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C.M.A.No.2617 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.2617 of 2021

David

... Appellant

Vs.

1.A.Kishore Kumar

2.Liberty Videocon General Insurance Co. Ltd.,
Anmol Palani, No.88, G.N. Chetty Road,
Level – 4, Unit No.E5 & F5,
T.Nagar, Chennai – 600 017.

... 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.4534 of 2015 dated 10.03.2020 on the file of the Motor Accident Claims Tribunal/In the II Court of Small Causes, Chennai.

For Appellant : M/s.Ramya V.Rao

For Respondents : Notice dispensed with [R1]
Mrs.C.Harini
for M/s.M.B.Gopalan Associates [R2]



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JUDGMENT

WEB COPY The appellant/claimant has filed the above appeal seeking an enhancement of the award granted by the Motor Accidents Claims Tribunal, (In the II Court of Small Causes), Chennai in M.C.O.P.No.4534 of 2015, dated 10.03.2020.

2. It is the case of the appellant that, on 25.10.2014, at about 05.20 hours, he was as a pedestrian standing to cross the road from west to east direction at Kamarajar Salai, near Ovvaiyar Statue. At that time, a Maruthi Car bearing Regn.No.TN-07-AR-0147 belonging to the 1st respondent, which was insured with the 2nd respondent, came from north to south direction, driven by its driver in a rash and negligent manner endangering public safety and hit against the petitioner. Due to which, he sustained grievous injuries all over the body. Therefore, he filed a claim petition claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in the said road accident.

3. Before the Tribunal, the appellant/claimant examined himself as P.W.1 and marked 15 documents viz., Ex.P.1 to Ex.P.15. No witness was examined nor any documents were marked on the side of the respondents.



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After adjudication, the Tribunal, allowed the petition in part and awarded a sum of Rs.1,00,000/- as compensation to the claimant. Not satisfied with the said award dated 10.03.2020, the present appeal has been filed by the appellant/claimant seeking enhancement.

4. Learned counsel appearing for the appellant submitted that, immediately after the accident, the appellant took first aid at Government Royapettah Hospital at Chennai. There, he was referred to take x-ray for his shoulder pain and the appellant himself presumed that the injuries were simple in nature, so he did not go to hospital. Thereafter, the injury worsened, and he was unable to walk. He was again admitted to the hospital on 12.12.2014 and took treatment until 05.01.2015. Within four days of the accident, the law enforcing agency called him as the vehicle was identified in the video footage recorded by a camera installed on Kamarajar Salai. However, when he appeared before the law enforcing agency, they forced the appellant to enter into a compromise with the owner of the offending vehicle, for which the owner of the offending vehicle gave Rs.5,000/- on that day and agreed to pay a sum of Rs.50,000/- thereafter. Subsequently, the agreed amount was not paid by the owner of the offending vehicle. Thereafter, the appellant's health



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worsened, thereby, he was again admitted to the hospital on 09.03.2015 and discharged on 20.04.2015. For further treatment, he was admitted to the hospital for “decompression C3, C4, C5, C6 deminelaure multiple injuries”. In order to prove this, the continuous treatment records viz., Ex.P.2 to Ex.P.5 were marked before the Tribunal. Furthermore, Ex.P.13, which was the disability certificate issued by Peripheral Hospital, was also marked before the Tribunal, from which it is seen that the doctor assessed the disability at 65%. Additionally, the medical board assessed 80% permanent disability, which was marked as Ex.C.1. However, without considering all the above documents, the Tribunal fixed a sum of Rs.1,00,000/- as compensation to the appellant for the injuries sustained by him in the accident, which is on the lower side. He further submitted that, due to the accidental injuries, the appellant was not able to move from his bed, therefore, compensation has to be granted by adopting multiplier method, considering that the appellant had suffered 100% permanent disability. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. Per contra, learned counsel appearing for the second respondent submitted that, the accident had happened on 25.10.2014, however, the



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FIR was registered on 07.04.2015 after a lapse 5 ½ months. Further, he submitted that the injuries sustained by the appellant are not due to accident claimed to have happened on 25.10.2014, and the injuries sustained by the appellant are simple in nature. Therefore, the Tribunal awarded a sum of Rs.1,00,000/- as compensation, which is just and reasonable and does not require any interference. He further submitted that, except for the documents viz., Ex.P.2 and Ex.P.3, no other documents were filed before the Tribunal to prove that the injuries are solely due to the accident. Additionally, he submitted that the medical records viz., Ex.P.4 and Ex.P.5 are not connected with Ex.P.2 and Ex.P.3. Accordingly, he prays for the dismissal of the appeal.

