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C.M.A.No.2566 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 06.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2566 of 2023

G. Jebaraj

... Appellant

Vs.

1. Mr.K.Thirumalai

2. The Manager,
Reliance General Insurance Co. Ltd.,
Old No.15, New No.29, 3rd Floor,
North Usman Road, T.Nagar,
Chennai – 600 017.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree, dated 30.01.2023 made in M.C.O.P.No.8283 of 2018 on the file of the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai.

For Appellant : Mr.I.Abraham Engles

Respondent-1 : Notice Dispensed with

Respondent-2 : Mr.P.Suresh Srinivasan



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JUDGEMENT

Questioning the quantum of compensation passed by the Motor Accident Claims Tribunal/II Court of Small Causes, Chennai, in M.C.O.P.No.8283 of 2018, dated 30.01.2023, 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 22.09.2018 at about 10.30 a.m. while he was riding a Vehicle, Bajaj M 80, bearing Regn.No.TN-02-Z-5613, from Palavayal to Anna Nagar and waiting for a traffic signal at Palavayal Junction Signal, Opposite No.23, GNT Service Road, Chennai, a Tipper Lorry, bearing Regn.No.TN-21-BC-2226, driven by its driver, turned left in the Palavayal Junction signal in a rash and negligent manner and hit the two wheeler of the appellant, as a result of



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which, appellant's right leg has been crashed, and hence, the appellant sought a sum of Rs.35,00,000/- as compensation.

4. The Tribunal, after considering the oral and documentary evidence held that the accident occurred due to the negligent driving of the vehicle owned by the first respondent insured with the second respondent and directed the second respondent/Insurance Company to pay a compensation of Rs.8,36,800/- 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:-

Permanent disability	
(60% x Rs.5,000/-)	: Rs. 3,00,000/-
Pain and sufferings	: Rs. 1,00,000/-
Loss of Income during treatment	: Rs. 45,000/-
Medical Expenses	: Rs.2,31,724/-
Loss of Amenities	: Rs.1,00,000/-
Attender Charges	: Rs. 20,000/-
Transportation to Hospital	: Rs. 20,000/-
Extra-Nourishment	: Rs. 20,000/-
Total	: Rs.8,36,724/- rounded off to Rs.8,36,800/-

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.I.Abraham Engles, learned counsel appearing for the appellant/claimant would submit that at the time of the accident, occurred in the year 2018, the appellant was aged about 48 years and he was running a Shop, under the name and style 'Arul Motors, Auto Spare Parts' and earning a monthly income of Rs.22,000/-; that, but, on account of the accident, the appellant's right leg below knee was amputated and the Medical Board issued a Disability Certificate, Ex.C.1, assessing the disability sustained by the appellant as permanent disability at 60% and owing to such disability, he can no longer carry on his avocation on his own, as he did before and is in need of an Assistant to assist to him; apart from that, he is also 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, passed an award of compensation at Rs.3,00,000/- under the head 'Disability', which is too low. Further, the learned counsel submitted that the Tribunal while computing compensation towards Disability, has adopted



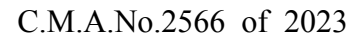
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percentage method instead of applying multiplier method, which also resulted in awarding an inadequate compensation towards Disability.

6.1 The learned counsel furthermore submitted that the Tribunal, while determining compensation under the head 'Loss of Earning during the treatment Period' took the notional monthly income of the appellant only at Rs.15,000/- and awarded compensation of Rs.45,000/-(Rs.15,000/- x 3), which is too low and prayed that the same requires appropriate modification.

6.2 The learned counsel would also submit that the compensation awarded by the Tribunal under other heads, more particularly, under the heads 'Pain and Sufferings' and 'Loss of Amenities' are too low and sought for proper enhancement of the compensation amount.

