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C.M.A. No.876 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

CMA NO.876 OF 2023

Ramarajan

... Appellant /
Petitioner

Vs.

1.S.Vivekananthan

2.Bajaj Allianz Insurance Co. Ltd.,
No.276 & 277, New No.497 & 498,
'Isana Kattima Building', 5th Floor,
Poonamallee High Road,
Opposite to Tamil Nadu Pollution
Control Board,
Arumbakkam, Chennai – 600 106.

... Respondents /
Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated January 20, 2023 passed in M.C.O.P.No.1184 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, at Chennai and enhance the compensation.

For Appellant : Mr.A.G.F.Terry Chella Raja
for Mr.S.Ravikumar
For Respondent-1 : *Tapal* returned
For Respondent-2 : Mr.M.B.Raghavan



J U D G M E N T

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(Judgment of the Court was made by **J.NISHA BANU, J.**)

Feeling aggrieved by the 'Award dated January 20, 2023 passed in M.C.O.P.No.1184 of 2017' [henceforth 'impugned Award' for clarity and convenience] by the 'Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai' [henceforth 'Tribunal' for brevity], the appellant / petitioner has preferred this Civil Miscellaneous Appeal seeking enhancement of compensation.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONER'S CASE:

3. On the fateful day viz., November 29, 2016, at about 09.00 hours, when the petitioner was proceeding in North to South direction opposite to K.G.Signature Club, Service Road, Nolambur, Chennai – 600017 in a motorcycle bearing Registration No.TN-13-E-8323 while wearing helmet, a car bearing Registration No.TN-18-E-0018 proceeding in South to North (opposite direction) zigzaggedly at over speed without



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observing traffic rules in a rash and negligent manner, dashed against the petitioner's motorcycle, due to which, the petitioner was knocked off the motorcycle and consequently, suffered spinal cord fracture, head injury and multiple grievous injuries all over his body. Then, petitioner was rushed to Sundaram Medical Foundation, Shanthi Colony, Anna Nagar, Chennai and thereafter, also obtained treatment from other private hospitals at Chennai. The driver of the car bearing Registration No.TN-18-E-0018 alone is responsible for the accident. The first respondent is the owner of the Car and the second respondent is its insurer. Therefore, the petitioner filed Original Petition claiming compensation of Rs.3,50,00,000/- from the respondents.

FIRST RESPONDENT'S CASE:

4. The first respondent remained absent and hence, was set *ex-parte* before the Tribunal on October 4, 2017.

SECOND RESPONDENT'S CASE:

5. The second respondent / Insurance Company filed counter denying the allegations made by the petitioner in the Claim Petition, including the manner of accident. Further, it is stated therein that the



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alleged accident was not reported by the first respondent to the second respondent and documents such as the vehicle policy copy, driving license of the driver, *etc.*, have not been produced. Further that the petitioner's claim amount and the interest claimed are excessive. Accordingly, the second respondent prayed to dismiss the Original Petition.

TRIBUNAL

6. On the side of the petitioner, petitioner examined himself as P.W.1 and three other witnesses were examined as P.W.2, P.W.3 and P.W.4 and Ex-P.1 to Ex-P.18 were marked. On the side of the second respondent, neither any witness nor any document was marked. The Disability Certificate issued by the 'Regional Medical Board, Government Kilpauk Medical College & Hospital, Chennai' ['Medical Board' for short] was marked as Ex-C.1.

7. The Tribunal, relying on the evidence of P.W.1 and Ex-P.1 – First Information Report (FIR), concluded that there is no contra evidence available on record to disprove the manner of accident and other averments made by the second respondent. Accordingly, the Tribunal came to the conclusion that the accident occurred due to the rash and negligent



driving of the driver of the car bearing Registration No.TN-18-E-0018.

