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Civil Miscellaneous Appeal No.1676 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1676 of 2024

Kuppusamy
Appellant

...

Vs.

1. Prabhu

2. Santhosh Kumar

3. The New India Assurance Co Ltd.,
No.7, B.K.Building, Ramalinga Madalaya Street,
Gugai, Salem – 636 006

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order made in M.C.O.P.No.1061 of 2020 dated 05.04.2022, on the file of the Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : M/s.S.Chendur Eashwaran
for Mr.C.Ramesh for R1 & R2



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Mr.N.Somasundar for R3

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed this appeal challenging the award passed by Motor Accident Claims Tribunal, Special Subordinate Judge No.II, Salem in M.C.O.P.No.1061 of 2020 dated 05.04.2022.

2. The case of the claimant is that on 16.07.2020, he was driving the lorry along with gas cylinders at Salem to Ponnampettai road. The lorry was parked near Bharat gas agency to unload the cylinders. At about 6.30 a.m, the offending vehicle which was also a goods vehicle was driven in a rash and negligent manner and it dashed on the claimant. As a result of which, the claimant sustained comminuted fracture left femur. The claimant underwent treatment as an in patient for 12 days and an operation was also performed. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.



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3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the accident had taken place only due to the rash and negligent driving on the part of the driver of the offending vehicle.

4. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.4,51,214/- under various heads as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Permanent disability	Rs.1,50,000/-
2.	Pain and sufferings	Rs. 30,000/-
3.	Loss of amenities	Rs.30,000/-
4.	Medical bills	Rs.1,50,214/-
5.	Loss of Income	Rs.40,000/-
6.	Transport charges	Rs.15,000/-
7.	Extra Nourishment	Rs.15,000/-
8.	Attendar charges	Rs.20,000/-
9.	Loss of damages to clothes	Rs. 1,000/-
	Total	Rs.4,51,214/-

5. The above compensation was directed to be paid by the



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Insurance company with interest at the rate of 7.5% per annum.

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6. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation.

7. Heard Mr.T.S.Arthanareeswaran, learned counsel for appellant/claimant and Mr.S.Chendur Eashwaran, learned counsel for R1 and R2 and Mr.N.Somasundar, learned counsel for 3rd respondent insurance company.

8. This Court carefully considered the submissions made on either side and the materials available on record.

9. This Court also carefully went through the award passed by the Tribunal.

10. The learned counsel for the Appellant submitted that the claimant was a lorry driver and he sustained communitied fracture left



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femur. As a result of which, there was difficulty in sitting, squatting, sitting cross legged and difficulty in climbing stairs. The learned counsel brought to the notice of this Court Ex.X1, which is the disability certificate given by the Medical board. The Medical board had assessed the disability at 30%. The learned counsel therefore submitted that the claimant had suffered functional disability and therefore, the Tribunal ought to have adopted the multiplier method.

11. In the instant case, the claimant was aged about 61 years. The Tribunal on considering the materials available on record came to a clear finding that the claimant does not suffer from any functional disability. Therefore, the Tribunal proceeded to fix the compensation by adopting per percentage method. This finding of the Tribunal is not perverse and it does not warrant the interference of this Court.

12. At this juncture, it must be pointed out that the Medical board in almost all cases, pertaining to injury to the leg, makes mechanical observations verbatim as follows :-



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***“Difficulty in sitting, squatting, sitting cross legged pain
in knee difficulty in climbing stairs, cant ambulate
without support”***

13. The practice of private doctors granting the disability certificate was done away with, since it was found that a lot of fraud was committed in the said process. That is the reason why, the assessment by the Medical board was brought in as a regular practice. Now, the medical board has started making mechanical observations in the disability certificate. This practice of making observations in a mechanical fashion in all cases involving injury to the limbs, must be stopped. This Court has already taken cognizance of the functioning of the Medical boards in yet another case and has directed the State Government Pleader to appear in that case and to ensure that a circular is issued in line with the directions already issued by this Court in an earlier order. Unless and otherwise, the Medical board functions with all sincerity and assess the disability correctly and also take note of the actual consequences of the injury, the very purpose of referring the matter to the Medical board will be defeated.



