



WEB COPY



C.M.A. No.1641 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1641 of 2021

K. Vinoba

.... Appellant

vs.

1. G. Meena

2. The United India Insurance Company Ltd.,
Rep. by its Divisional Manager,
Motor Third Party Claims Cell,
No.7/A, Varadhanar Street,
Vedhachalam Nagar,
Chengalpattu – 603 002.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the fair and decretal order dated 31.01.2020 passed in M.C.O.P. No.283 of 2011 by the learned Additional Sub Judge / Presiding Officer, Motor Accidents Claims Tribunal, Chengalpattu @ Kancheepuram District.

For Appellant

: Mr.S.S. Swaminathan

For Respondents

: R1 – Dispensed with
Mr.D. Bhaskaran for R2



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JUDGMENT

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

2. Heard Mr.S.S. Swaminathan, learned counsel for the appellant / claimant and Mr.D. Bhaskaran, learned counsel for the 2nd respondent / Insurance Company.

3. This Court has perused and examined the impugned award as well as the materials and evidence available on record before the Tribunal.

4. The Tribunal under the impugned award has directed the 2nd respondent / Insurance Company to pay the appellant / claimant a compensation of Rs.1,08,363/- for the injuries sustained by him as a result of an accident caused by the vehicle insured with the 2nd respondent. The details of the compensation awarded by the Tribunal under the impugned award to the appellant / claimant are set out hereunder :-



<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Disability (Rs.2,000 x 30)	60,000
Pain and suffering	10,000
Transport Charges	3,000
Extra nourishment	1,000
Attendant charges	1,000
Medical expenses	13,363
Loss of Income	20,000
Total	1,08,363

5. The appellant has claimed that the Tribunal has erroneously not adopted the multiplier method for assessing the compensation payable to him towards loss of earning capacity, but instead has awarded the disability compensation based on the percentage of disability. The appellant / claimant contends that considering the nature of injuries sustained by him and the nature of his avocation, the Tribunal ought to have awarded compensation towards loss of earning capacity by adopting the multiplier method. The appellant claims that he had lost one of his eyes due to the injuries sustained by him as a result of the accident caused by the vehicle, insured with the 2nd respondent / Insurance Company and having sustained the permanent disability, the Tribunal ought to have granted compensation towards loss of his earning capacity



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by adopting the multiplier method. The learned counsel for the appellant / claimant would also contend that the appellant / claimant, being a Construction Supervisor due to the injuries sustained by him was unable to do his regular avocation and presently he is also unemployed.

6. The appellant was directed to be present before this Court and as per the said direction, he was present on the last hearing date as well as today. This Court had also directed the Government Eye Hospital, Egmore, Chennai to examine the appellant / claimant and submit a medical report in a sealed cover. The sealed cover enclosing the medical report of the appellant / claimant submitted by the Government Eye Hospital, Egmore is opened before this Court, today and both the learned counsels were also permitted to peruse the same. As seen from the medical report submitted by the Government Eye Hospital, Egmore, Chennai, it is clear that the appellant / claimant has lost his vision in his right eye. As seen from the claim petition filed by the appellant / claimant before the Tribunal as well as the disability certificate, which was marked as Ex.C1 before the Tribunal, it is clear that the appellant / claimant had lost his vision in his right eye. There are also no contradictions with regard to the loss of vision in the right eye of the appellant / claimant



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from the evidence available on record. Only to ascertain the truth, this

Court had directed the appellant / claimant to be examined once again,

by the Government Eye Hospital, Egmore, Chennai. The report of the

Government Eye Hospital, Chennai also confirms the fact that the

appellant / claimant has lost the vision in his right eye. This Court had

also put questions to the appellant / claimant, who is present in the open

Court today with regard to his loss of vision had lost the vision in his

right eye as a result of an accident caused by the vehicle insured with the

2nd respondent / Insurance Company. Having lost his complete vision in

his right eye, it is certainly a permanent disability. The appellant /

claimant is a Construction Supervisor. No contra evidence has also been

produced by the 2nd respondent / Insurance Company before the Tribunal

to disprove the appellant / claimant's avocation. Being a Construction

Supervisor and having lost his complete vision in his right eye, the

appellant / claimant would have certainly lost his earning capacity. At the

time of the accident, the appellant / claimant was 43 years old. The

employer of the appellant / claimant was also examined as a witness

(P.W.2) before the Tribunal. Documentary evidence was also produced

by the appellant / claimant to prove that he was a Construction Supervisor

and that he was earning Rs.20,000/- p.m. at the time of the accident,



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which happened in the year 2011. Though the learned counsel for the 2nd respondent / Insurance Company would vehemently oppose the fixation of the monthly income of the appellant / claimant by the Tribunal at Rs.20,000/- as according to him, it is too high, there is no supporting documents produced by the 2nd respondent / Insurance Company before the Tribunal to disprove that the appellant / claimant was earning Rs.20,000/-p.m. at the time of the accident. The vouchers pertaining to the receipt of the sum of Rs.20,000/-p.m. by the appellant / claimant towards his monthly income has also been marked as Ex.P18 before the Tribunal. There are also no contradictions in the evidence of the appellant / claimant with regard to the fact that he was earning Rs.20,000/- p.m. as a Construction Supervisor at the time of the accident. The 2nd respondent / Insurance Company has also not filed any appeal challenging the findings of the Tribunal with regard to the assessment of the monthly income of the appellant / claimant at Rs.20,000/-. After giving due consideration to the aforementioned factors, the question of reducing the assessment of the monthly income of the appellant / claimant from Rs.20,000/- does not arise and the same is confirmed by this Court.



