



C.M.A.No.1762 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.No.1762 of 2022

and

C.M.P.No.12770 of 2022

United India Insurance Co.Ltd
Branch Office, Dr.Sankaran Road,
Namakkal.

... Appellant

Vs.

1. Murugesan
2. Palaniappan

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 27.07.2015 made in MCOP.No.514/2013 on the file of the MACT (Addl.District Court) at Namakkal.

For Appellant : M/S.I.Malar
For R1 : Mr.S.Sankar
For R2 : No appearance



C.M.A.No.1762 of 2022

WEB COPY

JUDGEMENT

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company, challenging the quantum of compensation awarded by the Motor Accident Claims Tribunal in M.C.O.P.No.514 of 2013 dated 27.07.2015.

2. On 05.11.2012, at about 2.00 p.m., while the claimant/injured was standing on the left side of the road, he was hit by a tractor bearing Reg.No.Tn-48-A-0777, which came from the opposite direction. Due to the said accident, the injured has sustained grievous injuries all over his body, specifically fractures, on his left leg and left rib. Therefore, the claimant made a claim petition before the Tribunal, claiming a compensation of Rs.5,00,000/-.

3. On consideration of oral and documentary evidence, the Tribunal awarded a sum of Rs.5,51,700/-. Questioning the same, the appellant/Insurance Company has filed the present appeal.



C.M.A.No.1762 of 2022

WEB COPY

4. The learned counsel for the appellant/Insurance Company would submit that while determining the compensation, the Tribunal has taken entire percentage of functional disability at 35% and applied multiplier method, and awarded the compensation. Further, he submit that the functional disability taken by the Tribunal is on the higher side and the same is required to be reduced.

5. The learned counsel for the first respondent/claimant would submit that the compensation awarded by the Tribunal for disability, is just and fair, which requires no interference. Further, he contended that the claimant was a driver, due to the said accident, he is not in a position to perform his work well as before. Further, he submitted that the notional income fixed by the Tribunal is on the lower side. Accordingly, he prays for appropriate enhancement in favour of the claimant.

6. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the first respondent and perused the materials available on record.



C.M.A.No.1762 of 2022

WEB COPY

7. The fact and manner of the accident is not disputed by the parties. Therefore, this Court is not dealing with the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. In the present case, the disability was assessed by the Doctor, who treated the claimant and fixed functional disability at 35%. However, today, the claimant appeared before this Court and submitted that he is not in a position to drive the vehicle. In view of that, this Court is not in a position to conclude whether he can drive or not. It appears, that he is well and he is supposed to have get cured. Under these circumstances, and taking into consideration, the submission made by the learned counsel for the appellant, this Court also feels that the functional disability at 35% taken by the Tribunal is not appropriate. Therefore, this Court feels that it would be appropriate to fix the functional disability at 15%. Since the Tribunal has applied multiplier method and awarded compensation, this Court is inclined to take the functional disability at 15% and multiplier method thereon. While applying the multiplier method, the Tribunal has fixed the notional income of the injured as



C.M.A.No.1762 of 2022

WEB COPY

Rs.6,500/-, which is on the lower side, since the injured was working as a driver, and the accident occurred in the year 2012. In fact, in the case of **Syed Sadiq Vs. United India Insurance Company**, reported in **2014 (1) TNMAC 459 (SC)**, the Hon'ble Apex Court, even for a vegetable vendor, who sustained injuries in the accident occurred in the year 2008, fixed the notional monthly income at Rs.6,500/-, by applying the multiplier based on the cost inflation method. Therefore, when the Hon'ble Apex Court took notional income of a vegetable vendor at Rs.6,500/- who met with an accident in the year 2008, this Court feels that, the notional income fixed by the Tribunal at Rs.6,500/- for a driver, who met with the accident in the year 2012, is on the lower side. Applying the ratio laid down by the Hon'ble Apex Court, this Court feels it appropriate to fix notional monthly income of the injured as Rs.9,000/- instead of Rs.6,500/-, which includes future prospects. The injured was aged about 36 years at the time of accident as evidenced from the records, adopting the multiplier of 16 as fixed by the Apex Court, the loss of income to the family is arrived at $\text{Rs.9,000/-} \times 12 \times 16 \times (15/100) = \text{Rs.2,59,200/-}$.



C.M.A.No.1762 of 2022

WEB COPY 8. No amount has been awarded by the Tribunal under the head of “future medical expenses”. Therefore, this Court is inclined to award a sum of Rs.25,000/- towards future medical expenses. In the above circumstances, the compensation awarded by the Tribunal is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning	4,36,800/-	2,59,200/- (reduced)
Medical expenses	44,933/-	44,933/-
Pain and sufferings	25,000/-	25,000/-
Nutrition	5,000/-	5,000/-
Transportation	5,000/-	5,000/-
Attender charges	10,000/-	10,000/-
Loss of Amenities	25,000/-	25,000/-
Future medical expenses	Nil	25,000/-
Total	5,51,733/-	3,99,133/-
	Rounded off	4,00,000/-

9. Accordingly, the Appeal is partly allowed and the impugned Award of the Tribunal is modified by reducing the compensation amount from **Rs.5,51,733/-** to **Rs.4,00,000/-**. The appellant/Insurance Company is directed to deposit the said amount along with interest at 7.5% and



C.M.A.No.1762 of 2022

costs, 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.514 of 2013 on the file of MACT (Additional District Court), Namakkal. Upon such deposit being made, the Tribunal is directed to transfer the entire amount to the bank account of the claimant along with accrued interest, 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 later. No costs. Consequently, connected Miscellaneous Petition is closed.

23.01.2024

Index : Yes / No

NCC : Yes / No

jd

To

1. The Motor Accident Claims Tribunal,
Additional District Court,
Namakkal.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.1762 of 2022

Krishnan Ramasamy,J.,

jd

C.M.A.No.1762 of 2022
and
C.M.P.No.12770 of 2022

23.01.2024