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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1404 of 2021

Pachiappan ... Appellant

vs.

1. Poongodi

2. Reliance General Insurance Company Ltd.,
Sree Lakshmi Complex, 1st floor,
Bharathi Street, Omalur Main road,
Salem - 636 004.

3. Chandrasekar

4. ICICI Lombard General Insurance Company Ltd.,
Swarnambigai Plaza, Omalur Main Road,
Salem - 636 004. ... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Award, dated 24.04.2017 in M.C.O.P.1961/2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem.

For Appellant : Mr.S.P.Yuvaraj

For R2 : Mr.P.Suresh Srinivasan

For R4 : Mr.K.Poomalai

JUDGMENT

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The appellant is the claimant in M.C.O.P.1961/2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of M.A.C.T. Rules, seeking compensation of Rs.50,00,000/- for the injuries sustained by him in a road accident that occurred on 09.03.2013.

2. The brief case of the appellant / claimant is as follows :

On 09.03.2013, the claimant was driving a lorry bearing Registration number TN 52 9939 on Mangrol Chauraha road, Ratlam, Madhya Pradesh and at about 16.30 hours, when he was nearing Salakhedi village, another lorry bearing Registration number TN 52 D 5973 overtook the lorry driven by the claimant. The driver of the lorry also applied sudden brake in the middle of the road, consequent upon which the claimant hit the said lorry and sustained injuries all over his body. He was immediately rushed to the hospital.

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3. According to the claimant, the rash and negligent driving of the driver of the lorry bearing Registration Number TN 52 D 5973 was the cause for the accident and that since the said vehicle was insured with the second respondent, the Reliance General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to him.

4. In the Tribunal, the owner of the lorry bearing Registration number TN 52 D 5973 remained absent and was set ex-parte. The second respondent, the Reliance General Insurance Company Limited contested the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

5. The claimant also impleaded the owner of the Lorry bearing Registration number TN 52 9939 and the insurer, the ICICI Lombard General Insurance Company Limited as parties to the claim petition.

6. The Tribunal, after analysing the evidence on record, fastened

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negligence on the part of the driver of the lorry bearing Registration number TN 52 D 5973 and directed second respondent, Reliance General Insurance Company Limited to pay compensation of Rs.35,80,801/- together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation. The Tribunal also held that the liability of the owner of the lorry bearing Registration number TN 52 D 5973 and the insurer is joint and several. The Tribunal dismissed the claim petition as against the owner of the lorry bearing Registration number TN 52 9939 and his insurer.

7. Aggrieved over the quantum of compensation awarded by the Tribunal, the present Civil Miscellaneous Appeal is filed by the appellant, claimant.

8. Heard Mr.S.P.Yuvaraj, learned counsel appearing for the appellant, Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent and Mr.K.Poomalai, learned counsel appearing for the fourth respondent.

9. Mr.S.P.Yuvaraj, learned counsel appearing for the appellant contended that the claimant was a heavy motor vehicle driver and on

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account of the accident, he is totally disabled from doing any work. He also drew the attention of this Court to the Medical records which shows that the right leg of the claimant was amputated above knee level. The Medical Board attached to the Government Hospital, Omalur assessed his disability as 84%. Since the claimant was a driver by profession, the Tribunal took functional disability as 100% and awarded Rs.21,60,000/- for disability. The learned counsel for the appellant, claimant further contended that the Tribunal had fixed only a sum of Rs.7,500/- as notional monthly income of the claimant though he was a heavy motor vehicle driver.

10. Per contra Mr.P.Suresh Srinivasan, learned counsel appearing for the second respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

11. It is seen from the records that the claimant was a heavy

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motor vehicle driver and the accident took place while he was driving a lorry bearing Registration number TN 52 9939. A perusal of the medical records shows that the right leg of the claimant was amputated above knee level. The Medical Board attached to Government Hospital, Omalur, assessed the partial permanent disability of the claimant as 84%. Since there is a functional disability to the extent of 100%, multiplier method is warranted as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343.***

12. According to the claimant, he was a heavy motor vehicle driver, earning a sum of Rs.22,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.7,500/-. It is pertinent to point out that the accident took place in the year 2013. Considering the age of the claimant (35 years) and the year of the accident, this Court is of the opinion that fixing notional monthly income of the claimant as Rs.13,000/- would meet the ends of justice. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***, 40% is added towards future prospects of the claimant. The

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proper multiplier in the instant case is 16 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***. Accordingly the 'loss of earning capacity' is calculated as shown under:

Calculation for loss of earning capacity

Notional income fixed - Rs.13,000/-

40% Future prospects - Rs.18,200/-

Proper multiplier - 16

Disability suffered by appellant - 100%

Loss of earning capacity - 13,000 x 12 x 16 x 100%

= Rs.34,94,400/-

The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

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S.No	***Heads***	***Amount awarded by Tribunal (Rs)***	***Amount awarded by this Court (Rs)***
1.	Loss of earning capacity	21,60,000/-	Rs.34,94,400/-
2.	Medical Expenses	8,61,801/-	8,61,801/-
3.	Pain and sufferings	2,00,000/-	2,00,000/-
4.	loss of amenities	1,50,000/-	1,50,000/-
5.	Future medical expenses	1,33,000/-	1,33,000/-
6.	Transportation charges	25,000/-	25,000/-
7.	Extra nourishment	25,000/-	25,000/-
8.	Attender's charges	25,000/-	25,000/-
9.	Damage to clothes	1,000/-	1,000/-
TOTAL		**Rs.35,80,801/-**	**Rs.49,15,201/-**

Thus, the compensation awarded by the Tribunal is enhanced to Rs.49,15,201/- that would carry interest at the rate of 7.5% per annum.

13. In the result,

i. The Civil Miscellaneous Appeal is partly allowed. No costs.

ii. The compensation awarded by the Tribunal is enhanced to Rs.49,15,201/-.

iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed

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to draft the decree only after the receipt of Court fee.

iv. The liability of the owner of the lorry bearing registration number TN 52 D 5973 and the second respondent (the Reliance General Insurance Company Limited) is joint and several and the second respondent, the Reliance General Insurance Company Limited, Salem, is directed to deposit the enhanced compensation amount of Rs.49,15,201/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.1961/2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court No.2, Salem, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order.

v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

vi. The appellant/claimant is not entitled to claim any interest for the period of delay of 861 days in filing this appeal.

18.10.2024

Index : Yes/No
Speaking/Non-speaking order
Neutral citation : Yes / No
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R.HEMALATHA, J.

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To

1. The Motor Accident Claims Tribunal,
Special Sub Court No.2, Salem.

2. The Section Officer, V.R. Section, Madras High Court, Chennai.

C.M.A.No.1404 of 2021

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