Considering the age of the petitioner at the time of accident and relying on the Judgment of the Hon'ble Supreme Court in *Sarla Verma -vs- Delhi Transport Corporation*, reported in (2009) 6 SCC 121, the Tribunal adopted the multiplier of 18. Further, in accordance with the guidelines laid down by the Hon'ble Supreme Court in *National Insurance Company Limited -vs- Pranay Sethi*, reported in (2017) 16 SCC 680, the Tribunal fixed future prospects at 40% and awarded compensation under various heads along with interest thereon at the rate of 7.5% per annum from the date of presentation of the petition till the date of realization, as tabulated hereunder:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount Rs.</i>
1	Disability	Rs.41,12,640.00
2	Pain and Sufferings	Rs.50,000.00
3	Transportation	Rs.6,000.00
4	Medical expenses	Rs.10,81,247.00
5	Extra Nourishment	Rs.15,000.00
6	Attender Charges	Rs.9,000.00
7	Loss of Amenities	Rs.30,000.00
	Total Compensation fixed	Rs.53,03,887.00
	Rounded Off	Rs.53,04,000.00



8. Not satisfied with the quantum of compensation, the appellant / petitioner has preferred this Civil Miscellaneous Appeal.

ARGUMENTS

9. Mr.A.G.F.Terry Chella Raja representing Counsel for Mr.S.Ravikumar, learned Counsel on record for the appellant / petitioner submits that the Tribunal having observed that the petitioner is a Final Year M.Tech Student at the time of accident, erred in fixing the notional income at Rs.17,000/-. The Tribunal failed to appreciate the evidence of P.W.3, a co-student, who deposed that he is earning about Rs.46,185/- per month and marked copy of his pay slip as Ex-P.16. The Tribunal failed to follow various Judgments of the Hon'ble Supreme Court as well as this Court, including the Judgment of the Hon'ble Supreme Court in ***S.Vasanthi -vs- Adhiparasakthi Engineering College*** reported in ***2023 ACJ 100*** wherein it has been held that income of a co-student should be taken into consideration while reckoning notional income.

9.1. He further submits that the Tribunal ought to have taken the functional disability at 100% since the appellant is suffering from *Quadri Paresis* which renders him incapable of performing any work as



before. Further, the Tribunal failed to appreciate the peculiar facts and circumstances of this case and award fair & adequate compensation to the petitioner herein. Therefore, the Award of the Tribunal is liable to be set aside. Accordingly, he prays this Court to enhance the compensation adequately.

10. Mr.M.B.Raghavan, learned Counsel for the second respondent/Insurance Company vehemently contends that the Tribunal was not right in relying upon the evidence of P.W.1 and fixing the entire negligence on the part of the driver of the first respondent's car bearing Registration No.TN-18-E-0018. He further submits that the Tribunal has not appreciated the evidence and facts properly. The Tribunal erred in awarding compensation under the head of permanent disability. Accordingly, he prays to reduce the quantum of compensation.

DISCUSSION

11. This Court has heard the learned Counsels for either side and perused the typed sets of papers and the impugned Award.

12. According to the petitioner, the accident occurred on November 29, 2016 at about 09.00 hours while the petitioner was riding a motorcycle bearing Registration No.TN-13-E-8323. At that time, a car



bearing Registration No.TN-18-E-0018 coming from the opposite direction, driven in a rash and negligent manner, dashed against the petitioner's motorcycle, due to which, the petitioner sustained spinal cord fracture, head injury and multiple grievous injuries all over his body. The petitioner examined himself as P.W.1 and deposed about the manner of accident. He deposed that the cause of the accident was the rash and negligent driving of the driver of the first respondent's car. The evidence of P.W.1 coupled with Ex-P.1 – FIR would clearly establish the manner of accident. There is nothing available on record to suggest the contra. While the first respondent remained *ex-parte*, the second respondent did not adduce any evidence to disprove the case of the petitioner. Hence, the Tribunal was right in fixing the negligence on the part of the first respondent's driver.

13. Further, Ex-C.1 - Disability Certificate issued by the Medical Board assesses the petitioner's disability as 90% permanent disability owing to his *Quadri Paresis* condition due to *C7 Vertebra Burst Fracture*, and Vocal Cord damage. *Quadri Paresis* is a condition where the patient suffers from weakness in all four limbs. P.W.1 / petitioner has deposed to the effect that the spine injuries caused by the accident has left



him bed ridden. Further, Ex-C.1 coupled with the evidence of P.W.1 would show that his vocal cord is affected impairing his ability to speak. As a result, post the accident, it would be hard for him to communicate with others. In these circumstances, this Court is of the view that the petitioner has suffered 100% functional disability. The Tribunal has erred in holding that the petitioner suffered 80% functional disability.

