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C.M.A(MD)No.324 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2024

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.324 of 2020

1.R.V.Maheswaran (died)

2.Uma

3.Minor Kavin

...Appellants

(A2 & A3 are brought on record as LR's of the deceased sole appellant vide order dated 01.03.2024 in CMP(MD)Nos.2905 to 2907 of 2024.)

Vs.

1.M.Palanisamy

2.The Manager,

United India Insurance Co. Ltd.,

No.280, Ooty Main Road,

Mettupalayam – 641 301.

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to allow this appeal and enhance the award amount in dated 30.08.2016 passed in M.C.O.P.No.86 of 2013 on the file of the Motor Accident Claims Tribunal / Principal Sub Judge, Karur.

For Appellants : Mr.N.Sudhagar Nagaraj

For R-2 : Mr.G.Prabhu Rajadurai



C.M.A(MD)No.324 of 2020

JUDGMENT

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[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN, J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Principal Sub Judge, Karur in M.C.O.P.No.86 of 2013, dated 30.08.2016, the claimant has filed the present appeal.

2.The first appellant is the claimant, who was represented by his wife in M.C.O.P.No.86 of 2013 on the file of the Motor Accident Claims Tribunal / Principal Sub Judge, Karur. He filed the claim petition in M.C.O.P.No.86 of 2013, claiming a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) as compensation for the loss suffered by him. By the award, dated 30.08.2016, the Tribunal awarded a sum of Rs.35,48,270/- (Rupees Thirty Five Lakhs Fourty Eight Thousand Two Seventy only) as compensation along with 7.5% interest from the date of filing of the claim petition.



C.M.A(MD)No.324 of 2020

3.Facts of the Case:-

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According to the appellants, on 06.12.2012 at about 14.15 hours, when the claimant was going by his bajaj discover motorcycle bearing Reg.No.TN 47 AC 6322 in Salem – Karur NH 7 bypass road, a Lorry bearing Reg.No.TN 66 D 9662 came in a rash and negligent manner and hit against the claimant and also another two wheeler rider namely maheswaran, due to which, he sustained severe injuries on his head and he became unconscious. FIR was also registered against the driver of the Lorry. The accident occurred only due to the rash and negligent driving of the driver of the Lorry. Therefore, the appellant filed the claim petition, claiming a sum of Rs.70,00,000/- (Rupees Seventy Lakhs only) as compensation.

4.The second respondent insurance company filed the counter statement and denied all the averments made in the claim petition. The second respondent insurance company contended that the accident occurred only due to the negligent driving of the appellant and hence, he prayed for dismissal of the claim petition.



C.M.A(MD)No.324 of 2020

5. Before the Tribunal, on the side of the claimants, P.W.1 to P.W.7 were examined and 58 documents were marked as Ex.P1 to P58. On the side of the insurance company, neither any witness was examined nor any document was marked.

6. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, and arguments of the counsel for the appellants and the respondent insurance company held that the accident occurred only due to the rash and negligent driving by the driver of the Lorry bearing Reg.No.TN 66 D 9662 that belonged to the first respondent herein and directed the first respondent and the second respondent Insurance Company, to pay a sum of Rs.35,48,270/- (Rupees Thirty Five Lakhs Fourty Eight Thousand Two Seventy only) as compensation along with 7.5% interest from the date of filing of the claim petition.

7. During the pendency of this appeal, the injured claimant who became unconscious died and hence, aggrieved against the said award dated 30.08.2016, the appellants have filed the present appeal seeking enhancement of the award.



C.M.A(MD)No.324 of 2020

8.Submission of the learned Counsel for the Appellants:

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The learned counsel appearing for the appellants submits that after the accident, the claimant became unconscious. The appellants seek enhancement of the award by adopting multiplier method to calculate the loss of income.

9.Submission of the learned Counsel for the Respondents:

Per contra, the learned counsel appearing for the second respondent insurance company seeks for dismissal of this appeal.

