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C.M.A.No.2575 of 2022

**IN THE HIGH OF JUDICATURE AT MADRAS
DATED : 07.02.2024**

**Coram
The Hon'ble Mr.Justice Krishnan Ramasamy**

C.M.A.No.2575 of 2022

Thangavel

... Appellant

Vs.

1. E.Sathish Kumar (ex parte)

2. M/s.Reliance General Insurance Co.Ltd. (Ex parte)
No.6, Reliance House,
4th Floor, Haddows Road,
Chennai – 600 006.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 08.04.2022 made in M.C.O.P.No.2565 of 2020, on the file of the Motor Accident Claims Tribunal/Special Sub Court No.2, Small Causes Court, Chennai.

For Appellant : Mr.R.Mohan Babu

Respondent-1 : No appearance

Respondent-2 : Mr.P.Suresh Srinivasan



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JUDGEMENT

Questioning the quantum of compensation passed by the Motor Accident Claims Tribunal cum Special Sub Court No.2, Small Causes Court, Chennai in M.C.O.P.No.2565 of 2020, dated 08.04.2022 the claimant has filed the present Appeal.

2. Since the present Appeal is filed only questioning the quantum of compensation, it is not necessary for this Court to traverse into the other aspects of the award passed by the Tribunal.

3. The appellant filed the Claim Petition stating that on 12.02.2020 at about 19.00 hours, while he was riding a Vehicle, viz., TVS 50, bearing Regn.No.TN-22-Z-0180 at Agili Village Road, near Nadar Maligai Kadaai, Kancheepuram District from South to North direction, another Vehicle, viz., Bajaj CT 100, bearing Regn.No.TN-19-AW-0757, came in the same road from opposite direction in a rash and negligent manner and hit against the two wheeler of the appellant, as a result of



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which, appellant's right knee has been crashed, and hence, the appellant sought a sum of Rs.49,00,000/- as compensation.

4. The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the rash and negligence on the part of the rider of the vehicle bearing Regn.No.TN-19-AW-0757, viz., the first respondent insured with the second respondent and directed the second respondent/Insurance Company to pay a compensation of Rs.12,78,200/- with interest at 7.5% p.a. from the date of petition till the date of realisation. The break up details of the compensation amount are as follows:-

Disability	: Rs.11,70,000/-
Pain and sufferings	: Rs. 75,000/-
Transportation to Hospital	: Rs. 10,000/-
Extra-Nourishment	: Rs. 10,000/-
Attender Charges	: Rs. 13,200/-
	
Total	: Rs.12,78,200/-

5. Aggrieved over the award passed by the Tribunal, the



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appellant/claimant has filed the present appeal seeking for enhancement of compensation.

6. Mr.R.Mohan Babu, learned counsel appearing for the appellant/claimant would submit that at the time of the accident, which occurred in the year 2020, the appellant was aged about 45 years and he was a Machine Operator, earning a monthly income of Rs.25,000/-; that, but, on account of the accident, the appellant's right leg below knee was amputated and as per Ex.P.8/Disability Certificate, the disability sustained by him is 70%; that owing to such disability, he became permanently disabled and he no can longer carry on his avocation and is finding difficult to do even his normal day-to-day work and has to depend on others for his needs, but the Tribunal, without taking into consideration of all these aspects, taken the disability only at 50% and fixed only a sum of Rs.12,000/- as notional monthly of the appellant, which has resulted in awarding such an inadequate compensation of Rs.11,70,000/-under the head 'Disability'. The learned counsel submitted as per the Schedule provided under the Employee's Compensation Act, the disability sustained by the appellant/claimant has to



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be deemed as 70%. Therefore, the learned counsel prays that the disability sustained by the appellant may be taken at 70% and reasonable monthly income may be fixed and just compensation may be awarded under the head, 'Disability'.

6.1 Further, the learned counsel submitted that on account of the accident, the appellant's right leg has been removed and hence, he took treatment as in-patient for a period of 88 days, but, the Tribunal has failed to award any compensation towards 'Loss of Income during Treatment' and 'Loss of Amenities' and even while passing award towards 'Attender Charges' has taken only 44 days as treatment period and awarded Rs.13,200/- which is too low. Therefore, the learned counsel prays for appropriate enhancement.

6.2 Further, the learned counsel submitted that the Tribunal also failed to award any compensation towards Future Medical Expenses, since, due to amputation, the appellant is fixed with artificial leg and the same has to be replaced once in three months, but, the Tribunal has failed to take into



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consideration of the said aspects and refused to award any compensation under the said head. Hence, the learned counsel prayed to award just and fair compensation under the said head.

7. Despite service of notice on the first respondent, viz., the owner/rider of the offending vehicle and his name is printed in the cause list, none has appeared on his behalf. Hence, the first respondent is set ex parte.

8. Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent/Insurance Company would submit that the Tribunal based on oral and documentary evidence has passed just and fair compensation towards the Disability, and the same requires no interference. The learned counsel further submitted that even the compensation awarded by the Tribunal under other heads are just and fair and the same may be confirmed. However, insofar as the failure of the Tribunal to award compensation under the head, 'Future Medical Expenses' the learned counsel submitted that some reasonable amount may be fixed.



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I have given due consideration to the submissions made by the learned counsel for the appellant/claimant and the learned counsel for the second respondent/Insurance Company and perused the materials available on record.

10. It is an undisputed fact that due to the accident, the appellant's right leg below knee was amputated and he has been fixed with artificial leg. Thus, because of the said unfortunate accident, the appellant became a lame man, lost his job and is finding difficult to do even his normal day-to-day work and has to depend on others for his needs. However, the Tribunal, regardless of the same, while determining compensation towards Disability, has taken the disability at 50% and fixed the notional monthly income at Rs.12,000/-, which is totally unfair. Therefore, as rightly contended by the learned counsel for the appellant as per the Schedule provided under the Employee's Compensation Act, disability sustained by the appellant/claimant has to be treated as 70% functional disability.

10.1 Further, this Court, on consideration of one other important



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factor that due to amputation of his right leg, the appellant/claimant can no longer carry on his avocation as a Machine Operator nor he could find employment anywhere, as no employer would engage a person with those deformities for any other Job and that the claimant has to suffer with his disability life long, has no hesitation to take the functional disability of the injured appellant at 70%, as per the schedule provided under the said Act.

10.2 Thus, by taking the notional monthly income of the injured appellant at Rs.15,000/-; adding 25% towards future prospects; applying the right multiplier of '13' (since the injured was aged 45 years) and taking the disability at 70%, the award of compensation towards 'Loss of Income due to Disability' is calculated as under:-

Notional Monthly income + 25% future prospects x 13 Multiplier x 12 x 60% Disability

$$\text{Rs.15,000/-} + \text{Rs.3,750/-} \times 13 \times 12 \times 70/100 = \text{Rs.20,47,500/-}$$

10.3 Consequently, the sum of Rs.11,70,000/- awarded by the



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Tribunal under the head of 'Loss of Future Income due to Disability' is hereby modified and enhanced to **Rs.20,47,500/-**.

10.4 So far as the award of compensation awarded by the Tribunal under the head 'Attender charges' at Rs.13,200/-is concerned, this Court taking into consideration of the fact that the appellant underwent treatment for nearly 88 days, is inclined to award a sum of Rs.25,000/- as compensation under the said head.

10.5 Insofar as the compensation to be awarded under the heads i) Loss of Amenities, Future Medical Expenses and Loss of Income during treatment period is concerned, , as rightly contended by the learned counsel for the appellant/claimant, the Tribunal has failed to award any compensation under the said heads and hence, this Court is inclined to award a Rs.25,000/-; Rs.50,000/- and Rs.60,000/-(Rs.15,000/- x 4 months) under those heads respectively.

10.6 Insofar as the award passed by the Tribunal under all other



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heads is concerned, this Court finds the same to be just and fair and confirms the same.

11. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-

<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of Future Income due to Disability	Rs.20,47,500/-.
2	Pain and Sufferings	Rs. 75,000/-
3	Loss of Earning during treatment period (Rs.15,000/- x 4months)	Rs. 60,000/-
3	Future Medical Expenses	Rs. 50,000/-
4	Loss of Amenities	Rs. 25,000/-
4	Attender's Charges	Rs. 25,000/-
5	Transportation	Rs. 10,000/-
6	Extra Nourishment	Rs. 10,000/-
Total		Rs.23,02,500/-

11.1 Consequently, the total compensation amount of Rs.12,78,200 awarded by the Tribunal is hereby modified and enhanced to **Rs.23,02,500/-** which shall carry interest at the rate of **7.5%** per annum from the date of



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claim petition till the date of deposit.

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12. In the result, this Civil Miscellaneous Appeal filed by the appellant/claimant is partly allowed on the following terms:-

(i) The second respondent/Insurance Company is directed to deposit the entire amount awarded by this Court equally along with interest at the rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the second respondent/Insurance Company, the Tribunal shall transfer the amount directly to the claimant's respective bank account through RTGS within a period of three weeks thereon.

(iii) The appellant/claimant is entitled to withdraw the entire award



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amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iv) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

v) There shall be no order as to costs.

07.02.2024

To

The Special Sub Judge No.2,
Small Causes Court,
Motor Accident Claims Tribunal, Chennai.



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Krishnan Ramasamy,J.,
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