14. That apart, the petitioner has averred that he was working as a part-time Site Engineer in Unique Constructions, Chennai and earning a sum of Rs.18,000/- per month, but there is no evidence to support the same. However, he has marked his Under-Graduate Degree Certificate as Ex-P.7 which shows that he has passed in first class. He has also marked his 1st to 3rd Year Post-Graduate Mark Sheets as Ex-P.18. The petitioner was aged 22 years and pursuing Master of Technology in Coastal Management [Final Year] at Anna University at the time of accident, as evident from Ex-P.18. Further, P.W.3 / co-student has deposed that he is earning about Rs.46,185/- per month and marked Ex-P.16 – Pay Slip to support his deposition. In these circumstances, the Tribunal has erred in fixing notional income at Rs.17,000/- per month, which is on the lower side. Considering the cost of living and price index that prevailed as on the



date of accident as well as the above facts, this Court deems it fit to fix a sum of Rs.30,000/- as notional income.

15. Further, as stated *supra*, the petitioner was a M.Tech Final Year student at Anna University and aged 22 years at the time of accident. Hence, the Tribunal has rightly fixed future prospects at 40%, which being in line with *Pranay Sethi's Case* (cited *supra*) does not require any interference.

16. Further, as evident from Ex-P.3 and Ex-P.4, the petitioner took treatment as in-patient for nearly 30 days at Sundaram Medical Foundation, Chennai. The injuries sustained by him appear to be grievous in nature. Considering the severity of injuries and the period of treatment undergone by the appellant / petitioner, this Court is of the view that the amount of Rs.50,000/- awarded by the Tribunal under the head 'pain and sufferings' is on the lower side and this Court deems fit to enhance the same to Rs.2,00,000/-.

17. The Tribunal awarded a sum of Rs.6,000/- under the head 'Transport Charges' and Rs.15,000/- under the head 'Extra Nourishment' which are also on the lower side and this Court is inclined to enhance them to Rs.25,000/- each.



18. The Hon'ble Supreme Court in *Kavita -vs- Deepak*, reported in **CDJ 2012 SC 564** has held that the attender charges must be fixed on the basis of the nature of injury and the life expectancy of injured person. While doing so, the Hon'ble Supreme Court observed as follows:-

"21. In light of the decision in Raj Kumar V. Ajay 10/15 Kumar (supra), the Tribunal and High Court erred in failing to award compensation under the heads of loss of amenities and loss of expectation of life. Relying on the decision in Nizam's Institute of Medical Sciences V. Prasanth S.Dhananka (supra) and assuming the claimant's life expectancy to be 55 years, we deem it appropriate to award attendant charges at the rate of Rs.2,000/- per month and physiotherapy expenses at the rate of Rs.3,000/- per month. With regard to the head of physical and mental pains the amount is enhanced to Rs.3,00,000/- and another Rs.3,00,000/- is awarded under the heads of loss of amenities and loss of life expectancy."

19. In the case on hand, the Tribunal failed to consider the fact that the petitioner has suffered 100% functional disability. Due to the accident, he cannot stand or sit without the help of others. Thus, considering the severity of the injuries, this Court is of the view that throughout the petitioner's life one Attender is necessary to take care of him and to fulfil his day-to-day needs. Hence, at least, a sum of Rs.3,000/- per month shall have to be awarded under the said head.

20. Further, as narrated above, the petitioner suffers from 90%



permanent disability as per Ex-C.1 due to his *Quadri Paresis* condition and vocal cord damage, and consequently, suffers from 100% functional disability. He has deposed that he is almost bed-ridden because of the injuries sustained in the accident. Thus his marriage prospects are adversely affected. Hence, this Court is of the view that a sum of Rs.2,00,000/- under the head of loss of marriage prospects would be adequate and fair.

