



C.M.A.No.1039 of 2011

THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 16.10.2023**

CORAM :

THE HONOURABLE MR. JUSTICE **M. DHANDAPANI**

**C.M.A.No.1039 of 2011**

P.S.Ramasamy

... Appellant/Petitioner

Vs.

1.Sukumar

2.M/s.Sunil Apparels,  
No.54, a Gandhi Road,  
Anupparpalayam Post,  
Avinashi Road,  
Tirupur – 641 652.

3.M/s.United India Insurance Co. Ltd.,  
P.B.No.34, C.G.Complex,  
139, Kumaran Road,  
Tirupur – 641 652.

... Respondents/Respondents

**Prayer :** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgement and decree rendered by the Tribunal in M.C.O.P.No.76 of 2009 dated 27.09.2010 on the file of Court of the Motor Accident Claims Tribunal, Perundurai, (Subordinate Judge).

For Appellant : Mr.V.Kathirvelu



WEB COPY



C.M.A.No.1039 of 2011

For Respondents : No appearance [R1]  
Not Ready in Notice [R2]  
Mr.J.Chandran [R3]

\*\*\*\*\*

### **JUDGEMENT**

Challenging the quantum of compensation awarded in M.C.O.P.No.76 of 2009 dated 27.09.2010 on the file of the Motor Accident Claims Tribunal, Perundurai, (Subordinate Judge), the claimant had preferred the present appeal.

2. On 23.03.2008 at about 16.30 hrs, when the petitioner was riding his bicycle near Chinnagoundanpalayam Pirivu near Anna Nagar, a motorcycle bearing Reg.No.TN-39-AJ-5670, owned by the second respondent and insured with the third respondent, driven by the first respondent/driver, in a rash and negligent manner and hit against the petitioner, thereby he was thrown away from the place and he sustained multiple grievous injuries. Thereafter, he filed a claim petition claiming a sum of Rs.3,10,000/- in M.C.O.P.No.76 of 2009 for the injuries sustained by him.

3. Before the Tribunal, the claimant examined himself as P.W.1 and examined the doctor as P.W.2 and marked 22 documents viz., Ex.P.1



C.M.A.No.1039 of 2011

to Ex.P.22. No witnesses were examined nor any documents were marked on the side of the respondents. After adjudication, the Tribunal awarded a sum of Rs.1,37,244/- with an interest of 7.5% p.a., and the respondents are jointly and severally liable to pay the compensation to the claimant. Not satisfied with the same, the claimant has filed the present appeal.

4. The learned counsel appearing for the appellant submitted that though independent doctor assessed the percentage of permanent disability at 34%, however, the Tribunal had fixed the percentage of permanent disability at 15% and awarded a sum of Rs.70,200/- under the head permanent disability and loss of earning power by adopting multiplier method, which is on the lower side and same requires enhancement. He also submitted that the Tribunal awarded a sum of Rs.3,000/- towards pain and sufferings, which is also on the lower side and the same also requires enhancement. Accordingly, he prays for appropriate enhancement in favour of the appellant.

5. The learned counsel appearing on behalf of the third respondent



C.M.A.No.1039 of 2011

WEB COPY

submitted that though the claimant has not suffered any functional disability, however, the Tribunal has awarded compensation by adopting multiplier method under the head permanent disability and loss of earning power, which is wholly unsustainable and on the higher side. He submitted that the same does not require any interference, since the insurance company has not filed any appeal. Accordingly, he prays for dismissal of the appeal.

6. Heard the learned counsel for the appellant and the learned counsel appearing on behalf of the third respondent and perused the materials available on record.

