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CMA.No.2022 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.09.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2022 of 2024

Elumalai

... Appellant

vs.

1. Manickam. C

2.The Manager,
The New India Assurance Company Limited,
No.232, VI Floor,
Bombay Mutual Buildings,
NSC Bose Road, Chennai - 600 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award dated 31.03.2023 in M.C.O.P.1795 of 2020 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai.

For Appellant : Ms. Ramya V. Rao

For R2 : Ms.S.Bhuvanasundari



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J U D G M E N T

The appellant is the claimant in M.C.O.P.1795 of 2020 on the file of the Motor Accident Claims Tribunal, II Small Causes Court, Chennai. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.49,00,000/- for the injuries sustained by him in a road accident that took place on 27.06.2020.

2. The brief case of the claimant is as follows :

On 27.06.2020, the claimant was standing near the gate of S.M.R. Transport in Armstrong Nagar, Chennai and at about 4.00 p.m., a speeding lorry bearing Registration Number TN-04-AK-8563 belonging to the first respondent, hit him, as a result of which, he fell down and sustained injuries. He was immediately rushed to the Government Stanley Hospital where he was treated as an inpatient for thirty days.

3. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN-04-AK-8563 was the cause of the accident and that since the said vehicle was insured with the second respondent, the New India Assurance Company Limited, the



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owner and the insurer are jointly and severally liable to pay compensation to him.

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

5. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the driver of the lorry bearing Registration Number TN-04-AK-8563 and also held that the owner of the lorry and the insurer are jointly and severally liable to pay compensation of Rs.20,72,900/- to the appellant/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 31.03.2023.

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



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7. Heard Ms.Ramya V. Rao, learned counsel for the appellant and Ms.C.Bhuvanasundari, learned counsel for the second respondent.

8. Ms.Ramya V. Rao, learned counsel for the appellant contended that the claimant was a driver by profession earning a sum of Rs.50,000/- per month. However, the Tribunal fixed the notional monthly income of the claimant as Rs.12,000/-. She also contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant. She therefore, prayed for enhancement of compensation.

9. Per contra, Ms.C.Bhuvanasundari, learned counsel appearing for the second respondent 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.

10. A perusal of the discharge summary (Ex.P3) issued by the



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Government Stanley Hospital shows that the claimant's right leg was amputated below knee level. The Medical Board attached to Rajiv Gandhi Government General Hospital has assessed the permanent disability of the claimant as 75%. The appellant/claimant is a driver and suffered disability to the extent of 75%. Therefore, multiplier method is warranted as per the decision in *Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343*.

11. According to the claimant, he was a driver by profession earning a sum of Rs.50,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.12,000/-. Considering the age of the claimant and the year of the accident, this Court is of the opinion that fixing notional monthly income of the claimant at Rs.15,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in *National Insurance Co. vs Pranay sethi and others* reported in *2017 (2) TNMAC 601*, 25% is added towards future prospects of the claimant. The claimant was aged 47 years on the date of accident and the proper multiplier to be adopted in the instant case is 13 as per the decision rendered in *Sarla Verma and others*



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vs. Delhi Transport Corporation and another reported in **(2009) 6 SCC**

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Calculation for loss of earning capacity

Notional income - Rs.15,000/-
25% Future prospects - Rs.18,750/-
Loss of earning capacity - $18,750 \times 12 \times 13 \times 75/100$
= Rs.21,93,750/-

12. 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>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
1.	Loss of earning capacity	17,55,000/-	21,93,750/-
2.	Pain and sufferings	1,00,000/-	1,00,000/-
3.	Medical Expenses	21,900/-	21,900/-
4.	Loss of amenities	1,00,000/-	1,00,000/-
5.	Attender's charges	20,000/-	30,000/-
6.	Transportation charges	20,000/-	30,000/-
7.	Loss of earning during treatment	36,000/-	-



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<i>S.No.</i>	<i>Description</i>	<i>Amount awarded by Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>
8.	Extra nourishment	20,000/-	50,000/-
	Total	20,72,900/-	25,25,650/-

12. Thus, the compensation awarded by the Tribunal is enhanced from Rs.20,72,900/- to Rs.25,25,650/- which would carry interest at the rate of 7.5% per annum.

13. In the result,

- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced from Rs.20,72,900/- to Rs.25,25,650/-.
- 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 receipt of Court fee.



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iv. The second Respondent, the New India Assurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount, i.e., Rs.25,25,650/- (less the amount already deposited) together 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 M.C.O.P.1795 of 2020 on the file of the Motor Accidents Claims Tribunal, II Small Causes Court, Chennai, within a period of four weeks from the date of receipt of a copy 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 interest for the period of delay of 161 days in filing this appeal.

12.09.2024

Index : Yes/No
Speaking/Non-speaking order
mtl



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To

1. The Motor Accident Claims Tribunal,
II Small Causes Court, Chennai.

2. The Manager,
The New India Assurance Company Limited,
No.232, VI Floor,
Bombay Mutual Buildings,
NSC Bose Road, Chennai - 600 001.

3. The Section Officer, VR Section, Madras High Court, Chennai.



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R.HEMALATHA, J.

mtl

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