby set aside and this Court is fixed 100% liability on the driver of the car. Since the second Respondent is the Insurance Company of the offending vehicle (Car), the second Respondent/Insurance Company is liable to pay the entire compensation on behalf the offending vehicle (Car).

7.The Appellant's right leg below knee was amputated. No doubt, he cannot perform the work of Electrician with his amputated leg. Though the disability was determined at 60%, functional disability is much more. Hence, this Court is determined the functional disability at 75%.

8.As far as monthly income is concerned, though the Court below referred the *Syed Sadiq's* case, this Court is following the decision rendered in *Andal and others Vs. Abhinav Kannan and others* reported in (2019) (1) TN MAC 54, where *Syed Sadiq's* case was also referred.



C.M.A.No.2473 of 2023

WEB COPY

9.The learned counsel for the second Respondent would further submit that based on the Cost Inflation Index, the income would come around Rs.14,562/-. Even though this Court is inclined to fix the notional income at Rs.20,000/- per month, based on the submission and calculation of the learned counsel for the second Respondent, notional income is fixed at Rs.14,562/-. Considering the nature of avocation, the same is rounded off to Rs.15,000/-.

10.Hence this Court is inclined to re-determine the compensation awarded by the Tribunal. Accordingly, the future prospects of 40% has to be added to the notional income of the deceased i.e., Rs.15,000/-, and the same has to be calculated as follows: Rs.15,000/- (notional income) + Rs.6,000/- (40% of the income) = Rs.21,000/-

11.Accordingly, the loss of income shall be calculated by applying multiplier as '17' as the age of the Appellant is 26 at the time of accident, in the following manner: Rs.21,000/- (income) \* 12 (months) \* 17 (multiplier) \* 75% (disability) = Rs.32,13,000/-



C.M.A.No.2473 of 2023

WEB COPY

12.Further, with regard to the amount awarded towards other heads viz., Pain and sufferings (Rs.50,000/-), Extra nourishment (Rs.20,000/-), Medical Expenses (Rs.2,78,508/-), Attender charges (Rs.20,000/-), Transportation expenses (Rs.20,000/-), Loss of amenities (Rs.1,00,000/-), the same stand confirmed. Therefore, the revised amount of compensation are re-determined as follows:

| <i>S.No.</i> | <i>Heads</i>            | <i>Amount (Rs.)</i>        |
|--------------|-------------------------|----------------------------|
| 1            | Loss of income          | 3213000                    |
| 2            | Pain and sufferings     | 50000                      |
| 3            | Extra Nourishment       | 20000                      |
| 4            | Medical Expenses        | 278508                     |
| 5            | Attender charges        | 20000                      |
| 6            | Transportation expenses | 20000                      |
| 7            | Loss of amenities       | 100000                     |
|              | Total                   | ** Expression is faulty ** |
|              | Rounded off             | 3700000                    |

13.Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.37,00,000/- (Rupees thirty seven lakh only). Accordingly, the award amount stands increased from a sum of Rs.15,80,480/- to Rs.37,00,000/-.



C.M.A.No.2473 of 2023

WEB COPY

14.In the result, this Civil Miscellaneous Appeal is partly allowed and the second Respondent/Insurance Company is directed to deposit a sum of Rs.37,00,000/- along with 7.5% interest per annum and costs from the date of accident, till the date of deposit, 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 MACTOP.No.632 of 2019 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai. Upon such deposit, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, as per the proportion determined by the Tribunal, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is earlier. No costs.

08.01.2024

Index: Yes/No

Internet:Yes/No

Speaking order/Non-speaking order

*sai*



*C.M.A.No.2473 of 2023*

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To

The Special Sub Judge,  
Motor Accident Claims Tribunal,  
Special Sub Court,  
Thiruvannamalai.



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*C.M.A.No.2473 of 2023*

**KRISHNAN RAMASAMY,J.**

*sai*

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