6. Heard the learned counsel appearing for the appellant and the learned counsel appearing on behalf of the second respondent and also perused the materials available on record.

7. Admittedly, the accident occurred on 25.10.2014, during which the appellant sustained injuries and was subsequently admitted to the hospital. To prove the accident, the initial record viz., AR copy was marked as Ex.P.2. A perusal of the same reveals that the appellant was



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admitted to the hospital on 25.10.2014 at 06.00 a.m., since the accident had occurred on 25.10.2014 at 05.20 a.m. Again, he was admitted to the hospital from 28.11.2014 to 13.05.2016, which was marked as Ex.P.3 and the discharge summary, which is the document to show the continuous treatment taken by the appellant in the government hospital, is marked as Ex.P.4. Furthermore, the appellant received treatment at the Government Institute of Rehabilitation Medicine, K.K.Nagar, Chennai and the diagnosis report specifically mentions that the appellant had decompression C3, C4, C5 and C6 along with multiple injuries from the date of accident to 09.03.2015. The above medical records clearly prove that due to the accident, the appellant sustained injuries to the shoulder as well as spinal cord, specifically at C3, C4, C5 and C6. The date of accident, as well as the delay in filing the FIR and the compromise entered into between the parties, is evident from a perusal of Ex.P.1/FIR. Hence, this Court has no hesitation in holding that the injuries sustained by the appellant are due to the accident that occurred on 25.10.2014, for which two medical boards assessed the disability, namely Ex.P.13 and Ex.C.1. Ignoring the disability certificates, the Tribunal awarded a sum of Rs.1,00,000/- as compensation, which is perverse, and accordingly, the same is set aside.



8. Considering the fact that, due to the accidental injuries, the appellant has become a vegetative state and is not able to perform his avocation, which he was carrying on before the accident, this Court is inclined to fix the percentage of disability suffered by the appellant at 100% and award compensation towards loss of earning capacity by adopting multiplier method. Applying the ratio laid down by the Hon'ble Supreme Court in the case of *Raj Kumar Vs. Ajay Kumar & Anr.* reported in **2011 (1) SCC 343**, this Court, fixes a sum of Rs.9,000/- as notional income of the appellant/claimant. Though no future prospects has been granted in *Raj Kumar's* case, considering the fact that the appellant is in a vegetative state, he cannot earn anything, hence, this Court awards 25% towards future prospects, since at the time of accident, the appellant was aged about 49 years. By fixing a sum of Rs.9,000/- as notional income and adding future prospects at 25%, the total income per month is quantified at Rs.11,250/-. Considering the fact that the appellant was aged 49 years at the time of accident, as evidenced from the records and adopting the multiplier of 13 as fixed by the Apex Court in the case of *Sarla Verma and Ors. v. DTC & Ors.* reported in **(2009) 6 SCC 121**, the loss of earning capacity is arrived at Rs.11,250/- * 12 * 13 = Rs.17,55,000/-.



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9. Further, taking into account the nature of injuries suffered by the appellant/claimant, this Court awards a sum of 40,000/- towards pain and sufferings; Rs.20,000/- towards attender charges; Rs.30,000/- towards extra nourishment and Rs.20,000/- towards transportation. As per Ex.P.4, this Court awards a sum of Rs.4,676/- towards medical expenses.

10. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>S. No.</i>	<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
1	Loss of earning capacity	1,00,000/-	17,55,000/-
2	Pain and sufferings		40,000/-
3	Attendar charges		20,000/-
4	Extra nourishment		30,000/-
5	Transportation		20,000/-
6	Medical expenses		4,676/-
	Total	1,00,000/-	18,69,676/-

11. Accordingly, the Civil Miscellaneous Appeal is allowed and the impugned award of the Tribunal is modified by enhancing the compensation amount from **Rs.1,00,000/-** to **Rs.18,69,676/-**. The second respondent-Insurance Company is directed to deposit the said amount to



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the credit of M.C.O.P.No.4534 of 2015 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation by the appellant. The appellant/claimant is directed to pay the necessary additional Court fee for the enhanced compensation amount, if required. It is made clear that the appellant is not entitled to interest for the default period, if any. No costs.

02.12.2024

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

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To

The Motor Accident Claims Tribunal/In the II Court of Small Causes,
Chennai.



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M.DHANDAPANI, J.,

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