



C.M.A.No.3267 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 05.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.3267 of 2021
and C.M.P.No.18572 of 2021

National Insurance Co. Ltd.,
Aathur.

... Appellant

vs.

1.Ramkumar
2.Gunasekar

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 07.07.2018 and made in M.C.O.P.No.49 of 2016 on the file of the Motor Accident Claims Tribunal, Villupuram, in the Court of Chief Judicial Magistrate, Villupuram, Principal District Court, Villupuram in M.C.O.P.No.163 of 2016.

For Appellant : Mr.Vadivel S.

For R1 : Mr.S.Chendur Eashwaran
for M/s.E.R.Ramesh

For R2 : Notice Dispense With

J U D G M E N T

Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, the appellant/insurance company has come by way of this appeal.



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2. It is not in dispute that 1st respondent/claimant suffered injury in a road accident that had taken place on 08.10.2015. Since no arguments are advanced on the question of negligence as well as liability, facts necessary for considering those aspects are not discussed in this judgment.

3. The learned counsel appearing for the appellant advanced arguments only on the question of quantum of compensation.

4. According to the 1st respondent/claimant, he was aged about 24 years at the time of accident and he was employed as a Tailor in the shop of PW.2. It was claimed that he received a sum of Rs.18,000/- per month as salary and due to the accident, he was totally disabled to continue his work and his earning capacity got affected. Therefore, the petitioner filed a claim petition before the Tribunal seeking compensation of Rs.50,00,000/-.

5. Before the Tribunal, on the side of the 1st respondent/claimant, he was examined as PW.1 and two other persons were examined as PW.2 and PW.3. On the side of the appellant herein/Insurance Company, no one was examined.



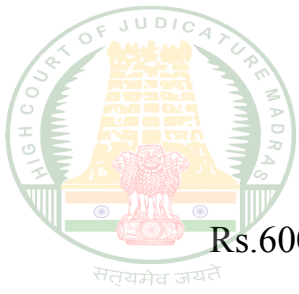
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6. Based on the evidence available on record, the Tribunal awarded a sum of Rs.26,08,500/- as compensation to the 1st respondent/claimant.

Aggrieved by the quantum of compensation fixed by the Tribunal, the appellant/insurance company has come by way of this appeal.

7. The learned counsel appearing for the Appellant/Insurance Company would submit that though Medical Board issued Disability Certificate fixing Locomotor Disability at 70%, the Tribunal committed a serious error in taking it as 100% disability. The learned counsel further submitted that income of the injured fixed at Rs.18,000/- per month is very much on the higher side.

8. The learned counsel appearing for the 1st respondent/claimant would submit that though the Tribunal had taken Locomotor Disability as 100%, it converted the same into 33.33% for whole body and considered only 33.33% at the time of calculation. Therefore, the submission made by the appellant/insurance company cannot be accepted. The learned counsel further submitted that as per the Salary Certificate issued by the employer of the victim, PW.2, which was marked as Ex.P22, the victim was given



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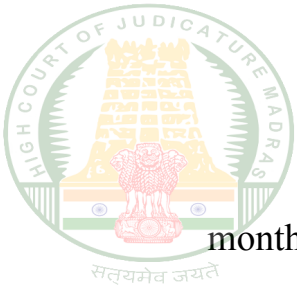
Rs.600/- per day as salary and therefore, the Tribunal was justified in fixing

the income of victim as Rs.18,000/- per month.

9. A perusal of the Disability Certificate issued by the Medical Board, which was marked as Ex.P18, the claimant suffered amputation at foot through tarsal bones done in the right lower limb. The petitioner also suffered injury in his left lower limb and at the time of examination, he was suffering from pain and restricted ROM at ankle. The Medical Board had given its opinion fixing the Locomotor Disability at 70%.

10. Taking into consideration, the avocation of the injured and the nature of the injury mentioned in the Disability Certificate, the Tribunal treated 70% Locomotor Disability as 100% and converted the same for whole body as 33.33% ($1/3^{\text{rd}}$). Therefore, for the purpose of calculating the compensation under the head partial permanent disability, the Tribunal applied only Disability Percentage of 33% (whole body). Therefore, the same requires no interference.

11. The Tribunal fixed income of the injured at Rs.18,000/- per



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month. Though Ex.P22-Salary Certificate issued by the employer of the injured would indicate that he was paid with Rs.600 per day, we cannot presume that the injured would work for all the 30 days. If we say injured work for nearly 25 days, he will be entitled to Rs.15,000/-. Even otherwise having regard to the date of the accident (08.10.2015), the notional income can be fixed at Rs.15,000/-.

12. In such circumstances, this Court is inclined to fix Rs.15,000/- as monthly income of the injured. In that case, the claimant is entitled to a sum of Rs.15,12,000/- under the head compensation for partial permanent disability (Rs.15,000 + 40% towards future prospects = Rs.21,000) ($\text{Rs.21,000} \times 12 \times 18 \times \frac{1}{3} = 15,12,000/-$). The compensation awarded by the Tribunal under various other heads are reasonable and therefore, the same requires no interference.

13. As far as the compensation under the head disability which includes future prospects, the claimant is entitled to Rs.15,12,000/-. The Tribunal has not granted any amount under the head loss of amenities. Therefore, this Court is inclined to grant a sum of Rs.20,000/- towards loss



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of amenities. In all the claimant is entitled to Rs.23,25,840/- instead of Rs.26,08,500/- as awarded by the Tribunal. Accordingly, the award passed by the Tribunal is modified as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court
1.	Compensation for Disability	Rs.12,96,000/-	Rs.15,12,000/-
2.	For loss of future prospect (40%)	Rs.5,18,400/-	
3.	Pain and Sufferings	Rs.30,000/-	Rs.30,000/-
4.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
5.	Attender Charges 3x9000)	Rs.27,000/-	Rs.27,000/-
6.	Loss of clothes	Rs.3,000/-	Rs.3,000/-
7.	Transportation charges (Ex.P14 and Ex.P17	Rs.53,200/-	Rs.53,200/-
8.	Medical Bills (Ex.P15 and Ex.P16)	6,70,640/-	6,70,640/-
9.	Loss of Amenities	-	Rs.20,000/-
Total		Rs.26,08,240/- (rounded off to Rs.26,08,500/-)	Rs.23,25,840/-

14. It is stated by the learned counsel for the appellant by virtue of interim order passed by this Court, the appellant/Insurance Company had deposited 50% of the award amount and the balance amount as per the modified award shall be deposited by the appellant/insurance company, within the time stipulated by this Court.



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15. In view of the same, the balance amount as per the modified award shall be deposited by the Appellant/Insurance Company together with interest at the rate of 7.5% per annum before the Tribunal, within a period of four weeks from the date of receipt of copy of this judgment. On such deposit, the 1st respondent/claimant is entitled to withdraw the said amount by filing appropriate application before the Tribunal.

16. Accordingly, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected civil miscellaneous petition is closed.

05.02.2025

Index :Yes/No
Speaking order :Yes/No
Neutral Citation :Yes/No
dm

To

1.The Motor Accident Claims Tribunal, Villupuram,
(Court of Chief Judicial Magistrate, Villupuram,
Principal District Court, Villupuram)

2.The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

dm

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