10.We have heard the learned Counsel appearing for the appellants and the learned counsel appearing for the respondent and also perused all the materials available on record.

11. The following points arise for consideration of this appeal:

11.1.Whether the claimant is entitled to receive enhanced compensation?



12.The appellant worked as a representative in Sara International.

P.W.7 was examined to prove the same, he deposed that he earned a sum of Rs.10,000/- as monthly income and Rs.5,000/- as incentive and Rs. 15,000/- as a special annual allowance. He produced Ex.P49. Due to the accidental injuries, he was in vegetable state becomes living vegetable and hence, he was terminated from service under Ex.P50.

13.According to the Doctor's evidence he sustained the following injuries:

1.Bilateral Communitied and depressed fracture of frontal bone with exposed frontal sinus with rupture of superior sagittal sinus with bilateral frontal and right temporal contusion and bilateral acute fronto temporal subdural heamatoma,

2. Delayed CSF Rhinorrhea and CSF Otorrhea with Meningitis,

3.Left 2nd - 6th fracture with Haemopneumothorax

4.Aspiration Pneumonia

5.Perisplenic rupture with Minimal Hemoperitoneum

6.Post Tracheostomy

7.Multiple facial bone fracture



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8. Diabetes Mellitus (Newly Diagnosed)

14.Further, the doctor deposed that multiple surgeries were performed on the injured claimant, and had been in continuous treatment for 2 years in hospitalization, after the accident on 06.12.2012 and his entire nervous system is totally affected and he suffers from paraplegia and he also lost his job and the same was deposed by P.W.7. Therefore, the learned Tribunal Judge ought to have taken the loss of earning capacity as 100%.

15.Calculation of the amount:

Considering the evidence of P.W.7 that the injured served as Sales Executive in Sara International Company and Ex.P19, this Court fixes the notional monthly income of injured as Rs.12,000/-. The injured was aged about 37 years at the time of the accident. By adding the future prospects (40%), the monthly income of the injured comes around Rs.16,800/- and the multiplier is also fixed at 15 and the loss of future income is calculated are as follows:-

$$(Rs.12,000 + 40\%) = Rs.16,800/-$$



C.M.A(MD)No.324 of 2020

(Rs.16,800 x 15 x 12) = Rs.30,24,000/-

Therefore, this Court calculated the loss of income by applying the multiplier method considering the nature of the injuries sustained by the injured claimant and his total loss of earning capacity and as he also was terminated from service, enhanced the loss of income to the extent of Rs. 30,24,000/-, and the remaining awarded amount granted by the Court below is hereby confirmed without any enhancement.

16.Conclusion:

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	Disability (80%)	2,00,000.00/-	2,00,000.00/-	confirmed
2	Loss of income	2,00,000.00/-	2,00,000.00/-	confirmed
3	Pain and suffering	2,92,500.00/-	2,92,500.00/-	confirmed
4	Loss of future income	1,00,000.00/-	30,24,000.00/-	enhanced
5	Transportation Expenses	50,000.00/-	50,000.00/-	confirmed
6	Nutrition Food	25,000.00/-	25,000.00/-	confirmed
7	As per document Ex.P. 15	6,39,264.00/-	6,39,264.00/-	confirmed
8	As per document Ex.P. 16	9,23,500.00/-	9,23,500.00/-	confirmed
9	As per document Ex.P. 17	1,55,000.00/-	1,55,000.00/-	confirmed



