



C.M.A.No.700 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2024

C O R A M

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

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S.Senthil

...Appellant

Vs

1.National Distributors,
No.6/30, Loganathan Street,
West Tambaram,
Chennai 40

2.Oriental Insurance Company Limited,
No.115/216, Prakasam Road, Broadway,
Chennai 600 108.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance and to set aside the award as against the judgment and decree dated 20.09.2016 and made in MACTOP.No.2924 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.



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For Appellant : Ms.A.Subadra

For Respondent : Mr.D.Bhaskaran for R2

JUDGMENT

This civil miscellaneous appeal has been filed challenging the judgment and decree dated 20.09.2016 made in MACTOP.No.2924 of 2013.

2. The learned counsel for the claimant would submit that on 04.04.2013, while the appellant was riding a Motorcycle bearing Registration No.TN-22-AJ-9990 at Perungalathur Kalazhar Salai, a TATA ACE bearing Registration No.TN-22-CU-2089 came in a rash and negligent manner and dashed against him, due to which he 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	Disability	75,000
2	Pain and Sufferings	25,000
3	Extra Nourishment	2,500
4	Transportation	2,500
5	Damage to Clothes	500
6	Attender's Charges	2,400
7	Medical Expenses	35,854



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<i>S.No</i>	<i>Heads</i>	<i>Compensation (Rs.)</i>
8	Future Medical Expenses	2,500
9	Loss of Income	6,500
10	Loss of Amenities	2,500
	Total	1,55,254

3. Further, he would submit that the appellant had sustained grievous injuries and the Doctor, who examined the appellant had assessed the disability at 40%. However, the Tribunal had awarded compensation by applying percentage method and by considering only 25% as functional disability since the certificate was not issued by the Medical Board. He would also contend that the Tribunal had awarded the compensation towards Loss of Income only for a period one month, which is on the lower side. Hence, he requests this Court to award the compensation towards loss of income for 3 months.

4. In reply, the learned counsel appearing for the respondent would fairly submit that the loss of income may be fixed for 3 months. However, as far as disability is concerned, he would submit that since the disability certificate was not issued by the Medical Board, the Tribunal had rightly taken 25% as functional disability of the claimant and hence, requests to confirm the same.



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5. Heard the learned counsel for the appellant and the respondents and also perused the documents available on records.

6. In the present case, there is no dispute with regard to the occurrence of accident, fixation of negligence and fastening of liability. The only issue is with regard to the quantum of compensation awarded by the Tribunal. Upon perusal of records, it appears that the disability certificate was only issued by the Doctor, who examined the claimant and not by the Medical Board. Hence, the Tribunal had taken only 25% as functional disability of the claimant. However, this Court is of the view that since the disability certificate was issued by the Doctor, who examined the claimant and not by the Medical Board, it may vary only about 5% to 10% and hence, the same cannot be completely ignored. In such case, the Tribunal should have taken 30% as functional disability for awarding compensation, however, the Tribunal had failed to do so. In such case, this Court is inclined to take 30% as functional disability of the claimant and accordingly, the compensation awarded by the Tribunal stands enhanced to a sum of Rs.90,000/- [30% * Rs.3,000/-].



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7. As far as the loss of income is concerned, the Tribunal had awarded the loss of income for a period of one month by taking the income of the claimant as a sum of Rs.6,500/- per month. In the present case, the accident was occurred in the year 2013 and hence, considering the year of accident, age and avocation of the claimant, this Court is inclined to fix a sum of Rs.10,000/- per month as notional income of the claimant. Further, considering the injuries sustained by the claimant, it appears that definitely the claimant is supposed to have undergone treatment for a period of 3 months and hence, he will not be able to go for his avocation for the said period. Therefore, this Court is inclined to award the compensation towards loss of income for a period of 3 months. In such case, the loss of income would be a sum of Rs.30,000/- [3 months * Rs.10,000/-].

8. That apart, the compensation awarded by the Tribunal towards loss of Amenities appears to be on the lower side. Hence, this Court is inclined to award a sum of Rs.10,000/- towards the same.



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9. Accordingly, the compensation awarded by the Tribunal is modified as

follows:

<i>S.No.</i>	<i>Heads</i>	<i>Compensation awarded by Tribunal (Rs.)</i>	<i>Compensation awarded by this Court (Rs.)</i>
1	Disability	75,000	90,000
2	Pain and Sufferings	25,000	25,000
3	Extra Nourishment	2,500	2,500
4	Transportation	2,500	2,500
5	Damage to Clothes	500	500
6	Attender's Charges	2,400	2,400
7	Medical Expenses	35,854	35,854
8	Future Medical Expenses	2,500	2,500
9	Loss of Income	6,500	30,000
10	Loss of Amenities	2,500	10,000
	Total	1,55,254	2,01,254

10. Therefore, the amount awarded by the Tribunal is modified as a sum of Rs.2,01,254/-. Accordingly, the award amount stands increased from a sum of Rs.1,55,254/- to Rs.2,01,254/-. In all other aspects, the award of the Tribunal stands confirmed.

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the 2nd respondent is directed to deposit a sum of Rs.2,01,254/- along with



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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 MACTOP.No.2924 of 2013 on the file of the Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. Further, as per the order dated 29.02.2024, the 2nd respondent shall not pay any interest for the delayed period of 1968 days in filing the present appeal. Upon such deposit, the Tribunal is directed to transfer the award amount to the bank account of the claimant, by way of RTGS, within a period of three weeks from the date of deposit and receipt of the Bank details obtained from the claimant. No costs.

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Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
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KRISHNAN RAMASAMY,J.

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