



C.M.A.Nos.2845 & 1920 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.Nos.2845 & 1920 of 2023

and

C.M.P.No.18583 of 2023

CMA.No.2945 of 2023:

Jayakumar

...Appellant

Vs

1.V.Selvakumar

2.M/s.National Insurance Company Ltd.,

Motor Third Party Hub,
'Regina Mansion' III Floor,
No.46, Moore Street,
Chennai 600 001.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the amount awarded in award dated 23.03.2023 passed in MCOP.No.6750 of 2017 by the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai.



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C.M.A.Nos.2845 & 1920 of 2023

For Appellant : Mr.K.Varadha Kamaraj

For Respondent : Mr.J.Micheal Visuvasam, for R2

CMA.No.1920 of 2023:

M/s.National Insurance Company Ltd.,
Motor Third Party Hub,
'Regina Mansion' III Floor,
No.46, Moore Street,
Chennai 600 001.

...Appellant

Vs

1.Jayakumar
2.V.Selvakumar

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award dated 23.03.2023 passed in MCOP.No.6750 of 2017 by the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai.

For Appellant : Mr.J.Micheal Visuvasam

For Respondent : Mr.K.Varadha Kamaraj, for R1



COMMON JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 23.03.2023 passed in MCOP.No.6750 of 2017.

2. The learned counsel for the claimant would submit that on 19.08.2017, when the claimant was travelling as a passenger in Auto Rickshaw bearing Registration No.TN 05 V 6852 at CMBT Emergency Out Gate, the driver drove the said Auto in a rash and negligent manner and dashed against the emergency gate, due to which the claimant had sustained grievous injuries. Considering all the aspects, the Tribunal had awarded the compensation in the following manner:

<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
1	Functional Disability	7,79,520
2	Medical Expenses	2,28,794
3	Pain and Sufferings	30,000
4	Transportation Expenses	10,000
5	Nutrition Expenses	10,000
6	Damages to Clothes	1,000
7	Attender Charges	4,500
8	Loss of Amenities	30,000
	Total	10,93,814
	Rounded off to	10,94,000



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3. The learned counsel for the appellant would submit that there is no dispute with regard to the occurrence of accident and fixation of liability. The only challenge is with regard to the disability sustained by the claimant due to the said accident. The said accident was occurred in the year 2017 and at the time of accident, the claimant was aged about 33 years and unmarried.

4. Further, by referring the Ex.P3, the learned counsel appearing for the claimant would submit that initially, the petitioner was diagnosed with Fracture femur (L) with hematoma(L) proximal thigh with skin necrosis – scaphoid fracture (L), contusion (L) forearm and thereafter, he was again admitted in the hospital and the treatment was provided for two fractures and plates were also fixed at left wrist and the left thigh. Further, he would submit that huge amount of flesh has been removed from the left thigh, due to which, there is a disfigurement, which has to be filled up with 2 kg of flesh and hence, it is very difficult for him to continue his avocation.



5. Prior to the accident, the claimant was working as driver and now he is working as Watchman and earning a sum of Rs.10,000/- per month. Since the disability was assessed by the Medical Board at 45% and the claimant had lost his avocation in entirety, the functional disability of 20% taken by the Tribunal is too low. Hence, he request this Court to enhance the same.

6. On the other hand, the learned counsel appearing for the respondent had strongly opposed for any enhancement of compensation and would submit that the claimant is now working as Watchman and drawing a sum of Rs.10,000/-. Further, he would submit that the claimant had renewed his driving license and hence, he has not lost his avocation in entirety. He is continuing his profession as driver. In such case, the functional disability fixed by the Tribunal at 20% is on the higher side and the same has to be reduced.

7. Heard the learned counsel for the appellant and the respondent and also perused the materials available on record.



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8. A perusal of Ex.C1/disability certificate, it appears that the disability was assessed by the Medical Board at 45%. There is no dispute with regard to the avocation of claimant, however, the only issue is as to whether the claimant is continuing his avocation after the said accident or not.

9. Today, the claimant had appeared before this Court. Upon his appearance, this Court had witnessed that there is a complete disfigurement of left thigh, since a huge amount of flesh was removed and hence, there is no doubt that it will be very difficult for him to drive the vehicle for long distance. Now, he may drive for nearly 5 to 10 kms in and around his resident area and the same cannot be construed as continuing of his avocation as driver. In such case, the renewal of driving license would also be made by the claimant only for driving in and around his resident area and he cannot drive for long distance.

10. Further, as per the law laid down by the Hon'ble Apex Court in ***Rajkumar vs. Ajaykumar and another*** reported in ***2010 SCC OnLine SC 1166***,



if the claimant had lost his avocation in entirety, the compensation has to be awarded by applying multiplier method for permanent disability by taking the entire disability as assessed by the Medical Board. Hence, in the present case, taking into consideration of the claimant's previous avocation and present avocation, the Tribunal had rightly fixed the disability at 20% as functional disability. Hence, this Court does not find any error or illegality in the same. Further, since there is no merit in these appeals, this Court is inclined to dismiss these appeals and confirm the award passed by the Tribunal with regard to the functional disability. Accordingly, the same stands confirmed.

11. In the result, these Civil Miscellaneous Appeals are dismissed and the Insurance Company is directed to deposit the entire award amount along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment, to the credit of MCOP.No.6750 of 2017 on the file of the Motor Accident Claims Tribunal, (IV Court of Small Causes), Chennai. Upon such deposit, the Tribunal is directed to transfer the award amount to bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit and receipt of the



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Bank details obtained from the claimant. No costs. Consequently, the connected miscellaneous petition is also closed.

08.03.2024

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
nsa



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KRISHNAN RAMASAMY,J.

nsa

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