



WEB COPY



C.M.A.No.1392 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.1392 of 2021

R.Venkatesh

.. Appellant

Vs.

1.A.Rajendran

2.Shri Ram General Insurance Company Limited,
Mugamigai Complex,
2nd Floor, No.4, Lady Desika Road,
Mylapore, Chennai - 600 004.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 13.09.2019 made in M.A.C.T.O.P. No.4549 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court-2, Small Causes Court, Chennai.

For Appellant : Ms.M.Malar

For Respondents : R1-exparte

Ms.R.Sreevidhya for R2



C.M.A.No.1392 of 2021

JUDGMENT

WEB COPY

This appeal has been filed by the appellant/claimant seeking enhancement of compensation.

2.The Tribunal, under the impugned award, has directed the second respondent/Insurance Company to pay the appellant/claimant a compensation of Rs.7,05,515/-, which was rounded off to Rs.7,05,600/-, for the injuries sustained by the appellant/claimant as a result of an accident caused by a vehicle, insured with the second respondent/ Insurance Company as detailed hereunder:

S.Nos.	Head	Amount awarded by the Tribunal
1.	Permanent disability	Rs.1,05,000.00
2.	Pain and suffering	Rs. 60,000.00
3.	Transportation	Rs. 30,000.00
4.	Extra nourishment	Rs. 30,000.00
5.	Loss of income	Rs. 62,500.00
6.	Medical bills	Rs.3,88,015.00
7.	Future Medical bills	Rs. 10,000.00
8.	Loss of amenities	Rs. 10,000.00
9.	Mental agony to family	Rs. 10,000.00
	Total	Rs.7,05,515.00 rounded off to Rs.7,05,600/-



C.M.A.No.1392 of 2021

3.The nature of injuries sustained by the appellant/claimant as a result of the accident caused by a vehicle, insured with the second respondent/Insurance Company has not been disputed by the respondents before the Tribunal. The Medical Board, after examination of the appellant/claimant, has assessed the appellant's/claimant's disability at 35%. The Tribunal, under the impugned award, has awarded a sum of Rs.1,05,000/- at Rs.3,000/- per percentage towards disability compensation for 35% disability assessed by the Medical Board.

4.Learned counsel for the appellant/claimant would contend that the Tribunal ought to have adopted multiplier method for the purpose of assessing loss of earning capacity of the appellant/claimant, considering the nature of injuries sustained by the appellant/claimant, which according to the learned counsel for the appellant/claimant is grievous in nature. She would also point out from the Medical Board Report/Ex.C1 that due to the injuries sustained by the appellant/claimant as a result of the accident caused by the vehicle, insured with the second respondent/ Insurance Company, the right knee movement of the appellant/claimant has been restricted and hence, she would submit that being a permanent disability, the Tribunal ought to have adopted the multiplier method.



5.Learned counsel for the second respondent/Insurance Company

would vehemently oppose the adoption of multiplier method as she would contend that the Tribunal has rightly considered the nature of injuries sustained by the appellant/claimant and has also considered the fact that the appellant/claimant has not let in any evidence to show that due to the injuries sustained by him, he suffered loss of earning capacity.

6.Learned counsel for the appellant/claimant would also contend that the compensation awarded by the Tribunal under various other heads is not a just compensation, which has to be enhanced. The same is disputed by the learned counsel for the second respondent/Insurance Company.

7.Admittedly, the appellant/claimant has sustained the following injuries:

'Fracture in both bone right leg and compound injury'

8.The appellant/claimant was also hospitalised admittedly for a period of 29 days due to the injuries sustained by him as a result of the



C.M.A.No.1392 of 2021

accident caused by the vehicle, insured with the second respondent. The Medical Board Certificate dated 03.01.2019/Ex.C1 also confirms that due to the injuries sustained by the appellant/claimant as stated supra, the right knee movement of the appellant/claimant has been restricted and still continues to have pain. The accident happened in the year 2015 and even after a lapse of more than three years, the appellant/claimant has still not fully recovered. As seen from the Medical Board Report dated 03.01.2019, the appellant/claimant continues to get pain in the knee and ankle on account of the injuries sustained by him as a result of the accident, caused by the vehicle insured with the second respondent/ Insurance Company. The Medical Board has assessed the disability of the appellant/claimant at 35%. However, as seen from the Medical Board Certificate dated 03.01.2019/Ex.C1, functional disability of the appellant/claimant with regard to his knee and ankle has not been assessed separately. The Tribunal, under the impugned award has awarded permanent disability compensation to the appellant/claimant at Rs.1,05,000/- on percentage basis, i.e. at Rs.3,000/- per percentage of disability for the accident that happened in the year 2015.



