IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2073 of 2018

Kandasamy .. Appellant

Vs.

1.M.Duraisamy

2.M/s.Royal Sundaram Alliance
Insurance Company Limited,
21, Patullos Road,
Chennai - 600 002. .. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 27.03.2014 made in M.C.O.P. No.24 of 2011 on the file of the Motor Vehicle Accident Claims Tribunal (Principal District Judge), Namakkal, Namakkal District.

For Appellant	:	Mr.D.Nelliappan
For R1	:	No appearance
For R2	:	Mr.M.B.Raghavan

JUDGMENT

This appeal has been filed by the appellant/claimant seeking enhancement of compensation.

2.The Tribunal under the impugned award has directed the second respondent/Insurance Company to pay the appellant/claimant the compensation of Rs.2,60,790/- together with interest at the rate of 7.5% per annum as detailed hereunder:

S.Nos.	Heads	Amount awarded by the Tribunal
1.	Loss of future earning capacity	Rs.1,80,000.00
2.	Medical expenses	Rs. 30,790.00
3.	Pain and suffering	Rs. 20,000.00
4.	Transport	Rs. 10,000.00
5.	Nutrition	Rs. 10,000.00
6.	Loss of income	Rs. 10,000.00
	Total	Rs.2,60,790.00

3.The appellant/claimant had sustained the following injuries as a result of an accident caused by a vehicle, owned by the first respondent and insured with the second respondent:

'1.Left Tempero parietal SDH
2.Multiple contusion right frontal lobe
3.Depressed fracture right tempero parietal and left tempero parietal and mexilla fracture'

4.Though the learned counsel for the appellant/claimant would contend that for an accident happened in the year 2010, the Tribunal ought to have fixed the notional monthly income of the appellant/ claimant at Rs.7,000/-, the said contention is rejected by this Court as the Tribunal has rightly fixed the notional monthly income of the appellant/ claimant at Rs.6,000/- after giving due consideration to the year of the accident and after giving due consideration to the fact that no evidence has been placed on record by the appellant/claimant before the Tribunal to prove that he was earning Rs.7,000/- per month at the time of the accident.

5.The nature of injuries sustained by the appellant/claimant has not been disputed by the second respondent/Insurance Company before the Tribunal. The Neuro Surgeon has assessed the disability of the appellant/ claimant at 45%, whereas the Ophthalmologist has assessed the disability of the appellant/claimant with regard to his vision at 90%. As seen from the disability certificates issued by both the specialists, it is clear that the appellant/claimant has lost his vision completely. In view of the same, the appellant/claimant would have certainly lost his earning capacity. However, the Tribunal has erroneously awarded disability compensation based on percentage basis. The Tribunal ought to have adopted the multiplier method and ought to have awarded compensation towards Loss of earning capacity to the appellant/claimant instead of awarding disability compensation based on percentage basis. The loss of earning capacity of the appellant/claimant is assessed by this Court by taking note of the fact that the notional disability of the appellant/ claimant is fixed at 90% in accordance with the disability certificate issued by the Ophthalmologist, which has been marked as Ex.P8 before the Tribunal. After giving due consideration to the nature of injuries sustained by the appellant/claimant, which admittedly is grievous in nature, the multiplier method ought to have been adopted. The law is well settled as laid down by the decision of the Hon'ble Supreme Court in ***National Insurance Company Limited Vs. Pranay Sethi and Others*** reported in ***2017 (16) SCC 680*** that in cases where the Tribunal has awarded compensation towards Loss of earning capacity, the appellant/

claimant is entitled for Loss of Future prospects at 40%. Accordingly, this Court awards the same. Therefore, instead of the disability compensation awarded by the Tribunal on percentage basis at Rs.1,80,000/-, this Court awards compensation towards Loss of earning capacity to the appellant/claimant at Rs.15,42,240/- in the following manner:

Monthly income	-	Rs.6,000/-
Future prospects	-	40%
Multiplier	-	17
Notional disability	-	90%
Loss of earning capacity	-	6000x40/100=2400 6000+2400=8400x12x17x90% Rs.15,42,240/-

