



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.3017 OF 2010

Munikrishnan @ Munikrishnapa

... Appellant/Claimant

Vs.

1. C.Alamelu, Proprietor of Nandhi Transport,
No.23, Kannaiyan Street,Thirunagar Colony,
Erode.
2. The National Insurance Co. Ltd.,
No.173, Perunduri Road, Near Collector Office,
Erode-638 011.
3. J.Shekar
4. The Oriental Insurance Company Limited,
Beauty Plaza, Balmatta Road, Hampankatta,
Mangalore.

... Respondents/Respondents

This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 18.06.2010 passed in M.C.O.P.No.1603 of 2007 by the Chief Judicial Magistrate, Motor Accident Claims Tribunal, Krishnagiri.

For Appellant : Mr.V.Kumaravelan

For Respondents : Mr.M.Guruprasad for R1

Mr.D.Baskaran for R2

Mr.S.Arunkumar for R4

J U D G M E N T

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant is before this court for enhancement of the compensation.



2. The claimant has filed a claim petition before the Tribunal seeking compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 17.05.2007.

WEB COPY

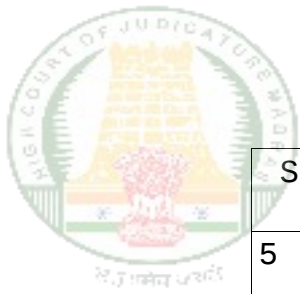
3. The brief case of the claimant is as follows: The petitioner is a driver by profession and he was working with the third respondent as driver. On 17.05.2007, the claimant drove a van bearing registration No.KA-19-B-5410, belonging to the third respondent along Coimbatore-Mangalore N.H.Road and while nearing Pudhupalayam Bridge diversion at Perumanallur, an omni bus bearing registration No.TN-33-AB-6996 was driven by its driver in a rash and negligent manner, thereby the front tyre of the bus had burst and the driver lost the control of the bus and dashed against the van and due to the impact, the claimant had sustained severe multiple injuries all over his body and was admitted to K.G.Hospital, Coimbatore as inpatient from 17.05.2007 to 26.05.2007. According to the claimant, the rash and negligent driving of the driver of the omni bus was the cause of accident and since the first respondent/ owner of the vehicle insured her bus with the second respondent/ insurance company, both of them are liable to pay compensation. The contention of the claimant is that the third and fourth respondents i.e. owner of the van and its insurer were impleaded as formal parties.

4. The claim petition was resisted by the first, second and fourth respondents by filing their respective counter affidavits.

5. Before Tribunal, on the side of the claimant, the claimant and one another witness was examined as PW1 and PW2 and Ex.P1 to Ex.P11 were marked. On the side of the respondents, no oral and documentary evidence was adduced.

6. After analysing the evidence on record, the Tribunal has awarded a sum of Rs.2,45,750/- as compensation to the claimant. The compensation awarded under various heads are extracted hereunder.

Sl No	Heads	Amount in Rs.
1	Disability (45 x 2000)	90,000
2	Loss of earnings	25,000
3	Pain and sufferings	30,000
4	Medical bills	95,750



WEB COPY

Sl No	Heads	Amount in Rs.
5	Transportation and extra nourishment	5000
	Total	2,45,750

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal to enhance the compensation.

7. Heard the learned counsel for the appellant and the counsel appearing for the insurance companies and I have perused the materials on record.

8. The learned counsel appearing for the appellant submitted that the claimant had sustained severe injuries and he had taken treatment as inpatient for a period of two months and also undergone for three operations, however, the Tribunal has awarded only a sum of Rs.3,0,000/- towards "Pain and sufferings". Further he submitted that by considering the injuries sustained by the claimant, the Tribunal ought to have adopted multiplier method while calculating the compensation towards "Disability" and "Future earning capacity". Therefore, he prayed for enhancement of compensation.

9. The learned counsel appearing for the second respondent/ insurance company submitted the after analysing the evidence and the documents on record, the Tribunal has awarded a just and reasonable compensation and therefore, the award passed by the Tribunal does not warrant any interference by this court.

10. Now the point for consideration is whether the compensation awarded by the Tribunal has to be enhanced.

11. Point

The specific contention of the appellant is that he sustained grievous injuries all over his body and he had underwent for three operations and he has also produced x-rays and the medical records before the Tribunal to prove the above factum. It is further contended that the doctor PW2 has given disability certificate by assessing the disability suffered by the claimant as 52%, however, the Tribunal has fixed only 45%, without any basis and the same is unsustainable. The disability certificate was marked as Ex.P10 and to prove the above document, Dr.S.Krishnakumar, who has given disability certificate, was examined as PW2. There is no materials placed before the Tribunal to disbelieve the above said evidence. Therefore, this court safely fixed the disability suffered by the claimant as 52%.



12. According to the claimant, he was a driver by profession and he drove the third party vehicle, belonging to the third respondent and insured with fourth respondent and due to the said accident, he is unable to continue his work as driver, as done earlier and hence, his entire career has been spoiled. The contention of the appellant is that awarding a sum of Rs.2,000/- per percentage would not be compensated for the loss of future income and hence, the same has to be enhanced. As rightly pointed out by the learned counsel appearing for the claimant, the disability suffered by the claimant is 52%.\, as per the disability certificate Ex.P10. The copy of the driving license of the claimant was marked as Ex.P9 before the Tribunal. Therefore, it is appropriate for this court to fix Rs.3,000/- per percentage. Further, no amount was awarded towards "Attender's charges", Loss of Amenities" and " Damages to cloths". Accordingly, the revised compensation awarded under various heads is extracted hereunder

Sl.No	Heads	Compensation Awarded by the Tribunal	Compensation enhanced/ Awarded by this court
1	Disability	90,000 (45 x 2000)	1,56,000 (52 x 3000)
2	Loss of earnings	25,000	25,000
3	Pain and sufferings	30,000	30,000
4	Medical bills	95,750	95,750
5	Transportation and extra nourishment	5,000	10,000
6	Attender's charges	-	10,000
7	Loss of amenities	-	10,000
8	Damages to cloths	-	1,000
	Total	2,45,750	3,37,750

This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

13. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is enhanced from Rs.2,45,750/- to Rs.3,37,750/-. No costs.

(ii) The second respondent/insurance company is directed to deposit the total compensation of Rs.3,37,750/- with interest



at the rate of 7.5.% p.a. from the date of claim petition till the date of deposit, less the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order.

WEB COPY

(iii) On such deposit being made by the insurance company, the claimant is entitled to withdraw the same, after following due process of law.

Sd/-
Assistant Registrar(Audit)

// True Copy //

Sub Assistant Registrar

mst

To

The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Krishnagiri.

Copy To

The Section Officer,
V.R.Section,
Madras High Court, Chennai-104.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.13379

+1cc to Mr.V.Kumaravelan, Advocate, S.R.No.13335

+1cc to Mr.S.Arunkumar, Advocate, S.R.No.13296

+1cc to Mr.D.Bhaskaran, Advocate, S.R.No.12742

CMA. No.3017 of 2010

CA(CO)
RLP(28/10/2021)