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C.M.A. No.2217 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2217 of 2021

A. Ezhumalai Appellant
vs.

1. A.D. Jayaveera Pandia Nadar and Bros.

2. SBI General Insurance Co. Ltd.,
Greens Dugar Building,
Ground Floor,
No.54, Greens Road,
Chennai – 600 006. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No.6355 of 2017, dated 05.03.2020 on the file of the Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai

For Appellant : Mr.Ramya V. Rao

For Respondents : Mr.K. Vinod for R2
R1 – Ex-parte

JUDGMENT

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



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2. Heard Ms. Ramya V. Rao, learned counsel for the appellant / claimant and Mr.K. Vinod, learned counsel for the 2nd respondent / Insurance Company.

3. The appellant / claimant sustained the following injuries as a result of an accident caused by the vehicle insured with the 2nd respondent / Insurance Company :-

“Shaft fracture on right femur”

Due to the injuries sustained by him, the appellant / claimant underwent a procedure, open reduction and internal fixation of retrograde IL nailing and bone grafting. The nature of injuries sustained by the appellant / claimant has not been disputed by the respondents before the Tribunal, as seen from the evidence available on record. The appellant / claimant has filed this appeal stating that the Tribunal ought to have adopted the multiplier method for assessing the loss of earning capacity of the appellant / claimant but instead had erroneously awarded the disability compensation based on percentage basis. The recent photographs of the appellant / claimant produced by the learned counsel for the appellant also reveals that the appellant / claimant had sustained grievous injuries as a result of an accident caused by the vehicle insured with the 2nd



respondent / Insurance Company and even now, only with the support of

a crutch, he is able to walk. The learned counsel for the 2nd respondent /

Insurance Company also does not dispute the said fact. The Medical

Board had assessed the functional disability of the appellant / claimant at

20% and the Medical Board report was marked as Ex.C1 before the

Tribunal. Even though the Tribunal has accepted that the appellant /

claimant had suffered 20% disability, the Tribunal has erroneously not

taken note of the fact that due to the injuries sustained by the appellant /

claimant, he has lost his earning capacity. The Tribunal ought to have

adopted the multiplier method and ought to have awarded compensation

to the appellant / claimant towards loss of earning capacity but instead

has erroneously awarded the disability compensation on percentage basis

and has awarded a meagre compensation of Rs.60,000/- towards the

same under the impugned award. The 20% functional disability assessed

by the Medical Board under Ex.C1 is on the higher side and therefore,

this Court deems it fit to reduce the same to 15%. Accordingly, this

Court fixes the functional disability of the appellant / claimant at 15%

and is adopting the multiplier method for awarding the compensation to

the appellant / claimant towards loss of earning capacity. Accordingly,

the disability compensation awarded by the Tribunal under the impugned



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award at Rs.60,000/- is modified to Rs.3,15,000/- by this Court by adopting the multiplier method and by fixing the functional disability of the appellant / claimant at 15%, instead of 20% fixed by the Tribunal. Therefore, the disability compensation of Rs.60,000/- is enhanced to Rs.3,15,000/- by this Court as detailed hereunder :-

$$\begin{aligned} &\text{Rs.12,500/- (notional monthly income) } \times 12 \times 14 \times 15\% \\ &= \text{Rs.3,15,000/-} \end{aligned}$$

4. Since this Court has awarded compensation towards loss of earning capacity to the appellant / claimant at Rs.3,15,000/-, the compensation awarded by the Tribunal to the appellant / claimant towards loss of income at Rs.24,000/- is set aside by this Court as the same, if granted would amount to duplication.

5. Insofar as the compensation awarded by the Tribunal towards pain and suffering at Rs.20,000/- is concerned, the same is low. The Tribunal ought to have given due consideration to the grievous injuries sustained by the appellant/claimant and also should have taken note of the fact that the appellant / claimant cannot walk without the support of a crutch and it ought to have awarded a compensation of Rs.30,000/-



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towards pain and suffering, but instead has erroneously awarded a lesser sum of Rs.20,000/- towards the said head. Accordingly, this Court awards a compensation of Rs.30,000/- towards pain and suffering.

6. Similarly, the Tribunal has awarded a lesser compensation of Rs.13,600/- to the appellant / claimant towards attender charges. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant enhances the same to Rs.15,000/-.

7. Insofar as the compensation awarded by the Tribunal under other heads viz., Future medical expenses, transportation, nourishment, damage to clothes and loss of amenities is concerned, the same is a just compensation and does not call for any interference by this Court.

8. Insofar as the compensation awarded by the Tribunal towards medical bills at Rs.9,536/- is concerned, the same is confirmed by this Court as it is supported by medical bills, which were marked as Exs.P3 and P6 (Series).



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

WEBCOPY Tribunal is re-worked in the following manner :-

<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Disability # Rs.12,500/- x 12 x 14 x 15%	60,000	3,15,000 #
Medical expenses	9,536	9,536
Future medical expenses	35,000	35,000
Loss of income	24,000	-
Pain and suffering	20,000	30,000
Transportation	10,000	10,000
Nourishment	15,000	15,000
Damages to clothes	2,000	2,000
Attender charges	13,600	15,000
Loss of amenities	20,000	20,000
Total	2,09,136	4,51,536

10. In the result, this Civil Miscellaneous Appeal stands partly allowed by enhancing the compensation from Rs.2,09,136/- to Rs.4,51,536/-. No Costs.

11. The 2nd respondent / Insurance Company is directed to deposit the amount awarded by this Court, after deducting the amount already



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deposited if any, together with interest from the date of claim till the date of deposit and cost, to the credit of M.C.O.P. No.6355 of 2017 on the file of the Motor Accidents Claims Tribunal, (IV Court of Small Causes), Chennai, 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.

22.07.2024

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

vsi2

To

1. The IV Judge,
Motor Accident Claims Tribunal
(IV Court of Small Causes),
Chennai.

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

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