



Civil Miscellaneous Appeal No.1963 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1963 of 2022
and
C.M.P.No.14943 of 2022

The Regional Manager
ICICI Lombard General Insurance Co., Ltd
No.12/2, Savitha Plaza, 100 Feet Road
Nellithope, Pondicherry.

... Appellant

Vs.

1.Mathan
S/o Rajendiran

2.Gokul
S/o Ganesan

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.03.2022 made in M.C.O.P.No.418 of 2020 on the file of Motor Accident Claims Tribunal, Puducherry.

For Appellant : Mr.B.Siva Kollappan

For Respondents : Mr.R.Sreedhar - for R1
R2 - Exparte



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J U D G M E N T

The appellant insurance company, aggrieved by the quantum of compensation awarded by the Motor Accident Claims Tribunal, Puducherry, in M.C.O.P.No.418 of 2020, dated 30.03.2022, has filed this appeal.

2. The case of the claimant is that on 16.09.2020 at about 1.30 p.m., the claimant was travelling in the tractor belonging to the second respondent in this appeal and it was driven in a rash and negligent manner, resulting in the iron hook that was connected with the tractor snapped and hit on the face and head of the claimant as a result of which the claimant sustained serious head injuries. The claimant underwent treatment as in-patient for 18 days. The skull injury that was sustained by the claimant resulted in 63% disability as was assessed by the Medical Board. It is under these circumstances that the claim petition was filed before the Tribunal.

3. The Tribunal, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to a conclusion that the accident had taken place only due to the negligence on the part of the driver of the tractor. Having rendered such a finding, the Tribunal proceeded to determine the compensation payable at Rs.27,00,800/- in the following manner:



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Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income due to permanent disability	21,16,800/-
2.	Extra nourishment	30,000/-
3.	Attender charges	44,000/-
4.	Medical expenses	2,00,000/-
5.	Transportation	10,000/-
6.	Pain and suffering	3,00,000/-
	Total	27,00,800/-

The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% p.a.

4. Questioning the quantum of compensation awarded by the Tribunal, the appellant insurance company has filed the present appeal.

5. Heard Mr.B.Siva Kollappan, learned counsel for appellant insurance company and Mr.R.Sreedhar, learned counsel for the first respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.



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8. The main ground that was urged by the learned counsel for the appellant is that the Tribunal ought not to have applied the multiplier method in this case since no functional disability was proved by the claimant and that the Tribunal ought to have granted the compensation by fixing the notional amount per percentage. The learned counsel further submitted that the notional income of the claimant was fixed at Rs.12,500/- without any basis. That apart, the compensation that was awarded under the head 'pain and suffering' to the tune of Rs.3,00,000/- is on a higher side.

9. *Per contra*, learned counsel for the claimant submitted that the claimant had suffered skull injury and as a result, the Medical Board has assessed that he has suffered 40% disability regarding the eye sight, 18% towards deficiency in hearing and another 6% under two other heads and arrived at the total disability of 63%. Learned counsel submitted that the disability suffered by the claimant has resulted in the claimant not being able to continue his avocation as fisherman. Therefore, it was contended that the Tribunal was right in adopting the multiplier method. Learned counsel further submitted that the compensation fixed by the Tribunal is reasonable and it does not warrant interference of this Court.

10. This Court carefully went through Ex.P5, Ex.P8 read along with the evidence of R.W.4. This Court also carefully went through Ex.C1 and Ex.C2



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which is the disability certificate that was given by the Medical Board. The report of the Medical Board shows that the injury sustained by the claimant has resulted in visual loss as well as hearing loss. There is no dispute with regard to the fact that the claimant suffered fracture in the face. For proper appreciation, the injuries as noted in the wound certificate marked as Ex.P8 is extracted hereunder:

Details of injuries:

2 laceration 2 x 1 cm over left frontal region

Laceration 2 x 1 cm over left chest

CT Face : Left Zygoma fracture

Left Maxilla fracture

Left Orbital Floor Fracture

11. The claimant had also undergone a neuro surgery which is evident from the Discharge Summary marked as Ex.P.5. It shows that the claimant underwent conservative treatment initially and he was later transferred to the Plastic surgery side for frontal bone internal fixation. After he was transferred to plastic surgery side, he underwent ORIF and IMF Fixation with Left Orbital Floor Reconstruction.

12. The above facts would reveal that the claimant sustained comminuted fractures involving the frontal bone, on both sides, periborbital



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fractures, orbital floor fracture around into the eye with depression over the right frontobasal region with cortical contusion and pneumocephalus.

13. The report of the Medical Board does not suggest as to whether the claimant has sustained 63% permanent disability. There is absolutely no indication whether it is permanent or partial permanent disability etc., Considering the fact that the claimant is a fisherman and his age was 35 years at the time of the accident and since there is no indication as to whether it is a permanent disability, this Court is inclined to fix the disability at 40% instead of 63%.

14. The Tribunal has fixed the notional monthly income at Rs.12,500/-. Considering the fact that the accident had taken place in the year 2020 and the claimant being a fisherman, this Court is inclined to fix the notional monthly income at Rs.13,500/-. If 40% future prospects is added it comes to Rs.5,400/-. Thus, the total monthly income will be Rs.18,900/-. In the light of the above discussion, the compensation towards permanent disability will work out as follows.

Monthly Income	:	Rs. 13,500/-
Add: Future Prospects	:	Rs. 5,400/-
40% of Rs.13,500/-	-----	
		Rs. 18,900/-



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Annual Income (18,900 * 12)	:	Rs. 2,26,800/-
Multiplier	:	_____ x 16
Loss of income	:	Rs.36,28,800/-
Permanent disability @ 40%		Rs.36,28,800 x 40/100
Loss of income due to permanent disability	:	Rs.14,51,520/-

15. Insofar as the compensation that has been fixed under the other heads, this Court is not inclined to interfere with the same since it looks reasonable, except the compensation that has been fixed under the head 'pain and suffering' and the same is reduced from Rs.3,00,000/- to Rs.2,50,000/-. Thus, the compensation is modified in the following manner.

Sl. No.	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of income/dependency	14,51,520/-
2.	Extra nourishment	30,000/-
3.	Attender charges	44,000/-
4.	Medical expenses	2,00,000/-
5.	Transportation	10,000/-
6.	Pain and suffering	2,50,000/-
	Total	19,85,520/-



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N.ANAND VENKATESH, J.

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16. The compensation awarded by the Tribunal at Rs.27,00,800/- is reduced to Rs.19,85,520/-. The appellant insurance company is directed to deposit the reduced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.04.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Sub Court, Puducherry.

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