



C.M.A.(MD).No.761 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.761 of 2021

A.Balaganapathy

... Appellant/Petitioner

Vs.

1.G.Venkatesan

2.United India Insurance Company Ltd.,
Branch Office,
Door No.5, Gomathiyapuram New 1st Street,
Balaji Complex,
Sankarankovil.

... Respondents/Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to enhance the award amount in M.C.O.P.No. 1175 of 2011 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli, dated 26.06.2018.

For Appellant : Mr.T.Selvakumaran

For Respondents : Mr.A.Shajahan for R2

For R1 – Notice Dispensed with.



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JUDGMENT

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This appeal has been filed to enhance the award amount in M.C.O.P.No.1175 of 2011 on the file of the Motor Accident Claims Tribunal (III Additional District Judge), Tirunelveli, dated 26.06.2018.

2.The facts in brief:

A.Balamurugan, who is the petitioner in M.C.O.P.No.1174 of 2011 was working as Grade I Head Constable in Tamil Nadu Police Department. On 22.04.2011 at about 10.25 in the night, he was riding a two wheeler along with his brother namely Balaganapathy, who is the petitioner in M.C.O.P.No.1175 of 2011 bearing registration No.TN 74 E 0157 on the Surandai - Pavurchathiram Road, from East West Direction. At that time, the first respondent vehicle's driver drove the vehicle bearing registration No.TN 04 9675, in rash and negligent manner and hit the motor cycle. As a result of which, both sustained injuries. Claiming compensation amount, both of them filed separate applications. Balamurugan claimed Rs.1,00,000/-, whereas Balaganapathy claimed Rs. 10 lakhs. Both the petition were tried together and award was passed.



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3.Balaganapathy, who is the petitioner in M.C.O.P.No.1175 of 2011 preferred this appeal aggrieved over the award. We will concentrate only on M.C.O.P.No.1175 of 2011. There is no cross appeal by the Insurance Company.

4.With regard to the negligent aspect, no discussion is required. But, however, to set the records correct, we can briefly refer to that aspect also. Even though the occurrence was not challenged, it is submitted by the Insurance Company that the rider of the two wheeler, without noticing the traffic, suddenly tried to cross the road towards the other side and invited the accident. But, the tribunal recorded a finding that the occurrence took place on the middle portion of the road. So the contention on the part of the Insurance Company that the rider of the two wheeler invited the accident and he was the responsible for the rash and negligent driving was not accepted. Since it is seen that the occurrence took place on the middle side of the road, naturally the offending vehicle driver might own the responsibility.



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5.Regarding the compensation for Balaganapathy, it fixed the compensation amount as Rs.15,71,850/-. Now, we will see the method of assessment of compensation. The appellant sustained multiple injuries. There was total disfigurement of face and right eye was completely damaged. He was admitted in hospital as inpatient in a private clinic from 23.04.2011 to 29.05.2011 and thereafter from 05.07.2011 to 09.07.2011. He underwent surgery and lost the vision on the right eye. Since multiple fracture was caused in face region, he underwent surgery. He continued the treatment in various hospitals for various durations namely 15.09.2011 to 17.09.2011, 15.11.2011 to 08.12.2011, 06.01.2012 to 08.01.2012 and 01.09.2012 to 03.09.2012 and underwent plastic surgery. PW3 was the Surgeon, who conducted the surgery upon the Balaganapathy. He underwent the plastic surgery in Amirtha Institute of Medical Science and Research Centre on various dates as mentioned in the petition. Because of the accidental injuries, giddiness, head ache and other discomforts continues. Reading of the dates and events as set out in the award of the tribunal shows that right from the date of accident upto 2015, he underwent several treatments, surgeries in various hospitals. The dates need not be elaborated hereunder.



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6.As mentioned above PW2 and PW3 Plastic surgeon stated in his evidence that hemorrhage was noticed in the brain region. There was a fracture on the nose, loss of teeth and a hole was found on the upper jaw region and considering the grievous nature of injuries in the form of multiple fractures, he assessed the disability as 70.8 %. The tribunal taken 60% as functional disability and by adopting the multiplier method, compensation was awarded by taking the monthly income as Rs.7,000/-. Regarding the avocation, it was submitted by the appellant that he was aged about 29 years at the time of occurrence and working as Production Engineer in Kane Pet Products Private Limited, West Africa and earning Rs.40,000/-. Ex.P15 is the Certificate issued by the concerned company. So on the basis of the Passport, it was found that he was working in the company and drawing the salary. But, the correct salary amount was not supported by any documentary evidence. Further it is stated that after the treatment was over, he again went abroad, returned to India and then to Bombay and where, he was working on the date of petition. There is no clear finding by the tribunal in this regard. It is stated by him that he went to Bombay after 2015 and earning



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Rs.24,000/- and for that also there was no evidence. Considering those facts it taken Rs.7,000/- as notional income. By considering the age and job nature of the appellant, I am of the considered view that the amount taken as notional as Rs.7,000/- is very meagre. Even for Engineering Graduate this Court fixes notional income as Rs.20,000/-. The same may be adopted in this matter also.

7.Regarding the disability, absolutely there is no reason assigned by the Tribunal as to how it reduced the functional disability to 60%. As noticed above, he lost the vision on the right eye. It is complete disfigurement of the face. So it must be taken 70.80% as fixed by the PW3. $\text{Rs.20,000/-} \times 12 \times 70.80/100 \times 17 = \text{Rs.28,88,640/-}$.

8.When the loss of income is calculated on the basis of the multiplier the future loss of income does not arise. It appears that by mistake it has been stated as future loss of income. But actually loss of income is during the treatment period only.

9.As noticed above, he underwent various surgeries in various



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hospitals at various intervals. So considering the same, it must be reasonably fixed as Rs.20,000/-.

10.Pain and sufferings may be raised to Rs.50,000/- and since he travelled to various hospitals to various places, the transport expenses must be raised to Rs.25,000/-. Towards the nourishment, it has to be raised to Rs.50,000/-. During the treatment period, the attendant would have been present. The amount was fixed as Rs.15,000/-. That must be maintained.

11.Regarding the facial disfigurement and loss of one eye, only Rs.20,000/- was ordered by the Tribunal, it must be raised to Rs.2,00,000/-. So the total compensation is arrived as follows:

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>Loss of Income</i>	28,88,640/-
2.	<i>Pain and sufferings</i>	50,000/-
3.	<i>Transportation</i>	25,000/-
4.	<i>Extra Nourishment</i>	50,000/-
5.	<i>Attendant Charges</i>	15,000/-



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6.	<i>Loss of Estate and Disfigurement of face and loss of one eye</i>	2,00,000/-
	Total	32,28,640/-

12. Accordingly, the award passed by the Tribunal is enhanced to Rs.32,28,640/- and the civil miscellaneous appeal is partly allowed with the following directions.

(i) The quantum of compensation awarded by the Tribunal is enhanced to Rs.32,28,640/- (Thirty Two Lakhs Twenty Eight Thousand Six Hundred and Forty only), which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent/insurance company is directed to deposit the entire compensation of Rs.32,28,640/- (Thirty Two Lakhs Twenty Eight Thousand Six Hundred and Forty only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs before the Tribunal, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the second respondent/ insurance company, the appellant / claimant is permitted to withdraw the



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entire award amount of Rs.32,28,640/- (Thirty Two Lakhs Twenty Eight Thousand Six Hundred and Forty only) after following the due process of law, less any amount already received by him.

10.07.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The III Additional District Judge, Motor Accident Claims Tribunal ,
Tirunelveli,
- 2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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