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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.02.2024

CORAM

THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1302 of 2023

Paramasivam

... Appellant

Vs.

1. Vivek

2. The Manager,

IFFCO TOKIO General Insurance Company Limited,

No.58 A, Sri Anjaneya Tower,

2nd Floor, Pavala Nagar,

Pandi - Villupuram Main Road,

Rettipalayam, Pondicherry.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the Judgment and Decree, dated 16.12.2022 passed in M.C.O.P.No. 283 of 2022 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thanjavur District.

For Appellant : M/s.P.Edin Brough

For R-2 : Mr.V.Sakthivel

JUDGEMENT

The claimant has preferred this appeal for enhancing the award amount granted by the Tribunal in M.C.O.P.No.283 of 2022, dated 16.12.2022



on the file of the Motor Accident Claims Tribunal/Special Sub Court,
Thanjavur District.

2. It is a case of injury. The contention of the claimant is that his right foot below ankle was amputated and hence he is eligible for enhanced compensation. The claimant was working as Mechanic, hence his notional income ought to be fixed as Rs.10,000/- or Rs.12,000/- but the Tribunal has fixed his salary as Rs.7,000/-, which is on lower side.

3. The contention of the Insurance Company is that the disability was fixed as 50% for the purpose of granting Government benefits and the same cannot be taken for fixing compensation. Further there is no iota of evidence produced by the claimant that he was working as Mechanic and hence the notional fixation of income as Rs.7,000/- is appropriate.

4. After hearing the rival submission this Court is increasing the notional income as Rs.8,000/- from Rs.7,000/- with future prospectus as Rs. 2000/-. It is seen from the records that the claimant has sustained 50% permanent disability, hence multiplier is applicable.



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Monthly income of the claimant is Rs.8,000/-

25% Future prospectus is Rs.2,000/-

Total monthly income is Rs.10,000/-

The claimant yearly income is Rs.10,000 x 12 = Rs.1,20,000/-

Since at the time of accident the claimant was aged about 48 years
the multiplier 13 shall be applied. Therefore,

$$\text{Rs.1,20,000} \times 13 \times 50/100 = \text{Rs.7,80,000/-}$$

5. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For permanent disability	Rs.6,82,500/-	Rs.7,80,000/-	enhanced
2.	For pain and suffering	Rs. 75,000/-	Rs. 75,000/-	confirmed
3.	For extra nourishment	Rs. 20,000/-	Rs. 20,000/-	confirmed
4.	For loss of income	Rs. 40,000 /-	Rs. 40,000/-	confirmed
5.	For loss of amenities	Rs. 50,000/-	Rs. 50,000/-	confirmed
6.	For attendar expenses	Rs. 25,000/-	Rs. 25,000/-	confirmed
7.	For damage of articles	Rs. 2,000/-	Rs. 2,000/-	confirmed
8.	For transport expenses	Rs.20,000/-	Rs.20,000/-	confirmed
Total		Rs.9,14,500/-	Rs.10,12,000/-	

This Court is enhancing a sum of Rs.10,12,000/-as compensation, from the total compensation of Rs.9,14,500/-granted by the Tribunal. Since 10% contributory



negligence is fixed on the petitioner, the Insurance Company is liable to deposit 90% of the total compensation i.e., (Rs.9,14,000 – 91,400) Rs.8,22,600/-.

6. Accordingly, the Insurance company is directed to deposit a sum of Rs.8,22,600/-, as compensation with 7.5% interest from the date of filing the petition till the date of realization, within a period of 8 weeks from the date of receipt of a copy of the order, less the amount if already deposited. On such deposit being made, the claimant is permitted to withdraw the same, as per Law. Since this Court is enhancing the compensation, the claimant is liable to pay the balance Court fee.

7. With these observations, this Civil Miscellaneous Appeal is partly allowed. No Costs.

13.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accident Claims Tribunal,
Special Sub Court,
Thanjavur District.
2. The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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S.SRIMATHY, J.

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**Judgment made in
C.M.A(MD)No.1302 of 2023**

13.02.2024