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C.M.A.No.1536 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2024

PRONOUNCED ON : 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.1536 of 2021

K.V.Padmanabhan

..Appellant/Petitioner

Vs.

1.J.Jacob Williams

2.National Insurance Company Limited,
II Floor,
Thanthai Periyar Market Complex,
Opp. Old Bus Stand,
1, Govindasamy Pillai Street,
Salem – 636 001.

.. Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance and to set aside the award dated 30.08.2019 and made in M.A.C.T.O.P.No.2415 of 2009 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant : M/s.M.Malar



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For R-1 : NDW
For R-2 : Mr.D.Bhaskaran

JUDGMENT

The Civil Miscellaneous Appeal is filed by the claimant in M.C.O.P.No.2415 of 2009, seeking enhancement of compensation awarded as per order dated 30.08.2019, on the file of Motor Accident Claims Tribunal (II Court of Small Causes), Chennai.

2. The appellant herein, who is the claimant, has approached the Claims Tribunal seeking compensation of Rs.10,00,000/- for the injuries sustained by him in the road accident dated 01.03.2006 at about 22.00 hours, while he was travelling in a bus from Nagercoil to Tirunelveli opposite Thiraviam Orthopaedic Hospital. The first and second respondents are the owner and insurer of the bus. The first respondent has not contested the claim. The second respondent contested the claim challenging the liability to pay the compensation and disputing the quantum of compensation. The Tribunal after considering the evidence awarded a sum of Rs.1,31,900/- as compensation to be payable by the second respondent



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along with interest at the rate of 7.5% per annum from the date of filing of the petition till the date of realisation.

3. The grievance of the appellant herein is that the assessment of disability by the Tribunal is not proper and the Tribunal has earlier referred the claimant to the Medical Board, but without awaiting for the report of the Medical Board, an award has been passed and the assessment made is also very low and hence, prays to enhance the compensation awarded by the Tribunal.

4. Before the Tribunal, the claimant has not examined any witnesses to speak about the disability nor he has subjected himself before the Medical Board for assessing the disability. After recording the evidence of the claimant/appellant, the Tribunal based on the medical records, more particularly, the discharge summary and the treatment records, has fixed the disability of the claimant as 25% non-functional and thereafter, the Tribunal has also awarded compensation under various heads.



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5. The injured herein has sustained lower 2/3rd comminuted fracture left femur. He has undergone in patient treatment from 01.03.2006 to 08.03.2006 at Thiraviam Orthopaedic Hospital, Nagercoil. Subsequently, he was again admitted in M.N.Hospital, Chennai and took treatment from 09.03.2006 to 14.03.2006.

6. The discharge summaries, Ex.P2 and Ex.P3, shows that he underwent surgery for lower 2/3rd left femur fracture. The injured has not adduced any evidence to prove his avocation that he was working in the marketing field. The Tribunal, taking note of the injury and the evidence of the claimant, has held that the injury sustained is only a non-functional disability. There is no infirmity in holding that the injury sustained by the claimant is only a non-functional disability. The Tribunal has *suo motu* fixed the disability for the injury sustained by the claimant as 25%. This fixation has been challenged in this appeal.

7. The Hon'ble Apex Court in ***Raj Kumar v. Ajay Kumar and another***, reported in (2011) 1 SCC 343, has laid down the parameters and



guidelines while fixing the functional disability and awarding compensation

under the disability. In paragraphs 16 to 18, it has held as follows:

“16. The Tribunal should not be a silent spectator when medical evidence is tendered in regard to the injuries and their effect, in particular, the extent of permanent disability. Sections 168 and 169 of the Act make it evident that the Tribunal does not function as a neutral umpire as in a civil suit, but as an active explorer and seeker of truth who is required to “hold an enquiry into the claim” for determining the “just compensation”. The Tribunal should therefore take an active role to ascertain the true and correct position so that it can assess the “just compensation”. While dealing with personal injury cases, the Tribunal should preferably equip itself with a medical dictionary and a handbook for evaluation of permanent physical impairment (for example, Manual for Evaluation of Permanent Physical Impairment for Orthopaedic Surgeons, prepared by American Academy of Orthopaedic Surgeons or its Indian equivalent or other authorised texts) for understanding the medical evidence and assessing the physical and functional disability. The Tribunal may also keep in view the First Schedule to the Workmen's Compensation Act, 1923 which gives some indication about the extent of permanent disability in different types of injuries, in the case of workmen.



