



WEB COPY



C.M.A.No.1220 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.07.2022

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.M.A.No.1220 of 2022

and

C.M.P.No.8761 of 2022

United India Insurance Company Ltd.,
Third Party Claims Hub,
No.134, Greams Road, 5th Floor,
Chennai - 600 006.

... 2nd Respondent / Appellants

Vs

1.Santhosh

... Petitioner / Respondent

2.A.Rajangam

... 1st Respondent/ Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award and decree dated 25.11.2021 made in M.C.O.P.No.5353 of 2019 on the file of the Motor Accidents Claims Tribunal, (In the II Court of Small Causes), Chennai.

For Appellant	:	Mr.D.Bhaskaran
For R1	:	Mr.K.Varadha Kamaraj

JUDGEMENT

The Insurance Company has filed this appeal challenging the adoption of multiplier method by the Motor Accidents Claims Tribunal, II Court of Small



C.M.A.No.1220 of 2022

Causes), Chennai in M.C.O.P.No.5353 of 2019 for calculating the loss of earning due to disability especially when disability has no impact on the earning capacity of the petitioner.

2.The facts in brief are as follows :-

(i) The first respondent who claims to be a Squash Coach in the Indian Institute of Technology, Chennai and aged about 25 years has filed the above claim petition seeking compensation of a sum of Rs.29,00,000/- for the injury sustained by him in a road accident.

(ii) The first respondent would submit that he was earning a monthly income of Rs.30,000/- at the time of the accident apart from the part time earning of a sum of Rs.20,000/-. He would submit that on 16.08.2019 at about 21.30 hrs, he was riding his motor-cycle bearing Registration No.TN 03 Y 8310 on the Kamarajar Salai and proceeding in a South to North direction. When he reached Adams Road Junction, a motor-cycle bearing Registration No.MH 14 EL 8131 coming from the opposite direction dashed against his motor-cycle, which resulted in the accident and he sustained grievous injuries to his self.



C.M.A.No.1220 of 2022

3.The second respondent herein, who is the owner of the motor-cycle had not entered appearance and was set *ex-parte*.

4.The Appellant/Insurance Company had filed their counter questioning the age, avocation and income of the first respondent. That apart, they had submitted that the petitioner was equally responsible for the accident. The second respondent had denied the disability sustained by the first respondent.

5.The Tribunal by its award dated 25.11.2021 had fastened the liability solely upon the driver of the second respondent's motor-cycle. Thereafter, taking into consideration, the disability assessed by the Medical Board under Ex.C1 and taking note of the avocation of the petitioner/first respondent herein, the Tribunal had taken the disability as assessed as a functional disability. The first respondent had filed Ex.P11 and Ex.P12 to show that he was employed with I.I.T, Madras and earning a monthly income of a sum of Rs.30,000/- per month. The Tribunal had also taken note of the fact that he was a Squash Player and the injuries would definitely affect his earning capacity and therefore, decided to calculate the loss of earning due to disability using the multiplier method. The Tribunal had taken the salary of the first respondent as a sum of Rs.30,000/- per



C.M.A.No.1220 of 2022

month, to which 40% was added for future prospects and therefore, the monthly income was arrived at a sum of Rs.42,000/-. Therefore, the annual income was a sum of Rs.5,04,000/-. The Tribunal held that after deduction of the income tax, a sum of Rs.17,66,520/- was actually given to the first respondent. To this, amounts under the other conventional heads totalling a sum of 19,58,513/- was awarded as compensation.

6.Challenging this award, the Appellant/Insurance Company has filed the appeal.

7.Heard the counsels on either side and perused the materials available on record.

8.A perusal of Ex.P8, the Medical Certificate would indicate that the first respondent, who had undergone surgery has been taking rehabilitation treatment at Karlos Sports Science Physio Therapeutic Care and they have issued a certificate stating that there is a marked improvement in the first respondent's injuries. In fact, the report would state that within five months, the first respondent would recover completely and he can resume his sports activity. This



C.M.A.No.1220 of 2022

document has been filed by the first respondent himself. This document would clearly prove that the injuries sustained by the first respondent is a reversible one and he was on the road to recovery. In fact, the document would clearly state that he can resume his sports activities.

9.In the light of the above, the adoption of multiplier method by the Tribunal below without considering the above is totally erroneous and is liable to be modified. Therefore, taking a sum of Rs.4,000/- per percentage and considering the disability assessed by the Medical Board at 20%, the loss of earning due to disability would be reassessed at a percentage basis i.e., $\text{Rs.4,000/-} \times 20 = 80,000/-$. Therefore, the amount under the head of loss of earning due to disability is reduced from Rs.17,66,520/- to a sum of Rs.80,000/-

10.Since the first respondent has undergone several surgeries, the amount under the head of Attender charges is enhanced to a sum of Rs.20,000/-. A further sum of Rs.10,000/- is granted towards extra nourishment, hence, the amount under this head is Rs.20,000/-. Likewise, a sum of Rs.15,000/- is granted under the head of transportation. Considering the fact that the award is now being modified on the percentage basis, a sum of Rs.50,000/- is granted



C.M.A.No.1220 of 2022

under the head of loss of amenities. Therefore, the total revised compensation would be a sum of Rs.3,44,993/- which is worked out as follows :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of earning due to dis	17,66,520	80,000 (reduced)
Medical expenses	1,09,993	1,09,993
Attender charges	12,000	20,000 (enhanced)
Towards Pain and Sufferings	50,000	50,000
Towards Extra Nourishment	10,000	20,000 (enhanced)
Towards Transportation	10,000	15,000 (enhanced)
Loss of Amenities	0	50,000
Total	19,58,513	3,44,993

11.The appeal is partly allowed and the impugned Award of the Tribunal is modified, reducing the compensation amount from Rs.19,58,513/- to Rs.3,44,993/-. By order dated 15.06.2022, this Court had permitted the claimant to withdraw 50% of the Award amount. It is informed by the learned counsels that the amounts have not yet been withdrawn by the claimant. The appeal is



C.M.A.No.1220 of 2022

partly allowed and the first respondent is permitted to withdraw the entire modified award amount i.e., Rs.3,44,993/-. It is informed that the Insurance Company has already deposited the award amount. The Tribunal shall on an application being made by the claimant permit the first respondent/claimant to withdraw the modified award amount of a sum of Rs.3,44,993/-. The Appellant/Insurance Company is permitted to withdraw the balance amount. The claimants are directed to pay the necessary Court fee for the modified claim amount, if not already paid. The Tribunal below shall not disburse the amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal. Consequently, connected miscellaneous petition is closed.

26.07.2022

Index : Yes/No
Speaking order/non-speaking order
sp

P.T.ASHA, J.,

sp



C.M.A.No.1220 of 2022

To

WEB COPY

- 1.The Motor Accidents Claims Tribunal,
II Court of Small Causes, Chennai.
- 2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No.1220 of 2022
and
C.M.P.No.8761 of 2022

26.07.2022