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C.M.A.(MD) No.533 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.08.2024

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

C.M.A.(MD) No.533 of 2024

Karthick
S/o.Krishnaswamy

... Appellant

Vs.

1.Thennarassan
S/o.Sababathi

2.The Branch Manager,
The New India Insurance Company Limited,
No.2889, Sethu Amirtham Towers,
Srinivasam Pillai Road,
Thanjavur.

... Respondents

Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree passed in M.C.O.P.No.51 of 2020 dated 29.07.2021 on the file of Motor Accident Claims Tribunal, (Special Subordinate Court), Thanjavur.

For Appellant : Mr.A.Sivasubramanian

For R2 : Mr.R.Ramadurai



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J U D G M E N T

Aggrieved by the quantum of compensation awarded by the Tribunal *vide* its Judgment and Decree dated 29.07.2021 passed in M.C.O.P.No.51 of 2020, the claimant has filed the instant appeal.

2. The appellant/claimant had filed a claim petition in M.C.O.P.No. 51 of 2020 stating that while he was riding a two wheeler bearing Registration No.TN-81-D-2638, a lorry bearing Registration No.TN-51-E-2921 insured with the second respondent Insurance Company and owned by the first respondent, came in a rash and negligent manner and collided with the two wheeler from behind, as a result of which, the appellant/claimant suffered fractures on his right hand, right elbow, index finger of his right hand and all over the body and therefore suffered permanent disability.

3. The first respondent had remained *exparte* before the Tribunal. The second respondent Insurance Company had opposed the claim petition stating that the accident took place due to the negligence of the appellant/claimant and sought for dismissal of the claim petition.



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4. The appellant/claimant had himself examined as P.W.1 and the Doctor who treated him, as P.W.2 and marked Exs.P1 to P11. On the side of the second respondent Insurance Company, Ex.R1 was marked.

5. After taking into consideration of the oral and documentary evidence, the Tribunal had assessed the functional disability of the appellant at 5% and adopted the multiplier method and awarded a total compensation of Rs.1,91,240/- to the appellant/claimant.

6. The learned counsel for the appellant/claimant submitted that the Doctor who was examined as P.W.2 had assessed the functional disability of the appellant/claimant at 40% and deposed in his evidence that the disability is permanent in nature and hence the Tribunal ought to have assessed the functional disability at 40% instead of 5%. The learned counsel for the appellant/claimant further submitted that the appellant/claimant is unable to perform his job to his full capacity due to the accident.

7. The learned counsel for the second respondent Insurance Company, per contra, submitted that since the appellant/claimant



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continues to work, the Tribunal ought not to have adopted the multiplier method and ought to have awarded the compensation on percentage basis.

He further submitted that in any case, the compensation awarded by the Tribunal is just and reasonable and therefore, no interference calls for.

8. This Court has carefully considered the rival submissions.

9. The only question involved in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

10. Admittedly, the second respondent has not challenged the award of the Tribunal adopting the multiplier method while calculating compensation to the appellant/claimant. The Tribunal had held that considering the nature of the job performed by the appellant/claimant and the injuries sustained by him, the appellant/claimant suffered a functional disability of 5%.

11. However, considering the nature of injuries sustained by the appellant which is enumerated by P.W.2 Doctor, the surgery and the treatment taken by him earlier, and also considering the fact that the P.W.



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2 Doctor has deposed that the disability is permanent in nature, this Court is of the view that it would be just and reasonable to fix the functional disability at 10% instead of 5%.

12. The award under the other heads is just and reasonable and therefore no interference calls for.

13. The compensation awarded by the Tribunal under the head of 'loss of income due to the disability' is modified as follows:-

Annual Income of the
appellant/claimant (Rs.8,000/- x 12) : Rs.96,000/-

Add: Future Prospects (40%)
(Rs.96,000/- x 40/100) : Rs.38,400/-

Total annual income of the
appellant/claimant : Rs.1,34,400/-

Loss of annual income due to
disability (10%)
(Rs.1,34,000/- x 10/100) : Rs.13,400/-

Multiplier (appellant's age 29) - 17

Loss of future income due to the disability
(Rs.13,400/- x 17) - **Rs.2,28,480/-**



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WEB COPY 14. Therefore, the total compensation awarded by the Tribunal is enhanced to Rs.3,05,480/- as follows:-

Sl. No	Description	Amount awarded by the Tribunal	Amount awarded by this Court	Award confirmed, enhanced or granted
1	Loss of income due to the disability	Rs.1,14,240/-	Rs.2,28,480/-	Enhanced
2	Loss of income during treatment	Rs. 8,000/-	Rs. 8,000/-	Confirmed
3	Loss of amenities	Rs. 25,000/-	Rs. 25,000/-	Confirmed
4	Attendant charges	Rs. 9,000/-	Rs. 9,000/-	Confirmed
5	Pain and sufferings	Rs. 25,000/-	Rs. 25,000/-	Confirmed
6	Conveyance charges	Rs. 5,000/-	Rs. 5,000/-	Confirmed
7	Special diet	Rs. 5,000/-	Rs. 5,000/-	Confirmed
Total		Rs.1,91,240/-	Rs.3,05,480/-	Enhanced by Rs.1,14,240/-

15. The second respondent Insurance Company is directed to deposit the modified amount of Rs.3,05,480/- together with interest at the rate of 7.5% per annum from the date of the claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of 6 weeks from the date of receipt of a copy of this order.



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16. On such deposit, the appellant/claimant is entitled to withdraw the same together with interest and costs, less the amount already withdrawn, if any, by filing suitable application before the Tribunal. The appellant/claimant is directed to pay the necessary court fee, if any, on the enhanced amount.

17. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

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The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Thanjavur.



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SUNDER MOHAN, J.

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