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C.M.A.No..3067 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS
DATED : 13.02.2024

Coram
The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3067 of 2023

Mr.Ravi

... Appellant

Vs.

1.R.Srinivasan

2.

3.M/s. New India Assurance Co. Ltd.,

4.Divisional Office, TP Hub,

5.Sethu Krishna Trade Center,

6.No.133/31-A, Trichy Main Road,

7.Gugai, Salem – 636 006.

...Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 07.09.2022 made in M.C.O.P.No.339 of 2020 on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.1, Salem.

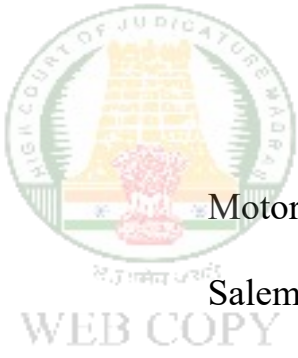
For Appellant : Mr.R.Navaneetha Krishnan

Respondent-1 : Notice dispensed with

Respondent-2 : M/s.C.Sangamithirai

JUDGEMENT

This instant Appeal is preferred against the award passed by the



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Motor Accident Claims Tribunal cum Special Subordinate Court No.1,

Salem (hereinafter, referred to as the 'Tribunal') in M.C.O.P.No.339 of 2020

dated 07.09.2022.

2. On 27.12.2019, at about 14.35 p.m. when the claimant was riding a two wheeler, Yamaha FZ, bearing Regn.No.TN 30-BW-2737, on the left hand side of the road at Bommidi – Deevatipatti Main Road, Danishpet, near Sunambusoolai Muthusamy House, a Tanker Lorry, bearing Regn.No.TN 29 AV 9124, driven by its driver, came from the opposite direction in a rash and negligent and dashed the claimant's two wheeler, as a result of which, the claimant was thrown out from the two wheeler and sustained injuries on his head, leg, hand and all other parts of the body. Hence, the claimant filed a Petition seeking a sum of Rs.30,00,000/- as compensation.

3. The Tribunal, on the basis of oral and documentary evidence arrived at a conclusion that the accident occurred due to rash and negligence on the part of the driver of the Lorry belonging to the first respondent, owner



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of the offending Vehicle, and hence, directed the second respondent/Assurance Company to pay a compensation of Rs8,83,176/- to the claimant together with interest at the rate of 7.5% p.a. from the date of filing of the Petition and till the date of realization and to recover the same from the first respondent, owner of the offending Vehicle.

3.1 The breakup details of the compensation awarded by the Tribunal is as follows:-

Sl.No.	Heads	Compensation amount
1	Pain and Sufferings	Rs. 50,000/-
2	Loss of Earning	Rs. 50,000/-
3	Medical Expenses	Rs.5,82,176/-
4	Transportation	Rs. 10,000/-
5	Extra Nourishment	Rs. 20,000/-
6	Attender Charges	Rs. 10,000/-
7	Damages to Clothes	Rs. 1,000/-
8	Loss of Amenities	Rs. 10,000/-
9	Permanent Disability	Rs.1,50,000/-
	Total compensation awarded	Rs.8,83,176/-



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4. Not being satisfied with the Quantum of Compensation, the present Civil Miscellaneous Appeal has been preferred by the appellant/claimant.

5. Mr.R.Navaneetha Krishnan, learned counsel appearing for the appellant/claimant would submit that the quantum of compensation awarded by the Tribunal under the head 'Permanent Disability' is too low. The learned counsel submitted that at the time of the accident, which occurred on 27.12.2019, the appellant/claimant was aged about 24 years; working as Insurance Surveyor Assistant and earning a sum of Rs.20,000/- p.m. that, due to the accident, he sustained fracture shaft of femur right' degloving injury right leg and foot; compound fracture medial malleolus right; compound fracture IV proximal right and III metacarpal fracture, due to which, he has hospitalized from 27.12.2019 to 29.01.2020 and 21.02.2020 to 24.02.2020, totally 40 days; that, though the Tribunal, taking into consideration of the medical expenses incurred by the appellant awarded a just compensation of Rs.5,82,176/- under the head 'Medical Expenses', however, committed an error while determining compensation towards Disability, as the appellant/claimant, due to the aforesaid disability, is not



