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C.M.A. No. 2611 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

C.M.A. No. 2611 of 2021

M.Yugahandher

... Appellant / Petitioner

Vs.

1.V.Sundarajan

2.ICICI Lombard General Insurance Co. Ltd.,  
1<sup>st</sup> floor, Arihant Plaza,  
No.84/85, Walltax Road,  
Parry's Corner,  
Chennai-600 003.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 07.12.2020 passed in M.C.O.P. No.13 of 2012 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.I, Small Causes Court, Chennai.

For Appellant : Mr.C.Munusamy

For Respondents : Mr.B.Sivakollapan



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### JUDGMENT

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No.13 of 2012, dated 07.12.2020 on the file of the Motor Accident Claims Tribunal, Special Sub Judge No.1, Small Causes Court, Chennai.

2. For the sake of convenience, the parties are referred hereunder according to their litigative status and ranking before the Tribunal.

3. The case of the claimant in brief is that he was a temporary manual worker in a private company. He was deputed to water plants which was planted in the centre median of the road at Maduravoyal to Tambaram Bye-pass road. While he was watering the plants through a Water Tanker Lorry bearing Registration No.TN 23 D 8672 on 22.10.2011 at about 14.30 hours, a Lorry bearing Registration No.TN 04 AA 8408 came in rash and negligent manner and hit him from behind, which resulted in causing severe injuries to the claimant. Subsequently, he has come forward with the claim petition under Section 166 of the Motor Vehicles Act, seeking compensation of Rs.10,00,000/-.

4. The first respondent who is the owner of the vehicle has filed



his counter and stating that there is a third-party insurance coverage and the driver was having valid driving licence. Hence the second respondent – Insurance Company is liable to indemnify the first respondent. The second respondent-Insurance Company has separately filed counter and disputed the age, income and avocation of the claimant and disability sustained by him. Hence prays to dismiss the claim petition.

5. After considering the evidences placed on record, in Point Nos.1 & 2 the Tribunal has accepted the case of the claimant that the driver of the lorry belongs to the first respondent is a tortfeasor and the second respondent – Insurance Company is liable to indemnify the first respondent. In Point No.3 the Tribunal has quantified the compensation and awarded a sum of Rs.1,17,000/- as compensation along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

6. Aggrieved over the quantum of compensation awarded by the Tribunal, the claimant has filed this appeal seeking enhancement of compensation.



7. The major grievance of the claimant herein is that it is a case of amputation and the Tribunal instead of awarding compensation by multiplier method, the compensation awarded under the head disability which is not proper and prays to award just compensation under the head loss of earning capacity.

8. Per contra, the learned counsel appearing for the second respondent – Insurance company has submitted that based on the evidences placed on record, the Tribunal has rightly fixed the disability of the claimant and awarded just compensation and there is no need for enhancing the same. Hence prays to dismiss the appeal.

9. I have heard the rival submissions made on both sides and also perused the materials available on record.

10. The Accident Register Copy-Ex.P1 issued by the Parvathy Hospital and Discharge Summaries Exs.P2 to P4 issued by the Fortis Malar Hospital and Appollo First Med Hospital was placed on record and the Tribunal has held that there is a “crush avulsion amputation right thumb



with skin loss over palm and dorsum hand” and the injuries are grievous in nature. The claimant was also subjected to medical board examination and his disability has been assessed by the Medical Board to the extent of 40%. Based on the disability assessed by the Medical Board, the Tribunal has awarded compensation of Rs.1,20,000/- by calculating per percentage of Rs.3,000/- and this Court is inclined to accept the same.