17. If a doctor giving evidence uses technical medical terms, the Tribunal should instruct him to state in addition, in simple non-medical terms, the nature and the effect of the injury. If a doctor gives evidence about the percentage of permanent disability, the Tribunal has to seek clarification as to whether such percentage of disability is the functional disability with reference to the whole body or whether it is only with reference to a limb. If the percentage of permanent disability is stated with reference to a limb, the Tribunal will have to seek the doctor's opinion as to whether it is possible to deduce the corresponding functional permanent disability with reference to the whole body and, if so, the percentage.

18. The Tribunal should also act with caution, if it proposed to accept the expert evidence of doctors who did not treat the injured but who give “ready to use” disability certificates, without proper medical assessment. There are several instances of unscrupulous doctors who without treating the injured, readily give liberal disability certificates to help the claimants. But where the disability certificates are given by duly constituted Medical Boards, they may be accepted subject to evidence regarding the genuineness of such certificates. The Tribunal may invariably make it a point to require the evidence



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of the doctor who treated the injured or who assessed the permanent disability. Mere production of a disability certificate or discharge certificate will not be proof of the extent of disability stated therein unless the doctor who treated the claimant or who medically examined and assessed the extent of disability of the claimant, is tendered for cross-examination with reference to the certificate. If the Tribunal is not satisfied with the medical evidence produced by the claimant, it can constitute a Medical Board (from a panel maintained by it in consultation with reputed local hospitals/medical colleges) and refer the claimant to such Medical Board for assessment of the disability.”

8. In this case, the claimant has not adduced any evidence regarding the disability by examining any Doctor or any medical officer. The records show that the Tribunal has referred the claimant to the Medical Board on 14.09.2018. Subsequently, after awaiting for the opinion of the Medical Board, on 26.02.2019, it is recorded by the Tribunal that the report of the Medical Board was not received and no steps taken by the petitioner. This shows that the appellant has not come forward to subject himself for the Medical Board to assess the disability. After awaiting for a long period, the



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Tribunal on *suo motu* has fixed the disability of the appellant as 25% based on the discharge summaries.

9. As held by the Hon'ble Apex Court in the judgment cited supra, the Tribunal ought not to have fixed the disability on its own. Even though it is stated that the Tribunal has to be equipped itself with all the medical terminology and methodology for assessing the disability, it is not proper for the Tribunal to fix the disability and award compensation. However, in this case, the Tribunal has referred the claimant, for the Medical Board examination, but the claimant had not subjected himself for examination before the Medical Board and thereby, the Tribunal has fixed the disability. Since the appellant/claimant has not taken effective steps for assessing the disability and the order was passed in the year 2019 and the accident took place in the year 2006, referring the appellant/claimant to the Medical Board at this stage is not necessary. Based on its rich experience in handling the claim cases, the Tribunal has taken the view that the injury sustained would only cause disability to the extent of 25% and awarded compensation. Since the injury sustained is only a comminuted fracture of left femur, the



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disability is not a schedule injury under the Employees Compensation Act or it causes the functional disability, this Court is of the view that the order of fixing the disability by the Tribunal need not be interfered with. The Tribunal based on the evidence placed on record has properly granted compensation under various heads such as,

(i) Disability	: Rs. 50,000.00
(ii) Pain and Suffering	: Rs. 25,000.00
(iii) Extra nourishment	: Rs. 5,000.00
(iv) Transport of Hospital:	Rs. 5,000.00
(v) Damages to clothes	: Rs. 500.00
(vi) Attender Charges	: Rs. 1,400.00
(vii) Medical expenses	: Rs. 10,000.00
(viii) Future medical expenses	: Rs. 5,000.00
(ix) Loss of income	: Rs. 25,000.00
(x) Loss of amenities	: Rs. 5,000.00
Total	: Rs.1,31,900.00

This Court is of the view that the compensation awarded by the Tribunal requires no interference and accordingly, the appeal fails.

10. In the result, the Civil Miscellaneous Appeal is dismissed. The award passed in M.C.O.P No.2415 of 2009 dated 30.08.2019 on the file of the Motor Accident Claims Tribunal (II Court of Small Causes), Chennai



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stands confirmed. There shall be no order as to costs.

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30.04.2024

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
Lm

To
1.The Motor Accident Claims Tribunal,
II Court of Small Causes,
Chennai.

2.The Section Officer,
V.R. Section,
High Court, Chennai.



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K.RAJASEKAR,J.

Lm

Judgment made in
C.M.A.No.1536 of 2021

30.04.2024