IN THE HIGH COURT OF JUDICATUE AT MADRAS

DATED: 02.04.2024

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THE HONOURABLE **MR. JUSTICE ABDUL QUDDHOSE**

C.M.A.No.1215 of 2019

K.Srinivasan .. Appellant

Vs

1.S.Giri Babu

2.The Manager,
The Reliance General Insurance Co. Ltd.,
No.6, Haddows Road,
Nungambakkam, Chennai – 6. .. Respondents

Prayer: This Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 06.06.2013, made in M.C.O.P.No.26 of 2009 on the file of the Motor Accident Claims Tribunal, Sub-Court, Thiruvallur.

For Appellant : Mr.K.R.Ponnusamy

For Respondents : Mr.M.B.Raghavan

JUDGMENT

This appeal is filed against the judgment and decree dated 06.06.2013, made in M.C.O.P.No.26 of 2009, on the file of the Motor Accident Claims Tribunal, Sub-Court, Thiruvallur.

2. The appellant has challenged the impugned award on the ground that the compensation awarded by the Tribunal is less. He has sought for enhancement of another six lakhs in this appeal.

3. Earlier, this Court had directed the appellant to go for medical examination before the Medical Board. As seen from the medical report dated 23.01.2023, the appellant's disability was assessed at 82%.

4. The appellant had also produced medical bills, which were allowed to be received by this Court on 22.12.2023 in C.M.P.No.14934 of 2023 in C.M.ANo.1215 of 2019 filed by the appellant. As per the said bills, total value of the medical expenses incurred by the appellant amounted to Rs.2,85,000/-. None of those bills were marked as exhibits before the Tribunal.

5. The learned counsel for the appellant contends that the monthly income fixed by the Tribunal at Rs.1,000/- is also too low. He would contend that the Tribunal ought to have fixed his monthly income at Rs.9,403/-, which was paid to the drivers at the relevant point of time.

6. However, the appellant himself, in his claim petition, has disclosed that his monthly income is only Rs.4,500/-. Therefore, when appellant has not produced any document before the Tribunal to show that he was earning a sum of Rs.9,403/-, monthly income of the appellant at the maximum can be fixed only at Rs.4,500/-. The date of the accident is 14.09.2008. Considering the year of the accident, this Court is of the considered view that monthly income fixed by the Tribunal for the appellant at Rs.1,000/- is too low. Therefore, the Tribunal ought to have fixed monthly income at Rs.4,500/- as claimed by the appellant in his claim petition.

7. As seen from the medical report dated 23.01.2023 submitted by the Regional Medical Board, Rajiv Gandhi Government General Hospital, Chennai, the appellant's disability has been assessed at 82%.

The medical report dated 23.01.2023, based on the medical examination of the appellant held on 18.12.2023, reads as follows:-

Post Traumatic and Post Infective

Sequete of fracture left femur

Fracture left tibia with severe left knee stiffness

Total disability 82%

8. Considering the permanent disability of the appellant assessed at 82%, this Court is of the considered view that the Tribunal has erroneously adopted percentage method, instead of adopting multiplier method, for assessing compensation towards loss of earning capacity. The finding of the Tribunal with regard to application of percentage method is hereby set aside by holding that the Tribunal ought to have adopted multiplier method while computing compensation towards loss of earning capacity.

9. As observed earlier, the assessment of the monthly income of the appellant by the Tribunal at Rs.1,000/- is too low and the said finding

has to be set aside by this Court. The appellant, in his claim petition as well as in his oral evidence, has consistently stated that his monthly income was only Rs.4,500/-. Eventhough no documentary evidence has been placed on record by the appellant, this Court, after giving due consideration to the fact that the accident had occurred in the year 2008 and the appellant being a driver, is of the considered view that the Tribunal ought to have fixed the monthly income of the appellant at Rs.4,500/-, instead of Rs.1,000/-. At the time of accident, the appellant was aged about 38 years. Therefore, multiplier 15 is adopted as per the decision of the Hon'ble Supreme Court in ***Sarla Verma v. Delhi Transport Corporation ((2009) 6 SCC 121).***

