



CMA.No.1627 of 2023

In the High Court of Judicature at Madras

Dated : 13.6.2024

Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1627 of 2023

Selvaraj

...Appellant

Vs

1.Arumugam

2.The Divisional Manager,  
(T.P.Claim), Bajaj Alliance  
General Insurance Company  
Limited, Old Nos.276 & 277,  
New Nos.497 & 498, Isna  
Kattima Building, 5th Floor,  
Poonamallee High Road,  
Arumbakkam, Chennai-106.

...Respondents

APPEAL under Section 173 of the Motor Vehicles Act, 1988  
against the judgment and decree dated 27.11.2020 made in M.C.O.P.  
No.5 of 2018 on the file of the Special Subordinate Court (Special  
Motor Accidents Claims Tribunal), Tiruvannamalai.

|               |   |                     |
|---------------|---|---------------------|
| For Appellant | : | Mr.S.Panneer Selvam |
| For R1        | : | Mr.E.Sathiyaraj     |
| For R2        | : | Mr.T.K.Premkumar    |



CMA.No.1627 of 2023

### JUDGMENT

WEB COPY

The claimant, not being satisfied with the quantum of compensation awarded by the Special Subordinate Court (Special Motor Accidents Claims Tribunal), Tiruvannamalai (for short, the Tribunal below) by judgment and decree dated 27.11.2020 in M.C.O.P. No.5 of 2018, has filed this appeal.

2. Heard the learned counsel for the appellant and the respective learned counsel appearing for both the respondents.

3. The case of the appellant/claimant is that on 18.11.2017, he was in the process of unloading granite stones from the offending vehicle and at that point of time, the driver of the offending vehicle, without giving any caution, drove the vehicle, as a result of which, the claimant fell down and sustained grievous injuries including hip bone fracture. It was under those circumstances, the claim petition came to be filed before the Tribunal below seeking for payment of compensation.



CMA.No.1627 of 2023

4. Before the Tribunal below, the second respondent filed a counter. Ultimately, the Tribunal below, on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to the conclusion that the driver of the mini lorry was the cause for the accident due to his negligence. Having come to such a conclusion, the Tribunal below proceeded to fix a total compensation of Rs.8,08,379/- under various heads as follows :

| S.No | Head                                 | Amount in Rs. |
|------|--------------------------------------|---------------|
| 1    | Loss of Estate                       | 6,48,000      |
| 2    | Pain & Suffering                     | 70,000        |
| 3    | Loss of amenities                    | 35,000        |
| 4    | Extra nourishment & Loss of property | 35,000        |
| 5    | Attender expenses                    | 15,000        |
| 6    | Medical expenses                     | 5,379         |
|      | Total compensation                   | 8,08,379      |

5. The above compensation was directed to be paid with interest at the rate of 7.5% per annum. The claimant, not being satisfied with the quantum of compensation fixed by the Tribunal below, filed this appeal seeking for enhancement of compensation.

6. The learned counsel for the appellant submits that the



CMA.No.1627 of 2023

WEB COPY

Tribunal below had taken into consideration the seriousness of the injuries sustained by the appellant/claimant and their consequences and thereafter proceeded to apply the multiplier method. However, while doing so, the Tribunal fixed the notional monthly income of the appellant at Rs.9,000/-, which is on the lower side considering the fact that the appellant was a lorry driver and that the accident had taken place in the year 2017. He has further submitted that the accident has virtually taken away the future of the appellant and that he will not be able to perform the job of a lorry driver. Therefore, according to the learned counsel, this is a fit case where future prospects may be added to the notional monthly income and compensation may be determined under the head 'loss of income'.

7. The learned counsel for the appellant has also submitted that the evidence of the doctor, who was examined as R.W.2 would show that the claimant requires regular treatment even in future and compensation has to be paid under the head 'future medical expenses'. By relying upon the judgment of the Supreme Court in the case of **Pappu Deo Yadav Vs. Naresh Kumar [reported in 2022 (13) SCC 790]**, he would contend that the claimant is entitled to compensation



CMA.No.1627 of 2023

even under the head 'loss of life expectancy' considering the nature of injuries sustained by him.

8. Per contra, the learned counsel appearing for the second respondent has submitted that in the present case, as could be ascertained from the materials available on record, the accident had actually taken place while unloading the granite stones. However, an impression has been given as if the accident had taken place due to the motor vehicle in a public place. He would further submit that this issue can be gone into by this Court in this appeal in exercise of its jurisdiction under Order XLI Rule 33 of the Civil Procedure Code. He has also submitted that if the very accident becomes questionable, there is no scope for enhancing the compensation, which was already fixed by the Tribunal below, that there are no merits in this appeal and that the same is liable to be dismissed by this Court.

9. This Court has carefully considered the submissions of the learned counsel on either side and perused the materials available on record.



WEB COPY



*CMA.No.1627 of 2023*



CMA.No.1627 of 2023

10. In the considered view of this Court, the Tribunal below analysed the evidence and came to the conclusion that the accident had taken place only due to the gross negligence on the part of the lorry driver. In the absence of any appeal filed by the second respondent, this Court does not want to go into this issue by exercising its discretion under Order XLI Rule 33 of the Code. In any case, the entire compensation amount has been deposited by the second respondent.

11. While carefully going through the compensation that has been fixed by the Tribunal below under various heads, this Court finds the same to be reasonable and they do not require the interference of this Court. The hip bone fracture sustained by the appellant will not certainly bring down the life expectancy and therefore, the judgment of the Supreme Court that has been relied upon by the learned counsel for the appellant cannot be applied to the facts of this case.

12. In the same way, the compensation under the head 'future prospects' is generally granted in a case of fatal accident. In the case on hand, there is nothing to show that the appellant has virtually lost



CMA.No.1627 of 2023

his capacity to do any other work. Courts must be slow while granting compensation under the head 'future prospects' in a case of injury.

13. This Court cannot grant compensation under the head 'future medical expenses' merely based on the evidence of R.W.2. There is no material to substantiate that the appellant is entitled for any compensation under the head 'future medical expenses'.

14. In the light of the above discussions, this Court does not find any ground to enhance the compensation fixed by the Tribunal below, as the award passed by the Tribunal below is supported by proper reasons and it does warrant any interference.

15. In the result, the above civil miscellaneous appeal is dismissed. The appellant/claimant is permitted to withdraw the amount that has been deposited by the second respondent together with accrued interest. No costs.

13.6.2024

RS

8/9