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14. Having made the above observation, this Court finds that the accident in this case had taken place in the year 2020. Hence, this Court is inclined to fix a sum of Rs.8,000/- per percentage. Accordingly, the compensation under the head of disability is fixed at Rs.2,40,000 (30 x 8000/-).

15. The Tribunal has fixed a sum of Rs.30,000/- under the loss of amenities. Once the Tribunal fixes the compensation by adopting the per percentage method and also gives a finding that there is no functional disability suffered, fixing a separate compensation under the head of loss of amenities is impermissible. Useful reference can be made to the judgement of the Apex Court in ***[Raj Kumar Vs.Ajay Kumar and another] reported in 2010 (2) TNMAC 581 (SC)*** and the relevant portion is extracted hereunder :-

5. The heads under which compensation is awarded in personal injury cases are the following :

Pecuniary damages (Special Damages)

(i) Expenses relating to treatment, hospitalization, medicines, transportation, nourishing food, and miscellaneous expenditure.



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(ii) Loss of earnings (and other gains) which the injured would have made had he not been injured, comprising :

(a) Loss of earning during the period of treatment;

(b) Loss of future earnings on account of permanent disability.

(iii) Future medical expenses.

Non-pecuniary damages (General Damages)

(iv) Damages for pain, suffering and trauma as a consequence of the injuries.

(v) Loss of amenities (and/or loss of prospects of marriage).

(vi) Loss of expectation of life (shortening of normal longevity). In routine personal injury cases, compensation will be awarded only under heads (i), (ii)(a) and (iv). It is only in serious cases of injury, where there is specific medical evidence corroborating the evidence of the claimant, that compensation will be granted under any of the heads (ii)(b), (iii), (v) and (vi) relating to loss of future earnings on account of permanent disability, future medical expenses, loss of amenities (and/or loss of prospects of marriage) and loss of expectation of life. Assessment of pecuniary damages under item

(i) and under item (ii)(a) do not pose much difficulty as they involve reimbursement of actuals and are easily ascertainable from the evidence. Award under the head of future medical expenses - item (iii) -- depends upon specific medical evidence regarding need for further treatment and cost thereof. Assessment of non-pecuniary damages - items (iv), (v) and (vi) -- involves



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determination of lump sum amounts with reference to circumstances such as age, nature of injury/deprivation/disability suffered by the claimant and the effect thereof on the future life of the claimant. Decision of this Court and High Courts contain necessary guidelines for award under these heads, if necessary. What usually poses some difficulty is the assessment of the loss of future earnings on account of permanent disability - item (ii)(a). We are concerned with that assessment in this case. Assessment of future loss of earnings due to permanent disability

16. In view of the above, a sum of Rs.30,000/- fixed under the head of loss of amenities is hereby set-aside.

17. The claimant had underwent treatment as an in patient for nearly 12 days. In view of the same, this Court is inclined to enhance the compensation under the head of “Extra Nourishment” to Rs.25,000/-.

18. The claimant in this case was a lorry driver and he was aged about 61 years. Considering the injury sustained by the claimant, this Court is inclined to fix a sum of Rs.50,000/- under the head of “loss of income”.



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19. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

20. In the light of the above discussion, this Court modifies the compensation in the following manner:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Permanent disability	Rs.2,40,000/-
2.	Pain and sufferings	Rs. 30,000/-
3.	Medical bills	Rs.1,50,214/-
4.	Loss of Income	Rs.50,000/-
5.	Transport charges	Rs.15,000/-
6.	Extra Nourishment	Rs.25,000/-
7.	Attendar charges	Rs.20,000/-
8.	Loss of damages to clothes	Rs. 1,000/-
	Total	Rs.5,31,214/-

21. The compensation awarded by the Tribunal at Rs.4,51,214/- is enhanced to Rs.5,31,214/-. The Insurance company is directed to deposit the enhanced compensation, less the amount already



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deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.80,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay of 291 days as was ordered by this Court in C.M.P.No.23791 of 2023, dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

16.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To, Motor Accident Claims Tribunal, Special Subordinate Judge No.II,

Salem

N.ANAND VENKATESH.,J



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