C.M.A.No.1392 of 2021

9. When the Tribunal has come to the conclusion that the appellant/claimant has suffered permanent disability, the Tribunal, after giving due consideration to the nature of injuries sustained by the appellant/claimant and the period of hospitalisation, ought to have adopted multiplier method. But this Court cannot accept the 35% disability assessed by the Medical Board under Ex.C1 as the functional disability for the purpose of assessing the loss of earning capacity of the appellant/claimant by adopting the multiplier method. If the functional disability of the knee and ankle of the appellant/claimant is alone taken into consideration, this Court, after giving due consideration to the evidence placed on record as well as the Medical Board Report dated 03.01.2019 (Ex.C1) is of the considered view that the permanent disability with regard to the knee and ankle of the appellant/claimant has to be fixed at 10% and not at 35% fixed under the disability certificate dated 03.01.2019 (Ex.C1), which has been accepted by the Tribunal under the impugned award. Since this Court has come to the conclusion that multiplier method will have to be adopted for the purpose of assessing the loss of earning capacity of the appellant/claimant, this Court assesses the compensation towards loss of earning capacity to the appellant/claimant at Rs.2,30,400/- by adopting



C.M.A.No.1392 of 2021

the multiplier '16' since the age of the injured at the time of accident was 32 years and fixing the notional monthly income at Rs.12000/- and disability at 10% as detailed hereunder:

$$12000 \times 12 \times 16 \times 10 / 100 = \text{Rs.}2,30,400/-$$

10. Even though the learned counsel for the appellant/claimant would contend that the appellant/claimant is also entitled for loss of future prospects at 40% as per the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and Others* reported in **2017 (16) SCC 680**, since according to her, the appellant/claimant, having sustained permanent disability, is entitled for the same, the said contention is rejected by this Court in view of the fact that the appellant/claimant has not let in any evidence to support the said contention by examining the appellant's/claimant's employer to prove that due to the injuries, the appellant/claimant had lost his future prospects in his employment.

11. Learned counsel for the appellant/claimant also contended that the compensation awarded by the Tribunal under various other heads is also not a just compensation and they have to be enhanced.



C.M.A.No.1392 of 2021

12.This Court, after giving due consideration to the nature of injuries sustained by the appellant/claimant and the period of his hospitalisation and the year of the accident, is of the considered view that the compensation awarded by the Tribunal under the heads 'pain and suffering', 'Transportation', 'Extra Nourishment', 'Loss of income', 'Medical Bills', 'Future Medical Bills', 'Loss of amenities' and 'Mental agony to family' is a just compensation and there is no scope for further enhancement by this Court.

13.However, the Tribunal erroneously has not awarded any compensation towards Attender charges. The Tribunal ought to have awarded compensation of Rs.20,000/- towards Attender charges in view of the fact that the appellant/claimant had suffered grievous injuries and was in the hospital for 29 days and he would have certainly engaged attenders for attending to his basic needs on account of the injuries sustained by him caused by the vehicle, insured with the second respondent/Insurance Company.



C.M.A.No.1392 of 2021

For the foregoing reasons, the compensation awarded by the Tribunal is enhanced from Rs.7,05,600/- to Rs.8,50,915/- as detailed hereunder:

S.Nos.	Head	Amount awarded by this Court
1.	Permanent disability	Rs.2,30,400.00
2.	Pain and suffering	Rs. 60,000.00
3.	Transportation	Rs. 30,000.00
4.	Extra nourishment	Rs. 30,000.00
5.	Loss of income	Rs. 62,500.00
6.	Medical bills	Rs.3,88,015.00
7.	Future Medical bills	Rs. 10,000.00
8.	Loss of amenities	Rs. 10,000.00
9.	Mental agony to family	Rs. 10,000.00
10.	Attender charges	Rs. 20,000.00
	Total	Rs.8,50,915.00

14.Accordingly, this Civil Miscellaneous Appeal is partly allowed by enhancing the award amount. The second respondent/insurance company is directed to deposit the enhanced award amount of Rs.8,50,915/-, after deducting the amount already deposited, if any, together with interest at the rate of 7.5% per annum from the date of the



C.M.A.No.1392 of 2021

claim petition till the date of deposit and cost to the credit of M.C.O.P.

No.4549 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court-2, Small Causes Court, Chennai within a period of four weeks from the date of receipt of a copy of this judgment.

15.The appellant/claimant is permitted to withdraw the said amount, once it is deposited by the second respondent/Insurance Company, by filing an appropriate application. On such application being made, the Tribunal shall transfer the amount lying to the credit of M.C.O.P. No.4549 of 2015 to the bank account of the appellant/claimant directly through RTGS, within a period of one week thereafter. No costs.

18.06.2024

vga

Internet: Yes/No

Speaking Order/Non-Speaking Order



WEB COPY

To



C.M.A.No.1392 of 2021

- 1.The Motor Accident Claims Tribunal,
Special Sub Court-2,
Small Causes Court, Chennai.
2. The Section Officer,
V.R. Section,
High Court, Madras.



WEB COPY



C.M.A.No.1392 of 2021

ABDUL QUDDHOSE, J.

vga

C.M.A. No.1392 of 2021

18.06.2024