



C.M.A(MD)No.965 of 2017

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2024

CORAM:

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**
AND
THE HONOURABLE MR.JUSTICE **K.K.RAMAKRISHNAN**

C.M.A(MD)No.965 of 2017

J. Kennady

... Petitioner/Appellant

Vs.

1. M.Manimegalai

2. The Branch Manager

Iffco Tokya General Insurance Co Ltd.,

I -Floor

Near Hotel Krishna

Bye pass Road, Madurai

..Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988 to allow the appeal for enhancing the amount of Rs.34,45,044/- against the actual claim of Rs.45,00,000/- made in M.C.O.P.No.4 of 2008, on the file of the Motor Accident Claims Tribunal/Sub Judge, Sivakasi,



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dated 16.11.2011.

For Appellant : Mr.T.Selvakumaran
For R-1 : Mr. D.Dhanachandra Prakash
For R-2 : Mr. V. Sakthivel

JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

The appellant is injured claimant in M.C.O.P.No.4 of 2008, on the file of the Motor Accidents Claims Tribunal, Sub Judge, Sivakasi, and he has filed this civil miscellaneous appeal seeking the enhancement of the compensation awarded in the said M.C.O.P.No.4 of 2008 by the impugned order dated 16.11.2011.

2. The brief facts of the petition averments in M.C.O.P.No.4 of 2008:

On 06.02.2006, at about 17.00 hrs, when the petitioner along with his co-worker were returning from Virudhunagar Collector Office in a two wheeler bearing Registration No.TN-67-B-5610 from east to west, the first respondent came in his two wheeler in a rash and negligent manner and dashed against the two wheeler driven by the petitioner, as a result, the petitioner sustained injuries.



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Thereafter, he was taken to Sivakasi Kiragam Hospital and given first aid and thereafter, taken to MIOT Hospital at Madurai and surgery was also done. A case was registered against the first respondent. The vehicle of the first respondent was insured with the second respondent. Hence, the claim petition has been filed seeking compensation from the respondent/Insurance company.

3. The brief facts of the counter filed by the second respondent is as follows:

The two wheeler belonging to the first respondent was insured with the second respondent at the time of accident. The accident occurred only due to the rash and negligent driving of the petitioner and he only is responsible for causing the accident and hence, the second respondent is not liable to pay any compensation to the petitioner. The complaint was lodged with a delay of 111 days. Further, this respondent denied the age, occupation, income, injuries sustained by the victim. Hence, the petition is liable to be dismissed as against this respondent.



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4.In order to prove the case of the petitioner, the petitioner himself was examined as P.W.1 and the Doctor was examined as P.W.2 and marked Exs.P.1 to Ex.P.32. On the side of the respondent, no witness was examined and no documents were marked.

5.After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.3,54,956/- towards compensation with interest at 7.5 % p.a., as follows:

1.	Loss of partial income	Rs.1,00,000/-
2.	Future Medical Expenses	Rs.30,000/-
3.	Loss of income	Rs.49,400/-
4.	Transport Expenses	Rs.1,53,556/-
5.	Pain and sufferings	Rs.15,000/-
6.	Extra Nourishment	Rs.2,000/-
	Total	Rs.3,54,956/-

6.Challenging the same, the petitioner has preferred this appeal for enhancing the compensation amount on various grounds.



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7.The learned counsel appearing for appellant/petitioner would contend that the Tribunal had erred in awarding compensation without considering the fact that the accident had occurred due to rash and negligent driving of the driver of the vehicle belonging to the first respondent. Further, the Tribunal has failed to consider the fact that the petitioner suffered permanent disability and there is shortening of legs and also failed to consider the fact that the petitioner has to incur huge medical expenses. The Tribunal had also erred in calculating the loss of income without verifying the documents. He would further submit that the petitioner worked as PRO in various fireworks companies and due to the above accident, he was unable to attend the business for a period of one year and within the said period, the entire business had collapsed and therefore, he obtained loan and the entire loan due is to be paid and now, he lost his entire salary and also there is loss in the company but the Tribunal without considering and applying multiplier method awarded lower amount under the head of loss of earning capacity and future loss of income. Hence, the order of the Tribunal is liable to be set aside by enhancing the compensation amount.



