



C.M.A(MD)No.1248 of 2016

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2024

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THE HON'BLE MRS.JUSTICE S.SRIMATHY

C.M.A(MD)No.1248 of 2016

S.Ramesh

... Appellant

Vs.

1.Sri Kanchi Kamakodi Medical trust,
Through its Managing Trustee,
Sankara Eye Centre,
Sathy Road, Sivanandapuram,
Coimbatore.

2.S. Dhanushkodi

3.The Divisional Manager,
Oriental Insurance Company Limited,
Sugma Building,
No.707, Avinashi Road,
Coimbatore.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 Motor Vehicles Act,, against the fair and decretal order, dated 27.09.2012, passed in M.C.O.P NO. 1222 of 2007 on the file of Motor Accident claims Tribunal, II Additional Subordinate Judge, Madurai.

For Appellant	: Mr.K.K.Balaram
For R1 and R2	: No appearance
For R3	: Mr.C.Jawahar Ravindran
Assisting Court	: Mr.P.T.Thiraviyam
	Government Advocate



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JUDGMENT

The claimant has preferred this Civil Miscellaneous Appeal.

2.It is a case of injury. The brief facts of the case are that the claimant was working as a mineral agent, ie., he used to procure minerals from various places in order to produce soaps and other related items. According to the claimant, he was earning Rs.20,000/- per month, he lost his earning capacity and he could not continue his mineral agency due to shortening of right leg to the tune of 3 cm. However, the Tribunal had not taken this factor into consideration and had ordered meagre amount and hence he has preferred this appeal for enhancement of compensation.

3. The contention of the appellant is that the Tribunal ought to have awarded based on the multiplier method, since the partial permanent disability is 50% as per the Doctor certificate. The said contention was refuted by the respondents stating that the claimant has submitted two certificates, one states 50% disability and the other one states 60% permanent disability. When there was two different divergent opinions this Court was of the considered opinion that a



3rd opinion is necessary and hence this Court directed the appellant herein / claimant to appear before the Medical Board for re-accessing the disability, vide order, dated 03.07.2024. However, the same was not complied with. The reason stated for non-compliance is since at the time of accident the claimant was 45 years old and now, he is 65 years old. The real state of permanent disability prevailed earlier cannot be assessed.

4. Therefore, this Court proceeded to fix the appropriate compensation based on the available records.

5. It is seen that the accident occurred on 05.07.2005 and the claimant was under treatment until 20.08.2005 which is more than one month. As far as partial permanent disability is concerned, even though the certificate states that the disability is 50%, the certificate is not stating the functional disability. The fact remains the functional disability was not ascertained at all.

6. From the disability certificates it is seen there is shortening of right leg, hence this Court is accepting 50% disability fixed by the Doctor. However, the same is not functional disability and hence multiplier method cannot be adopted.



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Hence this Court is fixing Rs.4,000/- for each percentage of disability instead of Rs.2,000/-. For pain and suffering, this Court is enhancing the compensation from Rs.25,000/- to Rs.30,000/-. For transport, this Court is enhancing the compensation from Rs.5,000/- to Rs.10,000/-. Attender charge was not granted by the Tribunal hence, this Court is granting Rs.10,000/- for attender charge. For extra nourishment, this Court is granting Rs.25,000/-. For future treatment, this Court is granting Rs.25,000/- and the same does not carry interest. For loss of salary for a period of three months, this Court is granting Rs.60,000/- (Rs.20,000/- *3). The compensation granted by the Tribunal under the head of medical bill is confirmed

7. The modified compensation awarded by this Court is as under:

S1. No.	Heads	Award granted by Tribunal	Award granted by this Court	Enhanced / Confirmed / Reduced
1.	Partial Permanent Disability	Rs.1,00,000/- (Rs.2,000/- * 50)	Rs.2,00,000/- (Rs.4,000/- * 50)	Enhanced
2.	Medical Bill	Rs.1,39,200/-	Rs.1,39,200/-	Confirmed
3.	Pain and Sufferings	Rs.25,000/-	Rs.30,000/-	Enhanced
4.	Transport	Rs.5,000/-	Rs.10,000/-	Enhanced
5.	Attender Charge	Nil	Rs.10,000/-	Enhanced
6.	Future Treatment	Nil	Rs.25,000/-	Enhanced
7.	Loss of Salary	Nil	Rs.60,000/- (Rs.20,000/- * 3)	Enhanced



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8.	Extra Nourishment	Nil	Rs.25,000/-	Enhanced
	Total	Rs.2,69,200/-	Rs.4,99,200/-	Enhanced

Thus, the total compensation granted by the Tribunal to the tune of Rs.2,69,200/- is enhanced to Rs.4,99,200/- by this Court. In the above said compensation, Rs. 25,000/- granted under the head of future treatment alone will not carry interest, i.e., Rs.4,74,200/- will carry interest at the rate of 7.5% per annum and Rs. 25,000/- will not carry interest.

8. The 3rd respondent Insurance Company is directed to deposit the sum of Rs.4,74,200/- with interest at the rate of 7.5% per annum, costs and Rs.25,000/- without interest, to the credit of M.C.O.P., on the file of claims Tribunal, less the amount already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant is permitted to withdraw the same with accrued interests and costs, less the amount already withdrawn by him, if any, by filing appropriate application before the Tribunal. Since this Court is enhancing the compensation, the claimant is liable to pay the balance Court fee, if any.



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9. With the above said directions, the Civil Miscellaneous Appeal is partly allowed. No costs.

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

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- 1.II Additional Subordinate Judge,
Motor Accident Claims Tribunal,
Madurai.

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



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S.SRIMATHY, J.

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