



C.M.A.No.569 of 2004

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.01.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

C.M.A.No.569 of 2004

1.K.Duraisamy (Died) .. Appellant/Petitioner

2.Gowri

3.D.Kanagasabapathy

4.Karunjami

5.Ramayee .. Appellants 2 to 5

(Appellants 2 to 5 are brought on record as LR's of the deceased sole appellant vide Court order dated 22.04.2008 made in M.P.(MD).Nos.2 and 3 of 2008 in C.M.A.No.569 of 2004)

Vs.

1.P.Thirumurthy

2.The New India Assurance Company Limited,
K.V.R.Complex, II Floor,
80 Feet Road,
Sengunthapuram,
Karur – 2.

..Respondents/Respondents



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 12.08.2003 made in M.C.O.P.No.2 of 2003 on the file of Motor Accidents Claims Tribunal (Sub Court), Karur, insofar as absolving the Insurance Company the second respondent herein and for enhancement.

For Appellants : Mr.T.Selvakumaran

For R-2 : Mr.M.Ramaratnam

JUDGMENT

The present Civil Miscellaneous Appeal is filed by the claimant being aggrieved by the compensation fixed by the Motor Accidents Claims Tribunal in M.C.O.P.No.2 of 2003 dated 12.08.2003, which is far less than the compensation claimed.

2. According to the first appellant/claimant, he was working as a cleaner in a lorry at the time of accident and earned Rs.4500/- per month with daily batta. In the accident, he sustained multiple injuries and amputation of right leg below the knee. This has caused impediment in his earning capacity as cleaner. Hence, he has sought for Rs.10,00,000/- as compensation, whereas, the Tribunal fixing his yearly income as Rs.30,000/-



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applied multiply as 17 and permanent disability at the rate of 60%, awarded a sum of Rs.4,06,245/- with 9% interest. Aggrieved by the same, the present Civil Miscellaneous Appeal is filed. Pending appeal, the sole appellant died and his legal representatives were brought on record.

3. The learned counsel appearing for the appellants, relying upon the judgment of the Hon'ble Supreme Court rendered in the case of ***New India Assurance Company Limited Vs. Smt.Kalpana and others in Civil Appeal No.255 of 2007 dated 17.01.2007***, submitted that even in the absence of income certificate, the notional income of Rs.3000/- per month has been fixed by the Supreme Court.

4. The learned counsel appearing for the second respondent/Insurance Company submitted that there is no document to show that the claimant was gainfully employed and the notional income of Rs.2500/- need not be revised.



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5. At the time of accident, the claimant was 35 years old and the accident has caused 60% permanent disability. He has lost his right leg below knee. Therefore, this Court finds that the compensation for loss of income must be enhanced from Rs.30,000/- to Rs.36,000/- per annum and accordingly, multiply should be applied. While doing so, the appellants will be entitled to get an additional sum of $(6000 \times 17 \times 60/100)$ Rs.61,200/- with 9% interest from the date of claim till the payment. On perusal of records, this Court finds that the appeal was dismissed for non-prosecution on 05.04.2016 and thereafter, got restored on 17.10.2022. Therefore, the period from the dismissal to restoration of the appeal shall be excluded for calculation of interest.

6. Accordingly, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

18.01.2024

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



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To

1.The Motor Accidents Claims Tribunal (Sub Court),
Karur.

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



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DR.G.JAYACHANDRAN,J.

Lm

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