6.3 Further, the learned counsel submitted that the Tribunal also failed to award any compensation toward Future Medical Expenses, since, due to amputation in his right leg, the appellant has been fixed with artificial



8. Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent/Insurance Company would submit that though the appellant sustained disability at 60% but yet, the appellant continued his Job of selling the secondhand Spare Parts and accessories and therefore, the Tribunal was right in determining the compensation towards disability by adopting percentage method and fixed the notional monthly income of the appellant at Rs.15,000/- for the purpose of awarding compensation towards Loss of Income during Treatment Period and hence, the award of



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compensation under the two heads, 'Disability' and 'Loss of Income during treatment Period' are just and proper. 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.

9. 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 become a lame man 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, wrongly came to the conclusion that there is no functional disability sustained by the claimant on account of the accident and chosen to adopt the percentage



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method and has awarded a compensation of Rs.3,00,000/- which is too low, as rightly contended by the learned counsel for the appellant/claimant.

10.1 Therefore, this Court, taking into consideration of other aspects of the functional disability of the injured, as due to the accident, it is seen that the claimant's right leg got amputated, due to which, he is unable to do any work on his own, and though he continued his avocation by selling second hand spare parts, obviously, he has to engage an Assistant to assist him in his work, for which, he has to spend additional expenses towards his salary. Further, this Court, on consideration of one other important factor that due to amputation on his right leg below knee, the appellant/claimant has to suffer with his disability life long, as cannot do any work on his own with his one leg and is in need of others help, is inclined to pass award under the head, 'Disability', by adopting multiplier method. However, so far as fixation of notional monthly income of the appellant by the Tribunal at Rs.15,000/- is concerned, this Court finds the same to be just and proper, as, the appellant failed to produce any income proof and in the absence of the same, the said sum of Rs.15,000/- towards notional monthly income is just



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and fair.

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10.2 Thus, by taking the notional monthly income of the injured appellant at Rs.15,000/-; adding 25% towards future prospects; applying right multiplier of '13' (since the injured was aged 48 years) and taking the functional disability at 60%, 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

$$\text{Rs.15,000/-} + \text{Rs.3,750/-} \times 13 \times 12 \times 60/100 = \text{Rs.17,55,000/-}$$

10.3 Consequently, the sum of Rs.3,00,000/- awarded by the Tribunal under the head of 'Loss of Future Income due to Disability' is hereby modified and enhanced to **Rs.17,55,000/-**.

10.4 So far as the award of compensation under the two heads, viz., 'Pain and Sufferings' and 'Loss of Amenities' at Rs.1,00,000/-each is concerned, though the learned counsel appearing for the appellant



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contended that the same to be low, this Court finds that since the Tribunal has computed compensation towards Disability by adopting percentage method, it has simultaneously, compensated the same by wrongly awarding such an exorbitant sum of Rs.1,00,000/- towards the said two heads, viz., 'Pain and Sufferings' and Loss of Amenities'. Hence, this Court is inclined to award a sum of Rs.50,000/- each towards the aforesaid two heads.

10.5 Insofar as award of compensation toward Future Medical Expenses, as rightly contended by the learned counsel for the appellant/claimant, the Tribunal has failed to award any compensation under the said head. Therefore, this Court considering the fact that due to amputation of his right leg below knee, the appellant has been fixed with artificial leg, and the same has to be replaced triennially ,this Court is inclined to award a sum of Rs.50,000/- as fair compensation towards Future Medical Expenses.

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.17,55,000/-.
2	Pain and Sufferings	Rs. 50,000/-
3	Loss of Earning during treatment period	Rs. 45,000/-
3	Medical Expenses	Rs. 2,31,724/-
4	Loss of Amenities	Rs. 50,000/-
4	Attender's Charges	Rs. 20,000/-
5	Transportation	Rs. 20,000/-
6	Extra Nourishment	Rs. 20,000/-
7	Future Medical Expenses	Rs. 50,000/-
Total		Rs.22,41,724/-

11.1 Consequently, the total compensation amount of Rs.8,36,800- awarded by the Tribunal is hereby modified and enhanced to **Rs.22,41,724/-**



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which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

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 amount, less the amount already withdrawn, if any, by making necessary



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application before the Tribunal.

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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.

06.02.2024

To

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



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Krishnan Ramasamy,J.,
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