



C.M.A(MD).No.87 of 2017

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 05.06.2024

DELIVERED ON: 07.06.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A.(MD).No.87 of 2017

P.Rajkumar(died)

2.Pandaram

3.Lakshmi

...Appellants/Petitioners

Vs

1.P.Raja

2.The Divisional Manager
Oriental Insurance Company Ltd.,
7-A, West Veli Street
Madurai 625 001

...Respondents/Respondents

(Appellants 2 and 3 are brought on record as
legal heirs of the deceased sole appellant vide
Court order dated 17.04.2024)

PRAYER: The Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow the appeal and modify the award passed in MCOP.No.2035 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Madurai, dated 17.12.2015.



WEB COPY



C.M.A(MD).No.87 of 2017

For Appellant : Mr.K.Ravi
For R1 : No appearance
For R2 : Mr.C.Rawaha Ravindran

J U D G E M E N T

The instant appeal was originally filed by the injured claimant challenging the award made in MCOP.No.2035 of 2010 on the file of the Motor Accident Claims Tribunal /Chief Judicial Magistrate, Madurai seeking enhancement of compensation.

2.Pending appeal, the appellant/claimant had passed away and his legal heirs have been impleaded.

3.As per averments in the claim petition, while the claimant was riding a two-wheeler on 22.09.2010 at about 5.00 a.m, a TATA 407 Van owned by the first respondent and insured with the second respondent had dashed against the two wheeler. In the said accident, the claimant sustained grievous injuries and he was admitted as an inpatient. The claimant had further contended that he was working as a salesman in a grocery shop and he was earning a sum of Rs.15,000/- per month. The claimant had prayed for a sum of Rs.31,75,000/- as compensation.



C.M.A(MD).No.87 of 2017

4.The Tribunal had arrived at a specific finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the first respondent which is insured with the second respondent. The Tribunal had further relied upon Exhibit P42-disability certificate wherein the disability was mentioned as 70%. However, the Tribunal had arrived at a finding that the disability is only to an extent of 40%. Since the Tribunal felt that the claimant had not established that the injuries have resulted in functional disability, the Tribunal had proceeded to award a sum of Rs.3000/- per percentage of injury. Ultimately, a sum of Rs.10,84,000/- was awarded by the Tribunal. Challenging the said quantum of award, the present appeal has been filed.

5.Pending appeal, the original claimant had passed away and this Court has raised the issue relating to the maintainability of the continuation of the appeal by the legal heirs of the deceased appellant.

6.The learned counsel for the appellants had relied upon a judgment of the Hon'ble Supreme Court reported in **(2022) 13 SCC 494 (Oriental Insurance Company Limited Vs. Kahlon alias Jasmail Singh Kahlon (Deceased) through his legal representative Narinder Kahlon Gosakan and another)** and specifically referred to Paragraph Nos. 17 to



20 which are extracted as follows:

WEB COPY

“17.....We are, therefore, of the opinion that while the claim for personal injuries may not have survived after the death of the injured unrelated to the accident or injuries, during the pendency of the appeal, but the claims for loss of estate caused was available to and counsel be pursued by the legal representatives of the deceased in the appeal.

18.In Parminder Singh compensation on the basis of complete loss of income, the percentage of disability, future prospects were granted applying the relevant multiplier. Again, in Kajal the injured was assessed as 100% disabled, considering all of which compensation was awarded on the notional future prospects along with relevant multiplier. The loss of income to the injured in the facts of the present case has to be assessed at 75%. In view of Raj Kumar there shall be no deduction towards personal expenses.

19.We see no reason to deviate from the consistent judicial view taken by more than one High Court that loss of estate would include expenditure on medicines, treatment, diet, attendant, doctor's fee, etc. including income and future prospects which would have caused reasonable accretion to the estate but for the sudden expenditure which had to be met from the depleted the estate of the injured, subsequently deceased.

20.However, the compensation under the head pain and suffering being personal injuries is held to be unsustainable and



C.M.A(MD).No.87 of 2017

is disallowed.....”

WEB COPY

7.In view of the judgement of the Hon'ble Supreme Court, this Court proceeds to consider the enhancement of compensation excluding the payment of compensation under the head of pain and suffering.

8.According to the claimant, he was working in the grocery shop owned by his brother and he was earning a sum of Rs.15000/- per month and he was aged 30 years on the date of the accident. The claimant has not produced any record to establish his employment or his monthly income. The claimant had further contended that he has sustained severe diffuse axonal injury, bilateral hemothorax, multiple rib fractures and other injuries.

9.Pending claim petition, the father of the injured claimant had filed I.A.No.436 of 2011 to examine himself in the place of his son on the ground that he is not able to speak cogently due to the injuries sustained by him in the accident. The said application was allowed by the Tribunal. Challenging the same, the Insurance Company had filed CRP(MD).No.375 of 2012 before this Court. This Court by an order dated 29.02.2012 had directed the claimant to appear before the Medical Board of Government Rajaji Hospital, Madurai. Based upon the certificate issued by them, the



C.M.A(MD).No.87 of 2017

Tribunal was directed to proceed further. In compliance with the said order, the claimant had appeared before the Medical Board and the Board has opined that the claimant is suffering from Post Traumatic Residual Hemiparesis with severe frontal lobe dysfunction. The Psychiatric Doctor had give a opinion that the claimant has features of organic brain syndrome and hence, he is not fit enough to depose before the Court of law.

10. Based upon the above said report of the Medical Board, the claimant's father was examined as PW1. Through PW1, Exhibit P42 disability certificate has been marked. A perusal of the disability certificate reveals that the physical disability is to an extent of 70%. A combined reading of the report of the Medical Board marked as Exhibit R2 and the disability certificate Exhibit P42 clearly reveals that the injuries are serious in nature and the claimant had sustained 70% disability. In fact, the claimant was not even able to depose before the Court. In such circumstances, the Tribunal was not right in reducing the percentage of disability from 70% to 40% without assigning any legally acceptable reason. Therefore, this Court is inclined to accept percentage of disability at 70%.



C.M.A(MD).No.87 of 2017

11.The claimant has not produced any record to establish his employment or his salary. The accident has taken place in the year 2010.

This Court is inclined to fix Rs.4000/- per percentage of disability.

12.The quantum of compensation is re-assessed as follows:

Partial permanent disablement (70x4000)	Rs. 2,80,000.00
Loss of earning for 6 months (Rs.6500/- x6)	Rs. 39,000.00
Medical expenses	Rs. 8,96,000.00
Attendant charges	Rs. 20,000.00
Transport charges	Rs. 10,000.00
Damage to clothes and articles	Rs. 1,000.00
Total	Rs. 12,86,000.00

13.In view of the above said deliberation, the award of the Tribunal is enhanced from Rs.10,84,000/- to 12,86,000/-. The father of the claimant namely Pandaram shall be entitled to receive 30% of the compensation along with accrued interest and costs. The balance 70% is awarded to the wife of the appellant namely Lakshmi along with accrued interest and costs. The enhanced compensation amount shall be deposited by the second respondent /Insurance Company, after deducting the amount that was already deposited, if any, within a period of 8 weeks from the date



C.M.A(MD).No.87 of 2017

of receipt of a copy of this judgment. On such deposit, the claimants are entitled to withdraw the same.

14.In the result, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. No costs.

07.06.2024

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

To

1.The Motor Accident Claims Tribunal
/Chief Judicial Magistrate, Madurai,

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



WEB COPY



C.M.A(MD).No.87 of 2017

R.VIJAYAKUMAR, J

msa

Pre-delivery judgement made in
C.M.A(MD).No.87 of 2017

07.06.2024