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able to walk or sit freely and unable to do any job, as he did before, but, the Tribunal, regardless of the same determined compensation by adopting percentage method, instead of multiplier method and fixed a sum of Rs.5,000/- towards per percentage of disability and taken the disability at 30%, as has been assessed by the Medical Board in Ex.C.1/Disability Certificate, which resulted in awarding such an inadequate sum of Rs.1,50,000/- under the head 'Disability'. Therefore, the learned counsel insisted this Court to re-determine the compensation by adopting multiplier method and to award just and fair compensation under the said head.

5.1 Further, the learned counsel submitted that the award passed by the Tribunal towards 'Loss of Income during Treatment' at Rs.50,000/- is also low and the same requires re-determination. Furthermore, the learned counsel submitted that even the quantum of compensation awarded by the Tribunal under various heads are on the lower side and prays for appropriate enhancement.

6. M/s.C.Sangamithirai, learned counsel appearing for the second respondent/Assurance Company would submit that the quantum of



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compensation awarded by the Tribunal under various heads is just and fair and the same also warrants no interference. However, as regards the applicability of multiplier method is concerned, the learned counsel would submit that in case, the Court is inclined to determine compensation towards 'Permanent Disability' by adopting multiplier method, then, some reasonable amount may be fixed as monthly income of the appellant/claimant.

7. Heard the learned counsel appearing for the appellant/claimant and learned counsel for the second respondent/Assurance Company and perused the materials available on record.

8. 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.

9. It is not in dispute that due to the accident, which occurred in the year 2019, the appellant/claimant sustained fracture shaft of femur right; degloving injury right leg and foot; compound fracture medial malleolus right; compound fracture IV proximal right and III metacarpal fracture, due



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to which, he underwent treatment for a period of 40 days, i.e. from 27.12.2019 to 29.01.2020 and 21.02.2020 to 24.02.2020, during which period, surgeries were performed; that as per Ex.C.1/Disability Certificate, the Medical Board assessed the disability sustained by the appellant/claimant at 30%. However, since it has been urged by the learned counsel for the appellant/claimant that the disability sustained by the appellant is permanent in nature, and insisted the Court to determine compensation by adopting multiplier method, this Court in order to find out the veracity of such statement, vide order dated 23.01.2024, directed the appellant/claimant to appear before this Court on 13.02.2024 (i.e. today). Accordingly, the appellant/claimant has appeared before this Court today. It is apparent that due to the disability sustained by the appellant in his right leg, he could not walk without any support, squat, and sit cross legged.

9.1 Therefore, this Court is of the view that the Tribunal ought to have taken into consideration of the aforesaid aspects and awarded compensation by adopting multiplier method instead of applying percentage method, as the disability sustained by the appellant is permanent in nature. Hence, this Court is setting aside the award passed by the Tribunal with



respect to 'Permanent Disability' which was determined by way of adopting percentage method and is proceeding to determine compensation towards the said head based on multiplier method.

9.2 Thus, this Court, taking into consideration of the appellant's age (24 years) avocation (Insurance Surveyor Assistant) and year of the accident (2019), suggested as to whether a sum of Rs.15,000/- shall be fixed as notional monthly income of the injured, to which, learned counsel for the second respondent/Assurance Company would submit that some lesser amount may be fixed as notional monthly income of the injured appellant, which may be below than Rs.13,000/-. Therefore, this Court is inclined to fix a sum of Rs.12,000/- as notional monthly income of the appellant, as the same would be just and reasonable. Insofar as the percentage of disability sustained by the appellant is concerned, though as per Ex.C.1, Disability Certificate, the appellant sustained 30% disability, which is no doubt true, a permanent disability, which would persists throughout his lifetime, however, this Court is inclined to take disability at 15% inasmuch as, the compensation awarded by the Tribunal towards Disability is re-determined by this Court by adopting multiplier method.