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8.The learned counsel appearing for the second respondent herein would contend that the Tribunal has awarded a just and fair compensation taking into consideration all the evidence adduced on the side of the petitioner and the petitioner had sustained 50% disability and the Tribunal awarded a sum of Rs. 1,00,000/- for the disability sustained by the petitioner and awarded a reasonable amount on various heads and the Tribunal has awarded a sum of Rs.2,000/- per 1% of the disability. Though the petitioner has stated in his evidence that the monthly income is Rs.50,000/-, no materials had been produced and he has also not examined any employer where he worked to prove the income and his profession. The learned counsel appearing for the respondent would contend that even though the income tax returns were produced by him for the years 2005 to 2011, he has not produced the income tax returns for the present years. Therefore, the Tribunal has passed a reasonable award which does not warrant any interference by this Court and hence, the petition is liable to be dismissed.

9.Heard the learned counsel appearing on either side and perused the materials available on record including the order of Tribunal.



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10. In this case, there is no dispute that he has sustained injuries in the legs. The doctors also conducted operation by inserting metal plates and screws. His legs were shortened. The doctor assessed partial permanent disability as 50% under Ex.P.39 and doctor also was examined as P.W.2 and he deposed that injured sustained injuries and the same caused disabilities and the said disability has its impairment in his activities. The injured also deposed that due to the accidental injuries, he is unable to continue his activities as done earlier. This Court also peruses the record and the evidence and finds that there is partial permanent disability. The same will impair his earning capacity. He was actively involved in the various business and visited various companies and gave advise. Due to accidental injuries and its complication, his leg has shortened. Therefore, his earning capacity is reduced to certain extent. This Court assesses his loss of earning capacity as 20% and decides to apply multiplier method to calculate his future loss of income.

11. Though the learned counsel for the appellant has stated that he earned a sum of Rs.50,000/- as monthly income, but to prove the same, he has not produced any material evidence and he has not examined any employer in the industry where he worked as an Advisor.



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12.The learned counsel for the respondent rightly contended that even the income tax returns were filed by him for the year 2005-2006, in Ex.P.33, it is revealed that approximately, he earned a sum of Rs.12,350/- per month. Accordingly, his monthly income fixed as Rs.12,350/- and considering his age, appropriate multiplier '15' is applied to calculate his future loss of income and the same comes around Rs.4,74,240/- [Rs.12,350/- X 20/100 X 12 X 15]. Therefore, the appellant is entitled to Rs.4,44,600/-, under the head of future loss of income.

13.The Honourable Supreme Court in the judgments of ***Subulaxmi V. Tamil Nadu State Transport Coporation Limited*** reported in **2012 10 scc 177** and ***S.Manickam Vs. MTC limited*** reported in **2013 12 SCC 603**, has directed to pay the amount equiavalent to the percentage of the disability under the separate head of the permanent disability apart from the award in the compensation under the head of loss of future income calculated on the basis of the multiplier method. Therefore, there is no bar to award compensation under the head of Permanent Disability Rs.1,00,000/- and hence, the same is confirmed. The amount awarded by the Tribunal under other heads ie., future medical expenses at Rs.30,000/-, for



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loss of income at Rs.49,400/-, for medical expenses at Rs.1,53,556/-, Rs.5000/- for transport expenses, Rs.15,000/- for pain and sufferings and Rs.2000/- for extra nourishment, seems to be just and reasonable.

14. For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
1.	Permanent Disability	1,00,000/-	1,00,000/-	confirmed
2.	Future Medical Expenses	30,000/-	30,000/-	confirmed
3.	Loss of income	49,400/-	49,400/-	confirmed
4.	Medical Expenses	1,53,556/-	1,53,556/-	confirmed
5.	Transport Expenses	5,000/-	5,000/-	confirmed
6.	Pain and sufferings	15,000/-	15,000/-	confirmed
7.	Extra Nourishment	2,000/-	2,000/-	confirmed
8.	Future loss of income	-----	4,44,600/-	Awarded
	Total	Rs.3,54,956/-	Rs.7,99,556/-	enhanced

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the award of the Tribunal is enhanced from Rs.3,54,956/- to Rs.7,99,556/-. The



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second respondent/Insurance company is directed to deposit the entire award amount within a period of eight weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit, the petitioner is permitted to withdraw the same, less the award amount if any already withdrawn, by filing appropriate petition before the Tribunal. No costs.

[P.V.,J.] [K.K.R.K.,J.]
21.08.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes
aav/vsg

To

- 1.The Motor Accident Claims Tribunal/Sub Judge, Sivakasi.
- 2.The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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