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C.M.A.No.2534 of 2023

IN THE HIGH OF JUDICATURE AT MADRAS

DATED : 16.02.2024

Coram

The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.2534 of 2023

Mr.Syed Ansari

... Appellant

Vs.

1. Mr.S.Dhanam
2. ICICI Lombard General Ins.Co.Ltd.,
Chottabhai Centre,
No.140, Uthamar Gandhi Road,
Nungambakkam, Chennai 600 034.

Now at:

“Arihant Plaza” 1st Floor,
No.84 & 85, Walltax Road,
Chennai 600 003.

...Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 17.06.2022, passed in M.C.O.P.No.7244 of 2016, on the file of the Motor Accident Claims Tribunal/VI Small Causes Court, Chennai.

For Appellant : Mr.P.C.Ramesh

Respondent-1 : Notice Dispensed with
vide order dated 17.10.2023

For Respondent-2 : Ms.A.Salomi



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JUDGEMENT

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This Civil Miscellaneous Appeal has been filed by the appellant/claimant challenging the award passed by the Motor Accident Claims Tribunal (hereinafter, referred to as 'the Tribunal') in M.C.O.P.No.7244 of 2016, dated 17.06.2022.

2. On 30.10.2016 at about 02.00 a.m., the appellant/injured was travelling as a occupant in a car bearing Reg.No.TN-03 K 3930 from Chennai to Tindivanam GST Road, which was driven by its driver in a rash and negligent manner and dashed against the left side wall and got capsized into the ditch, due to which, the appellant/injured sustained grievous injures all over his body. Hence, the claimant/appellant made a claim petition before the Tribunal, claiming a sum of Rs.50,00,000/- as compensation.

3. The Tribunal after considering the oral and documentary evidence held that the accident occurred due to rash and negligence on the part of the Car Driver, and hence, directed the second respondent/Insurance Company to pay a compensation of Rs.36,97,500/-



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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.

4. Aggrieved over the award passed by the Tribunal, the appellant/claimant has filed the present appeal seeking for enhancement of compensation.

5. Mr.P.C.Ramesh, learned counsel appearing for the appellant/claimant contended that the accident took place in the year, 2016 and at the time of the accident, the appellant was aged about 22 years and working as a Sales Executive in a Tass Mobile Store, earning Rs.17,500/- per month and as proof to the same, the appellant/claimant has marked Ex.P10 viz., Salary Certificate issued by the Employer of the injured, however, the Tribunal, while determining the award of compensation under the head “Loss of Income due to Disability”, fixed the notional monthly income of the appellant/claimant at Rs.12,000/- per month, which is meagre. Therefore, the learned counsel contended that based on the Salary Certificate, the Tribunal ought to have fixed higher notional income of the injured and, accordingly he prayed for appropriate



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enhancement in favour of the appellant.

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6. Ms.A.Salomi, learned counsel appearing for the second respondent/Insurance Company, per contra, submitted that though the appellant/claimant has marked Ex.P.10, Salary Certificate so as to prove that the injured/appellant was earning a sum of Rs.17,500/- p.m., at the time of the accident, the Employer of the appellant, who issued such certificate was not examined and in the absence of any corroborative evidence to prove the same, and only based on the 12th standard transfer certificate, the Tribunal has fixed the notional monthly income of the claimant at Rs.12,000/- per month, which is correct and proceeded to award compensation towards “Loss of Income due to Disability”, which is just and reasonable and the same need not be interfered with by this Court. Further, she contended that the compensation awarded by the Tribunal towards “loss of income during treatment period” for a period of 6 months was arrived at a sum of Rs.72,000/-, which is double benefit to the injured, and the same is liable to be set-aside by this Court. Though the second respondent/Insurance Company has not filed any appeal, she requested to re-consider the award passed under the said



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head.

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

8. In the present case, as noticed above, the appellant/injured was working as a Sales Executive in a Tass Mobiles Store and aged about 22 years at the time of the accident. Further, the Medical Board fixed the disability of claimant at 80%, which is not in dispute, and due to the accident, the appellant/claimant right hand was amputated and disability is severe in nature due to which, the marital prospects are also diminished. Therefore, the learned counsel for the appellant contended that due to loss of his right-hand, the appellant is not able to perform his day-to-day work as he did before. Hence, this Court, in the light of the law laid down by the Hon'ble Supreme Court in catena of judgements and taking into consideration of the nature of employment of the appellant (Sales Executive in Tass Mobiles), and he had earned a sum of



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Rs.17,500/- p.m., deems it fit to fix the notional monthly income of the injured at Rs.13,000/-. Adding future prospects at 40% as per the dictum laid-down by the Hon'ble Apex Court, the total income is quantified at Rs.18,200/- per month. The injured was aged about 22 years at the time of accident as evidenced from the records, adopting the multiplier of 18 as per the decision of Apex Court, the loss of earning due to disability is arrived at $Rs.18,200/- \times 12 \times 18 \times (80/100) = Rs.31,44,960/-$.

9. As rightly contended by the learned counsel for the second respondent, the Tribunal has awarded a sum of Rs.72,000/- under the head of “loss of earning during treatment period” for a period of six months, from the date of accident, which is liable to be set-aside and accordingly, the same is set-aside.

10. Consequently, a sum of **Rs.29,03,040/-** awarded by the Tribunal under the head of “loss of earning due to disability” is hereby modified, and enhanced to **Rs.31,44,960/-**. This Court finds that the Tribunal has failed to award any compensation under the heads of “loss of amenities”, “marital prospects” and “damages to clothes”. Hence, this



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Court is inclined to award a sum of Rs.1,00,000/- towards “loss of amenities” and a sum of Rs.1,00,000/- towards “marital prospects” for losing his better life partner, and sum of Rs.2,000/- towards “damages to clothes”.

11. Insofar as the compensation awarded by the Tribunal under all other heads are concerned, this Court finds the same to be just and proper and are hereby confirmed.

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

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Total loss of earning due to disability	29,03,040/-	31,44,960/- (enhanced)
Loss of amenities	Nil	1,00,000/- (awarded)
Marital prospects	Nil	1,00,000/- (awarded)
Loss of earning during treatment	72,000/-	Nil
Medical expenses	4,82,374/-	4,82,374/-
Pain and sufferings	2,00,000/-	2,00,000/-
Extra nourishments	10,000/-	10,000/-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Attender charges	10,000/-	10,000/-
Transportation charges	20,000/-	20,000/-
Damages to clothes	Nil	2,000/-
Total	36,97,414/-	40,69,334/-

13. The appeal is partly allowed and the impugned Award of the Tribunal is modified by enhancing the compensation amount from **Rs.36,97,414/-** to **Rs.40,69,334/-**. The second respondent/Insurance Company is directed to deposit the said amount along with interest and cost, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment, to the credit of M.C.O.P.No.7244 of 2016 on the file of VI Small Causes Court, Chennai. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the deposit or from the date of receipt of the Bank details obtained from the claimant or application for withdrawal from the claimant, whichever is earlier. The appellant/claimant is directed to pay the necessary Court fee for the enhanced compensation amount, if required. The Tribunal below shall



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not disburse the enhanced amount till such time the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs.

16.02.2024

Index : Yes / No
NCC : Yes / No
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To

1. The Motor Accident Claims Tribunal,
VI Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



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Krishnan Ramasamy,J.,

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