



C.M.A(MD)No.281 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.281 of 2019

Subramanian

... Appellant/Petitioner

Vs.

1.Senthil Velu

2.IFFCO-TOKIO General Insurance Company Limited,
28 North Usman Road,
T.Nagar,
Chennai.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount passed by Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Tirunelveli under Motor Vehicles Act, dated 20.09.2018 in M.C.O.P.No.303 of 2017.

For Appellant : Mr.R.Krishnan

For R-1 : No appearance

For R-2 : Mr.V.Sakthivel



C.M.A(MD)No.281 of 2019

WEB COPY

JUDGMENT

The instant appeal has been filed by the claimant in M.C.O.P.No. 303 of 2017 on the file of the Motor Accident Claims Tribunal cum Chief Judicial Magistrate, Tirunelveli seeking enhancement of the compensation.

2. The claimant, who is working as a Head Constable in Tamil Nadu Police Service sustained grievous injuries in an accident that took place on 19.08.2016, when a lorry coming from the opposite direction owned by the first respondent and insured with the second respondent had dashed against the two-wheeler. The claimant had contended that he had sustained severe injuries and prayed for compensation of rupees one crore.

3. The Tribunal after considering the evidence on either side has arrived at a finding that the accident has taken place only due to the rash and negligent driving of the lorry driver and mulcted the liability upon the owner to be indemnified by the appellant Insurance Company. The Tribunal has held that the claimant would be entitled to a sum of



C.M.A(MD)/No.281 of 2019

Rs.4,000/- per percentage of disability, which is fixed at 65%.

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4. The Tribunal has passed the award as follows:

S.No.	Head	Compensation
01.	65% Permanent disability	Rs.2,60,000/-
02.	Pain and Sufferings	Rs.1,00,000/-
03.	Medical Expenses	Rs.1,79,500/-
04.	Transport Expenses	Rs.20,000/-
05.	Temporary loss of Income	Rs.75,000/-
06.	Attendant charges	Rs.15,000/-
07.	Loss of amenities	Rs.1,00,000/-
08.	Extra nourishment and loss of Estate	Rs.25,000/-
	Total	Rs.7,74,500/-

Challenging the said award, the present appeal has been filed seeking enhancement.

5. According to the learned Counsel appearing for the appellant, the accident having taken place in the year 2016, the Tribunal ought to have awarded Rs.5,000/- per percentage of disability. He further relied upon the judgment of the Hon'ble Supreme Court of India reported in **2023 SAR (Civil) 208 [Mohd. Sabeer @ Shabir Hussian Vs. Regional**



C.M.A(MD)No.281 of 2019

Manager, Uttar Pradesh State Road Transport Corporation], to claim Rs.2,00,000/- towards pain and suffering instead of Rs.1,00,000/-, to claim Rs.2,00,000/- for loss of amenities instead of Rs.1,00,000/-. He claimed a sum of Rs.8,00,000/- towards prosthetic limb and its maintenance and he claimed Rs.2,00,000/- towards disability and disfigurement.

6. Per contra, the learned Counsel appearing for the respondent Insurance Company had contended that the amount awarded by the Hon'ble Supreme Court was based upon the facts of that case and therefore, it cannot be awarded in the present case also. He further contended that the claimant being a Government Servant, there was no loss of income much less a temporary loss of income. Therefore, the Tribunal was not right in awarding a sum of Rs.75,000/- to the said effect. He further questioned the award of Rs.2,00,000/- under the head of disability and disfigurement. The learned Counsel appearing for the Insurance Company further contended that only a sum of Rs.1,00,000/- could have been awarded towards pain and sufferings and not Rs.2,00,000/-. Hence, he prayed for passing appropriate orders.



C.M.A(MD)No.281 of 2019

7. I have carefully considered the submissions made on either side and perused the materials available on record.

8. The Hon'ble Division Bench of this Court in a judgment reported in **CDJ 2022 MHC 7542 [The Branch Manager, M/s.United India Insurance Company Limited Palladam Vs. P.Balamurugan and Others]** has awarded a sum of Rs.5,000/- for each percentage of disability for an accident that has taken place in the year 2015.

9. In the present case, accident has taken place in the year 2016. Therefore, this Court follows the judgment of the Hon'ble Division Bench and fixes the award towards permanent disability at 65 X 5,000 as Rs.3,25,000/-. Since the claimant is a Government Servant and there are no records to establish that he had suffered financial loss due to the leave taken by him, the Tribunal was not right in awarding a sum of Rs.75,000/- towards loss of income. As per the judgment of the Hon'ble Supreme Court of India reported in **2023 SAR (Civil) 208 [Mohd. Sabeer @ Shabir Hussian Vs. Regional Manager, Uttar Pradesh State Road Transport Corporation]**, the Tribunal ought to have awarded a sum of Rs.2,00,000/- towards loss of amenities, but it had failed to do so.



C.M.A(MD)/No.281 of 2019

Admittedly, the petitioner has got his left leg amputated above the knee level and the percentage of disability is 65%. Therefore, the claim of the appellant herein for award of compensation under the head of prosthetic limb and its maintenance at the rate of Rs.7,00,000/- is reasonable.

10. In view of the above said deliberations, the award of the Tribunal is re-assessed as follows:

S.No.	Head	Compensation
01.	65% Permanent disability	Rs.3,25,000/-
02.	Pain and Sufferings	Rs.1,00,000/-
03.	Medical Expenses	Rs.1,79,600/-
04.	Transport Expenses	Rs.20,000/-
05.	Attendant Charges	Rs.15,000/-
06.	Loss of Amenities	Rs.2,00,000/-
07.	Extra nourishment	Rs.25,000/-
08.	Prosthetic limb and its maintenance	5,00,000/- + 2,00,000 = Rs.7,00,000/-
09.	Loss of Promotional Opportunity	Rs.1,00,000/-
	Total	Rs.16,64,600/-



C.M.A(MD)No.281 of 2019

WEB COPY

11. In view of the above said deliberations, the award of the Tribunal is enhanced from Rs.7,74,500/- (Rupees Seven Lakhs Seventy Four Thousand and Five Hundred only) to **Rs.16,64,600/-** (Rupees Sixteen Lakhs Sixty Four Thousand and Six Hundred only). The award amount shall carry 7.5% interest from the date of claim petition. The enhanced amount shall be deposited by the second respondent Insurance Company along with accrued interest within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

12. This Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

29.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Motor Accident Claims Tribunal,
(Chief Judicial Magistrate),
Tirunelveli.



C.M.A(MD)No.281 of 2019

2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.281 of 2019

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.281 of 2019

29.04.2024