7. The learned counsel for the 2nd respondent / Insurance Company drew the attention of this Court to a judgement of the Hon'ble Supreme Court in the case of ***Raj Kumar vs. Ajay Kumar and another reported in 2011 1 SCC 343*** and would submit that the whole body disability will have to be taken into consideration for the purpose of assessing the compensation payable towards loss of earning capacity. According to him, the 30% disability assessed by the Medical Board and accepted by the Tribunal under the impugned award is not the whole body disability and therefore, the disability assessed by the Tribunal has to be reduced further, if this Court deems it fit to adopt the multiplier method for the purpose of assessing the compensation payable towards loss of earning capacity. The learned counsel for the 2nd respondent / Insurance Company referred to paragraph Nos.8, 9 and 10 of the aforesaid judgement (***Raj Kumar's case***) for the said submission. Admittedly, as seen from the report issued by the Medical Education Department, which was marked as Ex.C1 before the Tribunal as well as the report submitted by the Government Eye Hospital, Chennai the said disability pertains only with regard to the eyes of the appellant / claimant and the said assessment of disability has not been made for the whole body. Therefore necessarily, this Court will have to determine the whole body



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disability of the appellant / claimant as a result of the accident caused by the vehicle insured with the 2nd respondent / Insurance Company. In the case on hand, as seen from the observations made by this Court supra, it is clear that the appellant / claimant has lost one of his eyes and he is able to see only with the other eye (left eye). As a Construction Supervisor, the appellant's / claimant's work would be to climb stairs and climb high rise buildings, which requires good vision. Having lost one of his eyes due to the injuries sustained by him as a result of an accident caused by the vehicle insured with the 2nd respondent / Insurance Company, he would have lost his capacity to do his avocation as a Construction Supervisor. The Tribunal has failed to take note of the aforementioned facts. Instead of adopting the multiplier method for assessing the loss of earning capacity to the appellant / claimant, the Tribunal has erroneously awarded the disability compensation calculated on percentage basis and has awarded a meager disability compensation of Rs.60,000/-. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant and after giving due consideration to the fact that the appellant / claimant has lost his right eye and is able to see only through his left eye, fixes the whole body disability of the appellant / claimant at 20% and is not inclined to take the 30% disability fixed by



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the Medical Board under the report, which was marked as Ex.C1 and the report of the Government Eye Hospital, Chennai as the whole body disability. In the decision relied upon by the learned counsel for the 2nd respondent / Insurance Company (*Rajkumar's case*), it is clear that while awarding compensation towards loss of earning capacity by adopting the multiplier method, the whole body disability has to be taken into consideration. Since the whole body disability of the appellant / claimant is assessed by this Court at 20%, this Court is awarding a compensation of Rs.7,20,000/- as compensation towards loss of earning capacity to the appellant / claimant as detailed hereunder :-.

$$\text{Rs.20,000/-} \times 12 \times 20\% \times 15 = \text{Rs.7,20,000/-}$$

8. Since this Court has awarded a compensation of Rs.7,20,000/- towards loss of earning capacity by adopting the multiplier method, the disability compensation awarded by the Tribunal to the appellant / claimant at Rs.60,000/- is set aside by this Court.

9. The Tribunal has also awarded a lesser compensation towards Pain and suffering, Transportation, Extra nourishment and Attendant charges. The Tribunal ought to have taken into consideration the fact



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that the appellant / claimant had lost his right eye due to the injuries sustained by him as a result of an accident caused by the vehicle insured with the 2nd respondent / Insurance Company, before assessing the compensation towards Pain and suffering, Transportation, Extra nourishment and Attendant charges. Having lost one of his eyes and having lost his earning capacity, this Court deems it fit to enhance the compensation payable to the appellant /claimant towards Pain and suffering from Rs.10,000/- to 50,000/-; towards transportation from Rs.3,000/- to Rs.10,000/-; towards Extra nourishment from Rs.1,000/- to Rs.10,000/- and Attendant charges from Rs.1,000/- to Rs.25,000/-.

9. Insofar as the compensation awarded by the Tribunal towards medical expenses at Rs.13,363/-, is concerned, the same is supported by medical bills (Ex.P8 Series) and therefore, there is no question of further enhancement by this Court and the same is confirmed.

10. Similarly the compensation awarded by the Tribunal towards loss of income at Rs.20,000/- is also confirmed by this Court.



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11. For the foregoing reasons, the compensation awarded by the

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<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Disability (Rs.2,000 x 30)	60,000	-
Loss of earning capacity # Rs.20,000/- x 12 x 20% x 15		7,20,000 #
Pain and suffering	10,000	50,000
Transportation	3,000	10,000
Extra nourishment	1,000	10,000
Attendant charges	1,000	25,000
Medical expenses	13,363	13,363
Loss of Income	20,000	20,000
Total	1,08,363	8,48,363

12. In the result, this Civil Miscellaneous Appeal stands partly allowed by enhancing the compensation from Rs.1,08,363/- to Rs.8,48,363/-. No Costs.

13. The 2nd respondent / Insurance Company is directed to deposit the amount awarded by this Court, after deducting the amount already deposited if any, together with interest from the date of claim till the date



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of deposit and cost, to the credit of M.C.O.P. No.283 of 2011 on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, (Presiding Officer), Chengalpattu @ Kancheepuram District, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

30.07.2024

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
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ABDUL QUDDHOSE, J.

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To

1. The Additional Sub Judge / Presiding Officer,
Motor Accidents Claims Tribunal,
Chengalpattu @ Kancheepuram District.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

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