6.This Court has given careful consideration to the compensation awarded by the Tribunal under various other heads. After giving due consideration to the same, this Court finds that the compensation awarded by the Tribunal towards Pain and sufferings at Rs.20,000/- is too low considering the nature of injuries sustained by the appellant/ claimant. Having lost his vision, the appellant/claimant is entitled for higher compensation towards pain and suffering. Accordingly, this Court enhances the compensation payable to the appellant/claimant towards Pain and suffering from Rs.20,000/- to Rs.1,00,000/-.

7.Insofar as the compensation awarded by the Tribunal towards Medical bills at Rs.30,790/- is concerned, the same is confirmed by this Court as only based on the medical bills produced by the appellant/ claimant the Tribunal has fixed the said sum.

8.After giving due consideration to the nature of injuries sustained by the appellant/claimant, certainly the appellant/claimant would have to incur Future medical expenses. This Court fixes the compensation towards Future medical expenses payable to the appellant/claimant at Rs.50,000/-, which the Tribunal has failed to award.

9.The Tribunal has also erroneously failed to award any compensation towards Attender charges. Considering the nature of injuries sustained by the appellant/claimant and the period of his hospitalisation, the Tribunal ought to have awarded compensation towards Attender Charges. This Court awards a compensation of Rs.25,000/- to the appellant/claimant towards Attender charges.

10.The compensation awarded by the Tribunal towards

Transportation and Extra Nourishment are also low, which requires enhancement by this Court. The compensation awarded by the Tribunal towards Transportation is enhanced from Rs.10,000/- to Rs.20,000/- and similarly, the compensation awarded by the Tribunal towards Extra nourishment is enhanced from Rs.10,000/- to Rs.20,000/-.

11.Since this Court has applied the multiplier method and has awarded compensation at Rs.15,42,240/- towards Loss of Earning capacity, there is no necessity to separately award compensation towards Loss of income. Hence, the compensation awarded by the Tribunal separately towards Loss of income at Rs.10,000/- is set aside by this Court.

12.It is evident from the injuries sustained by the appellant/ claimant, he will not be in a position to get married as he has lost his total vision and he has also sustained other serious injuries as a result of the accident caused by the vehicle, insured with the second respondent. The appellant/claimant is also entitled to compensation towards Loss of marital prospects, which this Court assesses the same at Rs.1,00,000/-.

13.For the foregoing reasons, the compensation awarded by the Tribunal at Rs.2,60,790/- to the appellant/claimant is enhanced to Rs.18,88,030/- in the following manner:

S.Nos.	Heads	Amount awarded by this Court
1.	Loss of future earning capacity	Rs.15,42,240.00
2.	Medical bills	Rs. 30,790.00
3.	Future medical expenses	Rs. 50,000.00
4.	Pain and suffering	Rs. 1,00,000.00
5.	Attender charges	Rs. 25,000.00
6.	Transport	Rs. 20,000.00
7.	Nutrition	Rs. 20,000.00
8.	Marital prospects	Rs. 1,00,000.00
	Total	Rs.18,88,030.00

14.Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount. The second respondent/insurance company is directed to deposit the enhanced award amount of Rs.18,88,030/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of deposit and cost to the credit of M.C.O.P. No.24 of 2011 on the file of the Motor Accidents Claims Tribunal, Principal District Judge, Namakkal, within a period of four weeks from the date of receipt of a copy of this judgment.

15.The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the second respondent/Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.24 of 2011 to the bank account of the appellant/claimant directly through RTGS, within a period of one week thereafter. No costs.

03.06.2024

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Internet: Yes/No
Speaking Order/Non-Speaking Order

ABDUL QUDDHOSE, J.

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To

1.The Motor Accident Claims Tribunal,
Principal District Judge,
Namakkal, Namakkal District.

2.The Section Officer,
V.R. Section,
High Court, Madras.

C.M.A. No.2073 of 2018

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