



C.M.A No.2556 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A. No.2556 of 2023

Muthuramalingam

... Appellant

Vs.

1.Antony Anburaj

2.ICICI Lombard General Insurance Company Limited

1st Floor, Arihant Plaza

No.84/85, Wall tax Road

Chennai - 3

... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 22.10.2019 made in M.C.O.P. No.3240 of 2011 on the file of Motor Accidents Claims Tribunal, (IV Small Causes Court), Chennai.

For Appellant : Mr.K.Varadhakamaraj

For Respondents : Mr.J.Michael Visuvasam for R2
R1 - Dispensed With



C.M.A No.2556 of 2023

JUDGMENT

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The victim of a road accident is now before this court seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai in M.C.O.P. No.3240 of 2011. It is the case of injury where the victim of the accident has lost one of his eyes.

2. The appellant was a driver. On 25.02.2011 at 5.00 a.m, he was standing in front of his lorry with trailer bearing Registration No.TN-04 AE-9700. When the driver of another lorry bearing Registration No.TN-09 AH-1832 moved his lorry in the reverse direction without noticing the claimant there, as a consequence, the appellant was pushed and crushed against the other stationary lorry. In the accident, the appellant suffered right clavicle fracture, fracture to right scapula and also lost his left eye. He was hospitalised from 25.02.2011 to 16.03.2011. Seeking compensation for the injuries he had sustained, he has approached the Tribunal and the Tribunal awarded a sum of Rs.1,32,000/- for the disability and almost twice the amount towards the medical expenses and adding other pecuniary and non pecuniary heads of compensation, had awarded Rs.5,47,600/- with interest. The break-up is as below:



C.M.A No.2556 of 2023

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1. Disability	:	Rs.1,32,000/-
2. Medical Expenses	:	Rs.2,65,591/-
3. Loss of Income	:	Rs. 48,000/-
4.Pain and suffering	:	Rs. 30,000/-
5. Transportation to Hospital	:	Rs. 20,000/-
6. Additional Nourishment	:	Rs. 20,000/-
7. Damages to clothes	:	Rs. 1,000/-
8. Attender charges	:	Rs. 6,000/-
9. Loss of amenities	:	Rs. 25,000/-

Rs.5,47,591/-

Rounded off to Rs.5,47,600/-

Justly aggrieved by the inadequacy of the compensation, the victim is now before this court.

3. The learned counsel for the appellant/claimant submitted that the claimant was a driver and in view of the fact that he had lost of his eyes, he could not pursue his avocation as a driver anymore. He submitted that the Tribunal has been unrealistically parsimonious in granting award of a meager sum of Rs.1,32,000/- when the claimant had lost his left eye. He submitted that the disability of the claimant must be treated as a functional disability. He would further submitted that, as per Ext.C1, the Medical Board has certified that the



C.M.A No.2556 of 2023

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appellant suffers from 44% of permanent disability but the fact remains that he could not any longer pursue his avocation as a driver.

4. Per contra, the learned counsel for the second respondent/insurance company argued that, as per Schedule I Part 2 of the Employees Compensation Act, 1923, any of the victim who loses one of his eyes, it should be counted as only 40% loss of earning capacity. This apart, yet loss of a vision does not *ipso facto* that he should be necessarily ceased to be working as a driver, since the Motor Vehicles Act enables a person with monocular vision (one eye vision) entitles to have a driving licence.

5. In response, the learned counsel for the appellant submitted that the respondent counsel conveniently discounted the other injuries suffered by the victim. Vision is one of the injury, but injury to right clavicle and scapula implies that he is no more fit to drive heavy vehicles.

6. After weighing the rival submissions closely, this court finds that the nature of injury suffered by the victim necessarily has to be construed as a functional disability and it fixed at 40%. The victim was 45 years old at the time of



C.M.A No.2556 of 2023

accident. The Tribunal has fixed Rs.8,000/- as monthly income notionally and this court chooses to retain it. At Rs.8,000/- as monthly income with an additional of 25% towards future prospects of the victim for his career a higher income would be Rs.10,000/-, applying 14 as the multiplier and reducing the same arrived by 40%, the loss of earning capacity is determined at Rs.6,72,000/-. This apart, this court also considers it appropriate to suitably enhance certain other non pecuniary heads of the compensation. The details are in the tabulation below:

<i>Sl. No.</i>	<i>Heads of compensation</i>	<i>Amount</i>
1.	Loss of earning capacity (10,000 x 12 x 14 x 40/100)	Rs.6,72,000/-
2.	Medical Expenses	Rs.2,65,591/-
3.	Loss of Income	Rs. 48,000/-
4.	Pain and suffering	Rs. 50,000/-
5.	Transportation	Rs. 20,000/-
6.	Nourishment	Rs. 20,000/-
7.	Damage to clothing	Rs. 1,000/-
8.	Attender charges	Rs. 10,000/-
9.	Loss of amenities	Rs. 50,000/-
	Total	Rs.11,36,591/-
	Rounded off to Rs.11,36,600/-	

7. Accordingly, the civil miscellaneous appeal is allowed. The judgment and



C.M.A No.2556 of 2023

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decree of the Motor Accident Claims Tribunal (IV Small Causes Court, Chennai dated 22.10.2019 made in M.C.O.P. No.3240 of 2011 awarding compensation of Rs.5,47,600/- is set aside. The enhanced compensation is Rs.11,36,600/-. The second respondent/insurance company is now required to deposit the said sum with interest @ 7.5% per annum less interest for 664 days (delay in filing the appeal) less any amount already deposited by the insurance company, within a period of six weeks from the date of receipt of a copy of this judgment. The appellant/claimant is now required to pay additional court fee on the enhanced value of compensation. No costs.

27.11.2023

Asr

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accidents Claims Tribunal,
(IV Small Causes Court), Chennai.

N.SESHASAYEE, J.

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C.M.A No.2556 of 2023

C.M.A. No.2556 of 2022

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