C.M.A(MD)No.324 of 2020

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
10	As per document Ex.P. 18	1,77,900.00/-	1,77,900.00/-	confirmed
11	As per document Ex.P. 19	79,250.00/-	79,250.00/-	confirmed
12	As per document Ex.P. 20	32,100.00/-	32,100.00/-	confirmed
13	As per document Ex.P. 21	7,900.00/-	7,900.00/-	confirmed
14	As per document Ex.P. 22	82,941.40/-	82,941.40/-	confirmed
15	As per document Ex.P. 23	51,646.00/-	51,646.00/-	confirmed
16	As per document Ex.P. 24	29,461.65/-	29,461.65/-	confirmed
17	As per document Ex.P. 25	18,988.65/-	18,988.65/-	confirmed
18	As per document Ex.P. 26	660.00/-	660.00/-	confirmed
19	As per document Ex.P. 27	23,445.00/-	23,445.00/-	confirmed
20	As per document Ex.P. 28	90,960.95/-	90,960.95/-	confirmed
21	As per document Ex.P. 29	2,375.00/-	2,375.00/-	confirmed
22	As per document Ex.P. 30	12,474.00/-	12,474.00/-	confirmed
23	As per document Ex.P. 31	19,515.00/-	19,515.00/-	confirmed
24	As per document Ex.P. 32	6,680.00/-	6,680.00/-	confirmed
25	As per document Ex.P. 33	3,395.00/-	3,395.00/-	confirmed



C.M.A(MD)No.324 of 2020

S. No.	Heads	Amount awarded by the Tribunal (in Rupees)	Re-quantified amount by this Court (in Rupees)	Status
26	As per document Ex.P. 34	30,425.00/-	30,425.00/-	confirmed
27	As per document Ex.P. 35	14,182.00/-	14,182.00/-	confirmed
28	As per document Ex.P. 36	42,290.00/-	42,290.00/-	confirmed
29	As per document Ex.P. 37	36,805.00/-	36,805.00/-	confirmed
30	As per document Ex.P. 38	20,407.00/-	20,407.00/-	confirmed
31	As per document Ex.P. 39	5,706.00/-	5,706.00/-	confirmed
32	As per document Ex.P. 40	6,540.00/-	6,540.00/-	confirmed
33	As per document Ex.P. 41	22,853.00/-	22,853.00/-	confirmed
34	As per document Ex.P. 42	2,390.00/-	2,390.00/-	confirmed
35	As per document Ex.P. 43	2,820.00/-	2,820.00/-	confirmed
36	As per document Ex.P. 44	1,800.00/-	1,800.00/-	confirmed
37	As per document Ex.P. 45	15,750.00/-	15,750.00/-	confirmed
38	As per document Ex.P. 51	6,870.00/-	6,870.00/-	confirmed
39	As per document Ex.P. 57	1,10,475.00/-	1,10,475.00/-	confirmed
Total		Rs.35,48,269.65/-	Rs.64,72,270.00/-	Enhanced



C.M.A(MD)No.324 of 2020

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

The compensation awarded in M.C.O.P.No.86 of 2013, on the file of the Motor Accident Claims Tribunal / Principal Sub Judge, Karur, dated 30.08.2016, is hereby enhanced from Rs.35,48,269.65/- to Rs.64,72,270.00/-. The second respondent Insurance company is directed to deposit the enhanced compensation amount i.e., Rs.64,72,270.00/- (Rupees Sixty Four Lakhs Seventy Two Thousand Two Seventy only) with accrued interest and costs, less any amount if already deposited, within a period of six month from the date of receipt of a copy of this judgment. During the pendency of the appeal, the injured claimant died and hence, the legal heirs, namely, his wife and the minor daughter are entitled to the apportionment of the above amount in the following ratio:

The second appeallan/wife is entitled to 60% of the amount.

The Minor daughter entitled to 40% of the amount.

17.1. On such deposit, appellant No.2 is permitted to withdraw her share along with proportionate interest with costs. The share of the minor



C.M.A(MD)No.324 of 2020

daughter is to be deposited in any one of the nationalized bank in the interest bearing account and the second appellant is permitted to withdraw the interest once in six months till her attainment of majority.

No costs.

**(V.B.S.J.) (K.K.R.K.J.)
12.03.2024**

Index: Yes/No
Internet: Yes/No
sm/sbn

To

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



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C.M.A(MD)No.324 of 2020

V.BHAVANI SUBBAROYAN, J.
and
K.K. RAMAKRISHNAN, J.

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C.M.A(MD)No.324 of 2020

Dated: 12.03.2024