21. Considering the injuries, treatment and other attendant factors, especially the fact that the petitioner is almost bed-ridden, this Court deems fit to grant a sum of Rs.4,00,000/- under the head 'Future Medical Expenses'.

22. Further, the Tribunal has awarded only a sum of Rs.30,000/- under the head of loss of amenities which appears to be on the lower side. Hence, in the facts and circumstances of this case, this Court deems fit to enhance the same to Rs.1,00,000/-, which in the considered opinion of this Court would be a fair compensation.

23. To sum up, this Court concludes that the petitioner is



entitled to compensation in the following manner:

S. No.	Heads	Amount awarded by the Tribunal	Re-quantified by this Court	Status
1	Loss of Income (Disability) [Rs.30,000/-(I)+12,000/-(40%)(FP) X 12(m) X 18(M)]	Rs.41,12,640.00	Rs.90,72,000.00	Enhanced
2	Pain and Sufferings	Rs.50,000.00	Rs.2,00,000.00	Enhanced
3	Transportation	Rs.6,000.00	Rs.25,000.00	Enhanced
4	Medical Expenses	Rs.10,81,247.00	Rs.10,81,247.00	Confirmed
5	Extra Nourishment	Rs.15,000.00	Rs.25,000.00	Enhanced
6	Attender Charges [Rs.3,000/- X 12(m) X 18(M)]	Rs.9,000.00	Rs.6,48,000.00	Enhanced
7	Loss of Amenities	Rs.30,000.00	Rs.1,00,000.00	Enhanced
8	Loss of Marriage Prospects	--	Rs.2,00,000.00	Granted
9	Future Medical Expenses	--	Rs.4,00,000.00	Granted
	Total	Rs.53,03,887.00	Rs.1,17,51,247.00	Enhanced
	Rounded Off	Rs.53,04,000.00	Rs.1,17,52,000.00	Enhanced
[Note: 'I' denotes 'income'; 'FP' denotes 'Future Prospects'; 'm' denotes 'months'; and 'M' denotes 'multiplier']				

24. Thus, the appellant / petitioner is entitled to a sum of Rs.1,17,52,000.00 (Rupees One Crore Seventeen Lakhs Fifty Two Thousand only) as compensation from the second respondent / Insurance Company. Petitioner is also entitled to interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.



CONCLUSION

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25. This Civil Miscellaneous Appeal is partly allowed in the following terms:

- (i) The second respondent / Insurance company is directed to deposit the **enhanced award amount of Rs.1,17,52,000.00 (Rupees One Crore Seventeen Lakhs Fifty Two Thousand Only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of MCOP No.1184 of 2017 on the file of Motor Accidents Claims Tribunal (Special Sub Court No.1, Motor Accidents Claims Petitions) Small Causes Court, Chennai, less the amount if any already deposited, within a period of two months from the date of receipt of a copy of this judgment;
- (ii) On such deposit being made, the petitioner/ claimant is entitled to withdraw 60% of the Award Amount with interest accrued thereon, by filing proper



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application;

- (iii) Remaining 40% of the Award amount shall be kept in a Fixed Deposit in anyone of the nationalised banks by the Special Sub Judge No.1, Motor Accidents Claims Petitions, Small Causes Court, Chennai and the interest accruing thereon shall be utilised for the future needs and welfare of the appellant / petitioner;
- (iv) While releasing the interest accrued thereon, the Tribunal shall ensure that the same is spent for the welfare of the petitioner;
- (v) If there is any medical emergency requiring heavy funds, amount shall be released as required from aforesaid 40% of the Award amount subject to the satisfaction of the Tribunal;
- (vi) It is further clarified that the amount awarded under the head 'Future Medical Expenses' would not carry any interest;
- (vii) The appellant / petitioner shall pay Court Fee, if any,



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for the enhanced compensation as per law within 30 days from the date of receipt of copy of this Judgment.

(viii) Considering the facts and circumstances of the case, there shall be no order as to costs.

[J.N.B., J.]

[R.S.V., J.]

02.12.2024

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
TK

To

The Motor Accident Claims Tribunal
(Special Sub Court No.1,
Motor Accidents Claims Petitions)
Small Causes Court
Chennai.



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