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C.M.A.No.495 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.No.495 of 2024

Kuppusamy

.. Appellant

Vs.

1. Saravanan

(Since R1 remained exparte
before the Tribunal his presence
may be dispensed with)

2. The Divisional Manager,

The Reliance General Insurance Company Limited,
Raj's Tower, 2nd floor, 2nd Avenue, Plot No.2054,
Next to GRT Jewellery,
Anna Nagar, Chennai.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 27.02.2018 made in M.A.C.T.O.P.No.1288 of 2017 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.

For Appellant : Mr.F.Terry Chella Raja
For Respondents : Mr.P. Suresh Srinivasan (R2)



JUDGMENT

This Civil Miscellaneous Appeal has been filed for enhancement of compensation granted by the award dated 27.02.2018 made in M.A.C.T.O.P.No.1286 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvannamalai.

2.The Appellant is the Claimant in M.C.O.P.No.1288 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court, Tiruvannamalai). He filed the above said claim petition, claiming a sum of Rs.5,00,000/- as compensation on account of the injuries sustained by him in an accident that took place on 16.09.2014.

3.The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the Lorry bearing registration No.TN-32-AZ-1456, belonging to the 2nd Respondent-Insurance Company and directed the 2nd Respondent to pay a sum of Rs.12,18,960/- as compensation to the Appellant/Claimant.

4.Not being satisfied with the amounts awarded by the Tribunal, the



Appellant has come out with the present appeal seeking enhancement of compensation.

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5. The learned counsel for the Appellant submitted that due to the aforesaid accident, the Appellant sustained fracture on his right leg, injuries on his right ankle, right hand and all over the body and though the Medical Board has assessed 60% disability, the Tribunal has fixed 70% as functional disability and ordered compensation towards Functional Disability at Rs.11,28,960/- which is very low. He further submitted that the accident is of the year 2014 at the time of accident, the Appellant was aged about 35 years and was an electrician and agriculturist and was earning a sum of Rs.9,000/- per month, but the Tribunal without considering the same has fixed a sum of Rs.6,000/- as monthly income of the injured which is very low and therefore prays this Court to fix a sum of Rs.9,000/- as monthly income of the injured. He further submitted that due to the aforesaid accident, the Appellant is not able to carry on the agricultural activities and work as before and is taking treatment till date and that apart that the stiffness in the knee continues and he is not able to turn his knee and even unable to walk and stand properly and therefore requested this Court to award compensation towards Future Medical



Expenses and to enhance the compensation granted by the Tribunal.

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6. The learned counsel appearing for the 2nd Respondent-Insurance Company submitted that the Claims Tribunal, after considering oral and documentary evidence, has rightly awarded the compensation under various heads and therefore the same does not warrant any interference.

7. Heard the learned counsel appearing for the appellants as well as the learned counsel appearing for the 2nd Respondent-Insurance Company and perused the entire materials on record.

8. The accident is of the year 2014. On a perusal of the Award, it is seen that the Appellant was referred to Medical Board for ascertaining the permanent disability and the Medical Board has assessed 60% disability and in the report of the Medical Board, it is mentioned that the Appellant suffered fracture distal femur and segmental fracture of both bone in right leg, presenting with infection and stiff knee. Hence, this Court in order to ascertain whether the Appellant can be able to carry out his avocation directed the Claimant to appear before this Court vide order dated



08.03.2024, pursuant to which the Claimant appeared before this Court. This Court is able to see that the Appellant/Claimant is not able to stand properly and that there is stiffness in the knee as stated by the Medical Board and thus it is crystal clear that the Appellant/Claimant cannot carry on his avocation. Hence, this Court feels that the disability shall be fixed at 80% instead of 70% and accordingly the disability is fixed at 80%.

9. In so far as the fixation of monthly income of the injured is concerned, since no documents were produced by the Appellant to prove the monthly income of the Appellant/Claimant, the Tribunal considering the fact that the injured was 35 years old at the time of accident and he could very well earn only a sum of Rs.6,000/- per month and hence fixed the monthly income of the injured at Rs.6,000/-, per month, which in the opinion of this Court, is very low. Considering the year of accident and as the cost of living has increased enormously and salary of even unskilled workers being increased substantially, therefore this Court is of the view that a sum of Rs.9,000/- can be fixed as monthly income of the Appellant/Claimant and accordingly a sum of Rs.9,000/- is fixed as monthly income of the Claimant and by adding 40% towards future prospects, a sum of Rs.12,600/-



(15000+3750) is arrived as monthly income and by adopting multiplier '16' as per Judgment of the Hon'ble Supreme Court in the case of **SARLA VERMA AND OTHERS VS. DELHI TRANSPORT CORPORATION AND ANOTHER** reported in (2009) 4 MLJ 997, a sum of **Rs.19,35,360/-** (12,600x12x16x80/100) is awarded towards **Functional Disability** and hence the compensation towards **Functional Disability** is enhanced from Rs.12,18,960/- to Rs.19,35,360/-.

10. Considering the nature of injuries sustained by the Appellant/Claimant and period of treatment undergone, a sum of Rs.50,000/- is awarded under the head '**Future Medical Expenses**'. The amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is re-determined as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Functional Disability	11,28,960/-	19,35,360/-	Enhanced
2.	Pain and Suffering	75,000/-	75,000/-	Confirmed
3.	Transportation	5,000/-	5,000/-	Confirmed



S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
	expenses			
4.	Extra Nourishment	10,000/-	10,000/-	Confirmed
5.	Future Medical Expenses	50,000/-	50,000/-	Granted
	Total	Rs.12,18,960/-	Rs.20,75,360/-	Enhanced by Rs.8,56,400/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,18,960/- is hereby enhanced to Rs.20,75,360/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 2nd Respondent-Insurance is directed to deposit the award amount now determined by this Court, along with interest and costs, 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.A.C.T.O.P.No.1288 of 2017 on the file of the Motor Accidents Claims Tribunal, the Special Sub Court, Tiruvannamalai. 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 **three weeks**. The claimant is directed to pay necessary Court fee, if any on the enhanced compensation. It is made clear



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that since there was delay in filing the C.M.A., the interest portion for the said period should be excluded for the purpose of granting interest. No costs.

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Index : Yes / No

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The Reliance General Insurance Company Limited,
Raj's Tower, 2nd floor, 2nd Avenue, Plot No.2054,
Next to GRT Jewellery,
Anna Nagar, Chennai.

2. The Motor Accident Claims Tribunal,
The Special Sub Court, Tiruvannamalai

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

KRISHNAN RAMASAMY, J.



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