



C.M.A.No.2106 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.2106 of 2022

Arunraj

... Appellant

Vs.

1. The Secretary, PACC Society Ltd.,
TYSPL 70 Devamangalam,
Devamangalam Post,
Udayarpalayam Taluk,
Ariyalur District.
2. The Branch Manager,
IFFCO TOKIO General Insurance Company Ltd.,
No.19/1, Puthur High Road,
Ramalinga Nagar,
Woraiyur, Trichy 17.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Award of the Motor Accident Claim Tribunal (Spl. Court II) Jayankondam in M.C.O.P.No.152 of 2020 (Sub Court Jayankondam MCOP.No.131 of 2019) dated 29.09.2021.

For Appellant : Mr.P.Parthikannan

For R1 : No appearance

For R2 : Mr.N.Anbumurugan



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JUDGEMENT

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Challenging the quantum of compensation awarded by the Motor Accidents Claims Tribunal, the present Appeal has been preferred by the appellant/claimant.

2. On 29.06.2019 at about 7.00 p.m., the appellant/petitioner was riding a two-wheeler bearing Reg.No.TN 61 M 2929 along with pillion rider namely Prasanth, the first respondent's vehicle viz., Tractor, bearing Reg.No.TN 61 B 7670, driven by its driver, came in opposite direction in a rash and negligent manner and dashed against the two-wheeler of the appellant, due to which, the appellant/injured sustained grievous injuries all over his body. Hence, the appellant/petitioner made a Claim Petition seeking a sum of Rs. 50,00,000/- as compensation.

3. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.5,62,122/- towards compensation to the appellant. Being not satisfied with the same, the appellant has filed the present appeal.



4. The learned counsel for the appellant would submit that, at the time

of accident, the appellant/claimant was a driver, and due to the accident, the appellant had suffered fractures in his right hand and right leg, and he is not in a position to perform his work well as before. The main grievance of the appellant is that, while fixing the notional income of the appellant/injured at a sum of Rs.9,000/- per month, the Tribunal has wrongly deducted 60% of his monthly income i.e., Rs.3,000/- towards his personal expenses, since it is applicable only in the case of fatal. Further, he submitted that, at the time of accident, the appellant was aged about 29 years, and had earned a sum of Rs.21,000/- per month. Without considering the same, the Tribunal had erroneously fixed the notional income of the appellant at Rs.9,000/- per month, which is on the lower side, and the same needs to be modified by this Court. Further, he contended that, the Tribunal has awarded a sum of Rs.20,000/- altogether under the heads of “pain and suffering”, “extra nourishments” and “future medical expenses”, which is also on the lower side, and the same may be enhanced by this Court. Accordingly, he prayed for appropriate enhancement in favour of the appellant.



5. The learned counsel appearing for the second respondent/Insurance Company would submit that, the Medical Board examined the appellant and fixed 40% as permanent disability, which was marked as Ex.C1, while determining the compensation under the head of loss of earning due to disability, the Tribunal has taken the entire percentage of disability and awarded the compensation, which is just and reasonable and subsequently he submitted that any fair amount may be awarded under the heads of “pain and suffering”, “extra nourishments” and “future medical expenses”.

6. Heard the learned counsel for the appellant and the learned counsel for the second respondent and also perused the exhibit Ex.C1 which was issued by the Medical Board.

7. The fact and the manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. In the present case, the Medical Board examined the claimant and



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assessed permanent disability at 46%. This Court vide order dated 24.01.2024, directed the appellant/claimant to appear before this Court to know the present physical status of the appellant/claimant. Pursuant to the direction of this Court, today, the appellant/claimant appeared and stated that now he is working as an acting driver, since the profession of the appellant is a Driver at the time of accident. Hence, his avocation is no way affected by the accident, as he has not lost the entire earning, however, he feels some difficulty in driving.

8. Under these circumstances and taking into consideration, the submission made by the learned counsel for the appellant and the second respondent, and this Court feels that it would be appropriate to fix the permanent disability of the claimant at 15%. Since the Tribunal has applied multiplier method and awarded compensation, this Court is inclined to take the permanent disability at 15% and applying multiplier method thereon. While applying the multiplier method, the Tribunal has fixed the notional income of the appellant/injured as Rs.9,000/-, which is on the lower side, since the appellant/injured was working as a driver, and the accident occurred in the year



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2019. Applying the ratio laid down by the Hon'ble Apex Court in catena of

judgments, this Court feels it appropriate to fix the notional income of the appellant/injured at Rs.12,000/- per month; adding 40% future prospects as per the dictum laid-down by the Hon'ble Apex Court, the total income is quantified at Rs.16,800/- per month. The injured was aged about 29 years at the time of accident as evidenced from the records, adopting the multiplier of 17 as per the decision of Apex Court, the loss of earning due to disability is arrived at Rs.16,800/-x12x17x(15/100)=Rs.5,14,080/-.

9. Consequently, a sum of **Rs.3,37,824/-** awarded by the Tribunal under the head of “loss of earning due to disability” is hereby modified, and enhanced to **Rs.5,14,080/-**.

10. A sum of **Rs.20,000/-** awarded by the Tribunal under the heads of “pain and suffering”, “extra nourishments” and “future medical expenses” altogether, which appears to be low, and the same is modified and enhanced to a sum of **Rs.50,000/-**.



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11. Insofar as the compensation awarded by the Tribunal under other heads viz., “Medical expenses” and “Transportation” are concerned, this Court finds the same is just and proper and the same are hereby confirmed.

12. Thus, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning due to disability	3,37,824/-	5,14,080/- (enhanced)
Medical expenses	1,84,598.65/-	1,84,598.65/-
Pain and suffering, extra nourishments and future medical expenses	20,000/-	50,000/- (enhanced)
Transportation charges	19,700/-	19,700/-
Total	5,62,122.65/-	7,68,378.65/-
Total (Rounded off)		7,68,500/-

13. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from



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Rs.5,62,122.65/- to Rs.7,68,500/-. The second respondent/Insurance Company

is directed to deposit the said amount along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.152 of 2020 on the file of Special Judge No.2, Jayankondam. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is later. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

16.02.2024

Index : Yes / No
NCC : Yes / No
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To

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1. The Motor Accident Claims Tribunal,
Special Judge No.2,
Jayankondam.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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