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9.3 Thus, by fixing the notional monthly income of the injured at Rs.12,000/-; adding 40% towards future prospects; applying right multiplier of '18' (since the injured was aged 20 years) and taking disability at 15%, the compensation towards 'Permanent Disability' is calculated as under:-

Monthly income + 40% future prospects x 18 Multiplier x 12 x 15% Disability

$$\text{Rs.12,000/-} + \text{Rs.4,800/-} \times 18 \times 12 \times 15/100 = \text{Rs.5,44,320/-}$$

9.4 Consequently, the sum of Rs.1,50,000/- awarded by the Tribunal under the head of 'Permanent Disability' is hereby modified and enhanced to **Rs.5,44,320/-**.

9.5 Since this Court fixed the notional monthly income of the injured at Rs.12,000/-, resultantly, the sum of Rs.50,000/- awarded by the Tribunal under the head of 'Loss of Earning during Treatment' requires to be modified. It is seen from the award that the Tribunal has taken 5 months, as the period, during which, the appellant was not earning for the purpose of awarding compensation under the said head and this Court is inclined to take the same period. Accordingly, the compensation under the said head is

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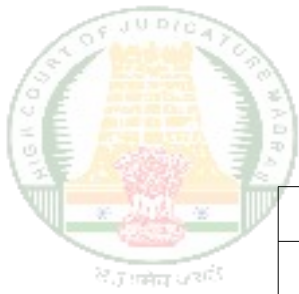
determined in the following manner (Rs.12,000/- x 5months) = **Rs.60,000/-**.

Hence, the award passed by the Tribunal towards Loss of Income during treatment period at Rs.50,000/- is hereby modified and enhanced to **Rs.60,000/-**.

9.6 Except the modification made under two heads, viz., i) 'Permanent Disability' and ii) 'Loss of Income during treatment period', the award of compensation passed by the Tribunal under other heads remain unaltered as the same appear to be just and reasonable.

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

Sl.No.	Heads	Compensation amount
1	Pain and Sufferings	Rs. 50,000/-
2	Loss of Earning During Treatment (Rs.12,000 x 5months)	Rs. 60,000/-
3	Medical Expenses	Rs.5,82,176/-
4	Transportation	Rs. 10,000/-



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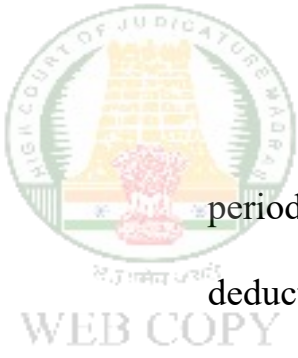
5	Extra Nourishment	Rs. 20,000/-
6	Attender Charges	Rs. 10,000/-
7	Damages to Clothes	Rs. 1,000/-
8	Loss of Amenities	Rs. 10,000/-
9	Permanent Disability	Rs,5,44,320/-
	Total compensation awarded	Rs.12,87,496/-

10.1 Consequently, the total compensation amount of Rs.**8,83,176/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.12,87,496/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit. As far as the pay and recover theory ordered by the Tribunal is concerned, the same also stands confirmed.

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

(i) The second respondent, M/s. New India Assurance Co. Ltd., 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

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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, M/s. New India Assurance Co. Ltd., the Tribunal shall transfer the amount directly to the claimant's respective bank account through RTGS within a period of three weeks thereon, upon which, the appellant/claimant is entitled to withdraw the entire award amount, less the amount already withdrawn, if any, by making necessary application before the Tribunal.

iii) It is made clear that since this Appeal has been filed with a delay of 256 days, the appellant/claimant shall forgo the interest for the delay period.

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.

13.02.2024

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8.The Special Subordinate Judge No.1,
9.Motor Accident Claims Tribunal,Salem.



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Krishnan Ramasamy,J.,
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