11. Admittedly, the amputation of right femur is a scheduled injury and apart from the amputation, the claimant has also sustained other injuries. He is a manual worker engaged in a private company. He is also aged about 42 years at the time of accident and he claimed that he was earning a sum of Rs.9,000/- per month. The accident had taken place in the year 2011 and considering the same, this Court is of the view that fixing monthly income of Rs.8,000/- would be proper since there is no evidence placed on record to prove the income. Since it is a case of amputation of the manual worker, I am of the view that the petitioner is entitled for compensation under the head loss of earning capacity by adopting multiplier method however, the loss of earning capacity is restricted to 30%. Accordingly, this Court is inclined to award compensation under the head



loss of earning capacity by applying multiplier '14' since the age of the injured is 42 years at the time of accident and accordingly a sum of Rs.4,03,200/- [8,000 x 12 x 14 x 30%] is awarded under the head loss of earning capacity.

12. The claimant is also entitled to 40% future prospects as held by the Hon'ble Apex Court in ***Erudhaya Priya vs. State Express Transport Corporation [AIR 2020 SC 4284]***. Accordingly, a sum of Rs.1,61,280/- [40% of Rs.4,03,200/-] awarded under the head 'Future Prospects'. The Tribunal has awarded compensation of Rs.25,000/- under the head pain and sufferings and considering the injuries sustained, the same is modified to Rs.40,000/- The Tribunal has awarded compensation of Rs.30,000/- under the head loss of future prospects since this Court has separately awarded future prospects of Rs.1,61,280/- the compensation of Rs.30,000/- under the head loss of future prospects by the Tribunal is hereby rejected. Similarly, since this Court adopted multiplier method for calculating loss of earning capacity, the compensation separately awarded under the head loss of earnings by the Tribunal is also rejected. As far as the compensation awarded under other heads are concerned, the same are hereby confirmed.



**WEB COPY** 13. Accordingly, the Award passed by the Tribunal under various heads are hereby modified as follows:

| S. No | Description                                      | Amount awarded by Tribunal (Rs)              | Amount awarded by this Court (Rs) | Award confirmed or enhanced or reduced |
|-------|--------------------------------------------------|----------------------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability/ Modified as Loss of earning capacity | Rs.1,20,000/-                                | Rs.4,03,200/-                     | Modified                               |
| 2.    | Pain and Sufferings                              | Rs.25,000/-                                  | Rs.40,000/-                       | Enhanced                               |
| 3     | Transportation                                   | Rs.5,000/-                                   | Rs.5,000/-                        | Confirmed                              |
| 4.    | Extra Nourishment                                | Rs.15,000/-                                  | Rs.15,000/-                       | Confirmed                              |
| 5     | Medical Expenses                                 | Rs.4,87,476/-                                | Rs.4,87,476/-                     | Confirmed                              |
| 6     | Attender Charges                                 | Rs.6,500/-                                   | Rs.6,500/-                        | Confirmed                              |
| 7     | Loss of Earnings                                 | Rs.28,000/-                                  | ---                               | Cancelled                              |
| 8     | Loss of future prospects/Future prospects        | Rs.30,000/-                                  | Rs.1,61,280/-                     | Modified                               |
|       | <b>Total Compensation</b>                        | <b>Rs.7,16,976/-<br/>@<br/>Rs.7,17,000/-</b> | <b>Rs.11,18,456/-<br/>-</b>       | <b>Enhanced by Rs.4,01,480/-</b>       |

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,17,000/- is hereby enhanced to Rs.11,18,456/- [Rupees Eleven Lakhs Eighteen Thousand Four Hundred and Fifty Six only] together with interest at the rate of 7.5% per annum from the date of filing of Claim Petition till the date of deposit,



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excluding the default period, if any. The second respondent - Insurance Company is directed to deposit the amount awarded 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.C.O.P.No.13 of 2012 on the file of the Motor Accidents Claims Tribunal, Special Sub Judge No.1, Small Causes Court, Chennai. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

02.01.2024

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Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No



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To:

1. The Special Sub Judge-I,  
Small Causes Court,  
Motor Accident Claims,  
Chennai.
2. The Section Officer,  
V.R.Section,  
High Court,  
Chennai.



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**K. RAJASEKAR, J.**

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