10. The Tribunal has also failed to award any compensation towards future prospects to the appellant, which the appellant is entitled as per the decision rendered by the Hon'ble Supreme Court in ***National Insurance Co. Ltd., Vs. Pranay Sethi and others [2017 (16) SCC 680]***. As per the said decision, the appellant is entitled to 40% towards future prospects, since he was aged about 38 years at the time of accident and he was working temporarily as a driver in the State Transport

Corporation. Accordingly, towards loss of earning capacity, a sum of Rs.9,29,880/- (4500+1800 (40% of 4500) x 12 x 15 x 82% disability) is awarded.

11. Eventhough the learned counsel for the appellant at this stage sought for time to file an application seeking for reception of additional documents, this Court is not entertaining such a request, since the appeal is of the year 2019.

12. As stated above, this Court permitted reception of medical bills paid by the appellant for his treatment as a result of the accident, in addition to the medical bills already filed by the appellant before the Tribunal, which was marked as Exs.P12 and P26. As seen from the same, the appellant has incurred a sum of Rs.2,85,000/- in addition to the medical bills already filed by the appellant before the Tribunal. No contra evidence has also been placed by the Insurance Company to disprove the said medical bills. Therefore, necessarily, a sum of Rs.2,85,000/- incurred by the appellant in addition to the medical bills already filed before the Tribunal has to be allowed.

13. The Tribunal has awarded a total compensation of Rs.8,06,128/- as detailed hereunder:-

Loss of earning capacity (50% x Rs.2000)	-- Rs.1,00,000/-
Loss of income (Rs.1000x 12)	-- Rs.12000/-
Original medical bills under Ex.P12	-- Rs.4,12,300/-
Travel expenses	-- Rs.1,12,700/-
Auto charges	-- Rs.55,400/-
Medical bills under Ex.P26	-- Rs.13,728/-
Pain and suffering	-- Rs.50,000/-
Amenities	-- Rs.50,000/-
Total	**-- Rs.8,06,128/-**

14. As seen from the above, the Tribunal has failed to award any amount of compensation towards attender charges and extra nourishment, which, it should have been awarded considering the nature of injuries sustained by the appellant. Therefore, this Court awards a sum of Rs.30,000/- each towards attender charges and extra nourishment.

15. For the foregoing reasons, the compensation awarded by the Tribunal is re-worked in the following manner:-

Loss of earning capacity	-- Rs.9,29,880/-
Additional medical bills	-- Rs.2,85,000/-
Original medical bills under Ex.P12	-- Rs.4,12,300/-
Travel expenses	-- Rs.1,12,700/-
Auto charges	-- Rs.55,400/-
Medical bills under Ex.P26	-- Rs.13,728/-
Pain and suffering	-- Rs.50,000/-
Amenities	-- Rs.50,000/-
Attender charges	-- Rs.30,000/-
Extra nourishment	-- Rs.30,000/-
Total	**-- Rs.19,69,008/-**

16. In the result, the impugned award passed by the Tribunal is modified by directing the second respondent Insurance company to deposit the entire award amount of Rs.19,69,008/- to the credit of M.C.O.P.No.26 of 2009 on the file of Motor Accident Claims Tribunal, Sub-Court, Thiruvallur, less the amount already deposited if any, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant is also entitled for interest at 7.5% per annum from the date of claim petition till the date of realization. On such deposit, the

claimant is permitted to withdraw the entire award amount along with accrued interest therein, by moving appropriate application. The appellant is directed to pay additional court fees for the differential amount within a period of two weeks from the date of receipt of a copy of this judgment. In fine, Civil Miscellaneous Appeal is disposed of. No Costs.

02.04.2024

Index: yes/no
Speaking/non-speaking
Neutral citation: yes/no
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To

1. The Sub-Court,
   (Motor Accident Claims Tribunal)
   Thiruvallur.

ABDUL QUDDHOSE,J.

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C.M.A. No.1215 of 2019

02.04.2024