



CMA No.1739 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1739 of 2023

S.Ettiappan

.. Appellant

.Vs.

1.D.Kumar

2.The Divisional Manager
The United India Insurance Co., Ltd.,
T.P.Claims Cub, having office
at No.43/397-A
Annai Indira Gandhi Street
Rajajipuram,Tiruvallur-602 001.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.123 of 2021, dated 01.04.2022, on the file of the Motor Accident Claims Tribunal/Special Sub Court No.II, Tiruvallur.

For Appellant : Mr.MA.P.Thangavel

For Respondents : Mr.J.Michael Visuvasam

for R2

For R1 – Ex-parte



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JUDGMENT

The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal against the award passed by the Motor Accident Claims Tribunal/Special Sub Court No.II, Tiruvallur in MCOP.No.123 of 2021, dated 01.04.2022.

2.The case of the claimant is that on 28.09.2011, he was present inside Koyambedu Vegetable Market and at about 00.10 hours the offending vehicle which belongs to the 1st respondent was driven in a rash and negligent manner and when this vehicle was reversing, it dashed on the claimant and as a result, the claimant suffered Grade III B Compound Fracture Both Bone Right Leg. An FIR came to be registered in Crime No.183 of 2011. The claimant underwent treatment as an inpatient from 28.09.2011 to 30.11.2011 and below knee right leg amputation was done on 8.10.2011.The Medical Board assessed the permanent disability at 70%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle. After having rendered such a finding, the



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Tribunal had proceeded to fix the compensation at Rs.10,30,500/- under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	For partial Permanent Disability (70% * 3000 @ 1% @ Rs.3,000)	2,10,000.00
2.	For Loss of Earning Capacity (Rs.6,875/- * 12) * 50% * 14	5,77,500.00
3.	Medical Expenses	5,000.00
4.	Transport Expenses	10,000.00
5.	Extra Nourishment	12,000.00
6.	Damage to Clothing and Articles	1,000.00
7.	Pain and Sufferings	1,00,000.00
8.	Attender Charges	15,000.00
9.	Loss of happiness and amenities	1,00,000.00
	Total	10,30,500.00

4.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

5.The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement of compensation.

6.Heard Mr.MA.P.Thangavel, learned counsel for the appellant and



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Mr.J.Michael Visuvasam, learned counsel appearing on behalf of the 2nd respondent - Insurance Company.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the award passed by the Tribunal.

8.The Tribunal on considering the disability certificate issued by the Medical Board came to a conclusion that the loss of earning capacity can be assessed at 50%. It must be borne in mind that the claimant was a load man working in Koyambedu Market and due to the injuries, he suffered below knee right leg amputation and this will virtually result in functional disability considering the avocation of the claimant. Therefore, the Tribunal ought to have calculated the loss of earning capacity at 70% since the Medical Board had assessed the permanent disability at 70% and this disability resulted in functional disability touching upon the livelihood of the claimant.

9.In view of the above, this Court is inclined to calculate the loss of earning capacity by assessing it as 70%. The Tribunal has fixed the notional monthly income at Rs.5,500/- p.m. The claimant had come up with a claim that he was earning Rs.1000/- per day and thus was earning a monthly income of



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Rs.30,000/- . To substantiate the same, the claimant did not let in any evidence.

The claimant was a load man and his daily income will be based on the work that he gets in the vegetable market. Therefore, no evidence can be expected in a case of this nature. Hence, this Court is inclined to fix the notional monthly income of the claimant at Rs.9000/- and 25% can be added towards future prospects and thus, the compensation towards loss of income is calculated as follows :

$$[9000 \times 25/100 = 2250 + 9000 = 11,250/- \times 12 \times 14 \times 70/100 = \mathbf{13,23,000/-}]$$

10.The above compensation of Rs.13,23,000/- shall fall under the head 'loss of income' and the first two heads under which the Tribunal has granted compensation shall be deleted and it shall be replaced with the head 'loss of income' of Rs.13,23,000/-.

11.The claimant was undergoing treatment as an in patient for more than two months and he had undergone atleast four surgeries during this period. Hence, this Court is inclined to enhance the compensation under the head 'transport expenses' to Rs.25,000/-, extra nourishment to Rs.20,000/- and attender charges to Rs.25,000/-.

12.In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows.



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Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of Income	13,23,000.00
3.	Medical Expenses	5,000.00
4.	Transport Expenses	25,000.00
5.	Extra Nourishment	20,000.00
6.	Damage to Clothing and Articles	1,000.00
7.	Pain and Sufferings	1,00,000.00
8.	Attender Charges	25,000.00
9.	Loss of happiness and amenities	1,00,000.00
	Total	15,99,000.00

13.The compensation awarded by the Tribunal at Rs.10,30,500/- is enhanced to Rs.15,99,000/-. The 2nd respondent - Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 7.5% p.a., from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, the appellant/claimant will be entitled to withdraw the entire compensation with interest. Insofar as the enhanced compensation of Rs.5,68,500/- is concerned, the appellant/ claimant will not be entitled for interest for the period of delay period of 270 days as was ordered by this Court in C.M.P.No.9095 of 2023, dated 21.07.2023. Insofar as the enhanced



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compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant/claimant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, this civil miscellaneous appeal is partly allowed. No costs.

03.07.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

1.The Divisional Manager
The United India Insurance Co., Ltd.,
T.P.Claims Cub, having office
at No.43/397-A
Annai Indira Gandhi Street
Rajajipuram,Tiruvallur-602 001.

2.Motor Accident Claims Tribunal/
Special Sub Court No.II
Tiruvallur.

N. ANAND VENKATESH., J
KP



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