



C.M.A.No.1027 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

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Thatchinamoorthy

.. Appellant

Vs.

1.E.Jayanth

(R1 remained exparte before the Tribunal.
Hence, notice to R1 dispensed with)

2.P.Saravanan

3.The New India Assurance Company Limited,
Having its branch office at;
No.9/6, Bhavani Road,
Karumandichellipalayam,
Perundurai – 638 052.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the compensation amount awarded in the Judgment dated 09.03.2022 in M.C.O.P.No.726 of 2019 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Erode, by allowing this Civil Miscellaneous Appeal.



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For Appellant : Mr.C.Ramaraj
For R2 : Mr.S.Parthasarathy
For R3 : Mr.C.Johnson

J U D G M E N T

The claimant not being satisfied with the quantum of compensation has filed the present appeal before this Court against the award passed by the Motor Accident Claims Tribunal / Special Sub Court, Erode, in M.C.O.P.No.726 of 2019 dated 09.03.2022.

2.The case of the claimant is that on 12.12.2018, he was riding a two wheeler from Palliyuthu to Kudumiyampalayam and at about 07.30 AM near Veppankadu, the offending vehicle which was a car came in the opposite direction and it was driven in a rash and negligent manner and it dashed on the two wheeler of the claimant and as a result, the claimant fell down and sustained Type 2 Open fracture right distal femur with closed both bone fracture right leg with auto amputated great toe right foot. The claimant underwent treatment as an inpatient for nearly 50 days. Surgery was also performed. The disability was assessed at 60% partial permanent disability. It is under these circumstances, the claim



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petition came to be filed before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the 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 car. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.8,01,00/- under various heads as follows:

1.Transport to Hospital	-	Rs.15,000/-
2. Extra Nourishment	-	Rs.10,000/-
3.Damages for Clothes and Articles	-	Rs.3,000/-
4.Medical Expenses	-	Rs.27,000/-
5.Pain and sufferings	-	Rs.65,000/-
6.Permanent Disability & Loss of Earning Power	-	Rs.6,81,000/-

		Rs.8,01,000/-

4.The above compensation was directed to be paid with interest at



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the rate of 7.5% per annum.

5.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal seeking for enhancement of compensation.

6.Heard the learned counsel for the appellant, learned counsel for 2nd respondent and the learned counsel for the 3rd respondent.

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

8.This Court has also carefully gone through the award passed by the Tribunal.

9.The bone of the contention pertains to the monthly income that was fixed by the Tribunal while calculating the compensation under the head of loss of earnings. The claimant came up with a specific case that he was an Electrician engaged in a Private Company and he was earning



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a sum of Rs.30,000/- per month. To substantiate the same, he had produced the salary certificates which were marked as Ex.P26 & Ex.P27 and to corroborate the same, P.W.4 & P.W.5 were also examined. The Tribunal came to a conclusion that no further materials were produced by P.W.4 & P.W.5 like the attendance certificate or the Income Tax documents, etc., and therefore, the Tribunal proceeded to fix the notional monthly income at Rs.9,000/-.

10.The claimant was not claiming to be an Electrician earning monthly salary by merely making an oral statement. He has taken efforts by marking certain documents and also examined certain witnesses. The same cannot be completely disregarded. Therefore, this Court is inclined to fix the notional monthly income at Rs.12,000/-. If 40% future prospects is added, it works out to Rs.16,800/-. Thus, the compensation under the head of loss of earnings is calculated as follows:

$$\text{Rs.16,800/-} \times 12 \times 15 \times 30/100 = \text{Rs.9,07,200/-}.$$



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11.As already stated supra, the claimant was undergoing treatment as an inpatient for nearly 50 days and his big toe was also amputated. Therefore, this Court is inclined to enhance the compensation under the head of extra nourishment to Rs.15,000/-, to fix the compensation under the head of attender charges as Rs.15,000/- and also to enhance the compensation under the head of pain and sufferings to Rs.1,00,000/-.

12.The Tribunal apart from granting compensation under the head of loss of earnings, has also independently calculated compensation under the head of loss of income. The Tribunal having adopted the multiplier method and granted compensation to the claimant, cannot independently grant compensation under the head of loss of income also. This head gets merged with the loss of earnings. Hence, the finding rendered in that regard by the Tribunal is unsustainable.

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

14.In the light of the above discussion, the compensation fixed by



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the Tribunal is modified as follows:

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1.Transport to Hospital	-	Rs.15,000/-
2. Extra Nourishment	-	Rs.15,000/-
3.Damages for Clothes and Articles	-	Rs.3,000/-
4.Medical Expenses	-	Rs.27,000/-
5.Pain and sufferings	-	Rs.1,00,000/-
6.Permanent Disability & Loss of Earning Power	-	Rs.9,07,200/-
7.Attender charges	-	Rs.15,000/-

		Rs.10,82,200/-

15.The compensation awarded by the Tribunal at Rs.8,01,000/- is hereby enhanced to Rs.10,82,200/-. The 3rd respondent-Insurance Company is directed to deposit the enhanced compensation together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four (4) weeks from the date of receipt of this judgment, if not already deposited. Insofar as the enhanced compensation of Rs.2,81,200/- is concerned, the appellant / claimant will not be entitled for interest for the period of delay of 162 days in filing this appeal.



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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.

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

27.06.2024

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Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No

To

1.The Special Sub Judge,
Motor Accident Claims Tribunal,
Special Sub Court,
Erode.

2.The Section Officer,
VR Section,
Madras High Court,
Chennai.

N.ANAND VENKATESH, J.



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