7. The factum of the accident is not disputed by the parties and so also the liability. Therefore, this Court is not entering into the said aspect. The only grievance of the appellant is with regard to the quantum of compensation awarded by the Tribunal. P.W.2 doctor deposed that the appellant had sustained 34% permanent disability and the Tribunal had fixed the permanent disability as 15%. However, this Court is of the view that the percentage of disability varies from doctor to doctor, hence,



C.M.A.No.1039 of 2011

WEB COPY

this Court fixes the percentage of permanent disability at 30%. It is seen from the award of the Tribunal that multiplier method has been adopted for awarding compensation under the head permanent disability and loss of earning power, even though the appellant has not suffered any functional disability. Therefore, this Court modifies the said head as permanent disability and awards a sum of Rs.90,000/- (Rs.3,000/- \* 30) by fixing a sum of Rs.3,000/- per percentage of disability.

8. Further, the amount of compensation awarded under the heads extra nourishment and pain and sufferings is enhanced to Rs.2,000/- and Rs.25,000/- respectively, as this Court is of the considered view that the compensation awarded by the Tribunal under the aforesaid heads are very meagre and deserves enhancement. Further, taking into account the nature of injury suffered by the claimant, this Court awards a sum of Rs.2,000/- towards attender charges. In all other aspects, the award of the Tribunal remains the same.

9. In view of the above, the compensation awarded by the Tribunal is modified as under :-



C.M.A.No.1039 of 2011

| <i>S.No.</i> | <i>Description</i>                                                                 | <i>Awarded by<br/>the Tribunal<br/>(Amount in<br/>Rs.)</i> | <i>Awarded by<br/>this Court<br/>(Amount in<br/>Rs.)</i> |
|--------------|------------------------------------------------------------------------------------|------------------------------------------------------------|----------------------------------------------------------|
| 1            | Loss of earning                                                                    | 6,000/-                                                    | 6,000/-                                                  |
| 2            | Transport to Hospital                                                              | 2,000/-                                                    | 2,000/-                                                  |
| 3            | Extra nourishment                                                                  | <b>1,000/-</b>                                             | <b>2,000/-<br/>(enhanced)</b>                            |
| 4            | Damages to clothing and articles                                                   | 500/-                                                      | 500/-                                                    |
| 5            | Medical expenses                                                                   | 54,544.22/-                                                | 54,544.22/-                                              |
| 6            | Pain and Sufferings                                                                | <b>3,000/-</b>                                             | <b>25,000/-<br/>(enhanced)</b>                           |
| 7            | Permanent disability and loss of earning power / <b>Permanent Disability @ 30%</b> | <b>70,200/-</b>                                            | <b>90,000/-<br/>(enhanced)</b>                           |
| 8            | Attender charges                                                                   | -                                                          | <b>2,000/-</b>                                           |
|              | <b>Total</b>                                                                       | <b>1,37,244.22/-</b>                                       | <b>1,82,044.22/-</b>                                     |
|              | <b>Rounded off to</b>                                                              | <b>1,37,244/-</b>                                          | <b>1,82,044/-</b>                                        |

10. Accordingly, this appeal is partly allowed and the compensation amount is enhanced from **Rs.1,37,244/-** to **Rs.1,82,044/-** and the respondents are jointly and severally directed to deposit the compensation amount, awarded by this Court above, to the credit of M.C.O.P.No.76 of 2009 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less the amount, if any already deposited, within a period of four weeks (4) from the date of receipt of a copy of this



C.M.A.No.1039 of 2011

WEB COPY

judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant/claimant through RTGS within a period of two (2) weeks thereafter upon production of proof with regard to payment of Court fee on the enhanced compensation. The appellant/claimant is directed to pay necessary additional Court fee on the enhanced compensation amount.

No costs.

**16.10.2023**

Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation Case : Yes / No

sp

To

- 1.The Motor Accident Claims Tribunal, Perundurai, (Subordinate Judge).
- 2.The Section Officer, V.R.Section, High Court, Madras.



WEB COPY



C.M.A.No.1039 of 2011

**M.DHANDAPANI, J.,**

sp

**C.M.A.No.1039 of 2011**

**16.10.2023**