



C.M.A.(MD).No.214 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.07.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.214 of 2018

Nagarajan

... Appellant/Claimant

-vs-

1. Farook Ali

2. The Branch Manager,
United India Insurance Company Limited,
No.28, 1st Floor,
76, V.O.C. Road,
Karaikudi,
Sivagangai District.

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree made in M.C.O.P.No.49 of 2014, on the file of the Motor Accident Claims Tribunal/ Sub Court, Devakottai, dated 07.12.2017.

For Appellant : Mr.D.Venkatesh

For Respondents : Mr.C.Jawahar Ravindran
for R2
: No appearance – for R1



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4. According to the learned counsel appearing for the appellant, the Tribunal has directed the claimant to appear before the Medical Board at Government Sivagangai Medical College and Hospital, Sivagangai, and the Board has also given an opinion on 20.02.2017 to the effect that the claimant has lost his vision to an extent of 30% in one of the eyes. However, the said opinion has not been taken into consideration by the trial Court. Therefore, no amount has been awarded under the head of loss of income. Hence, he prayed for enhancement of compensation.

5. Per contra, the learned counsel appearing for the second respondent herein had contended that since the opinion of the Medical Board has not been marked before the Tribunal, the same cannot be taken into consideration by the trial Court. Hence, he prayed for sustaining the award passed by the Tribunal.

6. I have carefully considered the submissions made by the learned counsel on either side and perused the materials available on record.



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7. As it could be seen from the typed set of papers, the Tribunal has referred the claimant to the Medical Board in Government Sivagangai Medical College and Hospital, Sivagangai, in Ref No.842/MB/2017. Based upon the reference, the Medical Board has issued an opinion on 20.02.2017 to the effect that the claimant has lost vision to an extent of 30% in one of the eyes. When the Court seeks the opinion of the Medical Board, it forms part of the record even without marking by any one of the parties. Therefore, the Court ought to have looked into the report of the Medical Board to assess the percentage of disability.

8. The claimant had claimed that he was earning a sum of Rs.20,000/- per month as a Government Contractor. However, no records have been placed before the Tribunal to the said effect. Considering the fact that the accident has taken place in November 2012, it could be appropriate to fix the notional monthly income at Rs.8,000/- per month and adding 25% towards future prospects it reaches at Rs.10,000/-. Since the claimant had lost vision to an extent of 30%, this Court is inclined to treat his disability as 30% of functional disability and proceeds to assess the compensation under the head of loss of income as follows:

$$\text{Rs.10,000/-} \times 30/100 \times 13 \times 12 = \text{Rs.4,68,000/-}$$



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9. The award of the Tribunal is reassessed as follows:

Loss of income	: Rs.4,68,000/-
Medical expenses and Transport Charges	: Rs.1,07,855/-
Extra Nourishment	: Rs. 15,000/-
Pain and sufferings	: Rs. 25,000/-
Transport charges	: Rs. 10,000/-
Loss of amenities	: Rs. 25,000/-
Future Medical Expenses	: Rs. 50,000/-
Loss of income during treatment	: <u>Rs. 8,000/-</u>
Total	: Rs.7,08,855/-

10. In view of the above said deliberation, the award of the Tribunal is enhanced from Rs.1,57,855/- to Rs.7,08,855/- (Rupees Seven Lakhs Eight Thousand Eight Hundred and Fifty Five only). The award amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of realization excluding the period of default, if any. The Insurance Company is directed to deposit the said award amount within a period of



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eight weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the same by filing necessary petition before the Tribunal.

11. Accordingly, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. There shall be no order as to costs.

30.07.2024

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

1. The Motor Accident Claims Tribunal/
Sub Court,
Devakottai,
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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