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C.M.A.No.1563 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1563 of 2024

Gunasekarapandian

... Appellant

..Vs..

1. Rajendran

2. M/s. United India Insurance Company Limited,
Bharathidasan Salai,
Cantonment Trichy,
Having Branch at
No.50-A, Pallivasal Street,
Perambalur.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 12.10.2023, on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, in M.C.O.P.494 of 2018.

For Appellant	: Mr.S.P. Yuvaraj
R1	: Notice dispensed with
For R2	: Ms. I. Malar



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JUDGMENT

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The appellant is the claimant in M.C.O.P.494/2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, and he filed the claim petition under Sections 163 & 166 of the Motor Vehicles Act, 1988, seeking compensation of Rs.50,00,000/- for the injuries sustained by him in a road accident that occurred on 28.01.2018.

2. The case of the appellant/claimant is that on 28.01.2018, at about 6.30 a.m, he was riding his two wheeler bearing Registration Number TN 39 BF 1212 on Vathalagundu-Devanapatti Main Road and when he was nearing Sri Ram Nagar, a speeding Maruthi Dzire car bearing Registration Number TN 39 CC 5346 hit his two wheeler as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a hospital where his right leg was amputated below knee level.

2.1. According to the claimant, the rash and negligent driving of the



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driver of the car bearing Registration Number TN 39 CC 5346 belonging to the first respondent, was the cause of the accident and that since the said car was insured with the second respondent, the United India Insurance Company Limited, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the car bearing Registration Number TN 39 CC 5346 and directed the second respondent Insurance Company to pay compensation of Rs.17,73,000/- to the claimant together with interest at the rate of 7.5% per annum from the date of the petition till the date of realisation, vide its orders dated 12.10.2023.



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5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of Motor Vehicles Act, 1988.

6. Heard Mr.S.P. Yuvaraj, learned counsel for the appellant and Ms.I. Malar, learned counsel for the second respondent Insurance Company.

7. Mr. S.P. Yuvaraj, learned counsel for the appellant contended that the claimant was hospitalised for a period of 34 days and his right leg was amputated below knee level. His contention was that though the District Medical Board, Perambalur, assessed the Disability of the appellant/claimant as 70%, the Tribunal had taken it as 60% without any basis. He further contended that the Tribunal had granted meagre amounts under the other heads also and therefore, prayed for overall enhancement of compensation.

8. Per contra, Ms. I. Malar, learned counsel appearing for the



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second respondent/Insurance Company contended that the Award passed by the Tribunal is based on the well laid down principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed in the present appeal.

9. It is seen from the records that the claimant was a driver by profession and his notional monthly income was fixed by the Tribunal as Rs.15,000/- including future prospects in the absence of satisfactory income proof. The accident took place in the year 2018 and the notional monthly income fixed by the Tribunal is perfectly in order. The District Medical Board, Perambalur, has issued the disability certificate stating that the claimant has sustained 70% of disability. Considering the profession of the claimant, multiplier method is adopted as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343.*** The proper multiplier in the instant case is 14 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121.*** Accordingly the 'loss of earning capacity' is calculated as follows.



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Notional income fixed	- Rs.15,000/-
Proper multiplier	- 14
Disability suffered by appellant	- 70%
Loss of earning capacity	- 15,000 x 12 x 14 x 70/100
	= Rs.17,64,000/-.

The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of earning capacity	15,12,000/-	17,64,000/-
2.	Transportation charges	10,000/-	15,000/-
3.	Extra Nourishment	25,000/-	50,000/-
4.	Attender charges	25,000/-	25,000/-
5.	Pain and sufferings	1,00,000/-	2,00,000/-
6.	Loss of amenities	50,000/-	-
7.	Future Medical Expenses	50,000/-	50,000/-
8.	Damages to clothes	1,000/-	1000/-



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<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
	Total	17,73,000/-	21,05,000/-

10. Thus, the compensation awarded by the Tribunal is enhanced to **Rs.21,05,000/-**. As regards interest, the claimant is entitled to get 7.5% per annum for Rs.20,55,000/- and no interest is granted for future medical expenses of Rs.50,000/-.

11. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to **Rs.21,05,000/-**.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The second respondent, the United India Insurance Company



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Limited, Perambalur, is directed to deposit the enhanced compensation amount i.e., **Rs.21,05,000/-** (less the amount already deposited) together with interest at the rate of 7.5% per annum on Rs.20,55,000/- from the date of claim petition till the date of deposit to the credit of MCOP.No.494 of 2018 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Perambalur, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.
- vi. The appellant/claimant is not entitled to claim any interest for the period of delay of 49 days in filing this appeal.

26.09.2024

Index : Yes/No
Internet : Yes/No
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To

1. The Chief Judicial Magistrate,



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- Motor Accident Claims Tribunal, Perambalur
2. M/s. United India Insurance Company Limited
Bharathidasan Salai, Cantonment Trichy,
Having Branch at No.50-A, Pallivasal Street, Perambalur.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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