



C.M.A.No.2200 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 27.09.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

**C.M.A. No. 2200 of 2023**

S.Devaraj

... Appellant

Versus

1.N.Kasthuri

2.Shri Ram General Insurance Co.Ltd,  
No.66, Thirmalai Pillai Road,  
T.Nagar, Chennai 600 017.

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, seeking to allow the appeal by enhancing the award and decree made in MCOP.No.7796 of 2013 dated 09.04.2019 on the file of the motor accident claims tribunal, II Court of Small Causes, Chennai by awarding additional compensation of Rs.5,00,000/- with interest.

For Appellant : Mr.A.A.Venkatesan

For R1 : Notice dispensed with

For R2 : Ms.R.Sreevidhya



WEB COPY



C.M.A.No.2200 of 2023

## **JUDGMENT**

This Civil Miscellaneous Appeal has been filed by the claimant seeking enhancement of the compensation awarded by the Tribunal in MCOP.No.7796 of 2013 dated 09.04.2019 on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

2.The claimant/appellant filed the claim petition stating that on 13.02.2013, at about 10.30 a.m., while he was riding a motor cycle bearing Registration No.TN-04-AF-5845, a Lorry bearing Reg.No.TN-50-D-5547, belonging to the first respondent and insured with the second respondent, came in a rash and negligent manner and hit the vehicle of the appellant, as a result of which, the appellant sustained grievous injuries. Thus, the appellant is entitled for compensation.

3.The 1<sup>st</sup> respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.



C.M.A.No.2200 of 2023

4.The 2<sup>nd</sup> respondent/Insurance Company filed counter denying all the averments made in the claim petition and stated that the accident took place only due to the negligence of the appellant and that in any case, the compensation claimed is excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant/claimant examined witnesses PW1 to PW13 and marked Ex.P.1 to Ex.P.17 on their side. The 2<sup>nd</sup> respondent/Insurance Company, neither examined any witness nor marked any document.

6.The Tribunal, after considering the oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry and being the insurer of the 1<sup>st</sup> respondent's lorry, directed the 2<sup>nd</sup> respondent/Insurance Company to pay a sum of Rs.2,25,000/- as compensation to the appellant/claimant.

7.Aggrieved over the award passed by the Tribunal, the appellant/claimant filed the present appeal seeking for enhancement of compensation.



C.M.A.No.2200 of 2023

8.The learned counsel appearing for the appellant submitted that the appellant had examined the witnesses PW2 and PW3 to prove the disability suffered by him. PW2, who is an Orthopedic Doctor had assessed the disability at 40% and PW3, who is a General Surgeon, had assessed the disability at 40%. The learned counsel further submitted that the Tribunal, without any basis, had reduced the disability as 20% and awarded compensation by adopting percentage method, which requires interference. The learned counsel also submitted that the Tribunal had not awarded compensation under the head “Loss of income” and hence, prayed for allowing this appeal.

9.The 1<sup>st</sup> respondent remained ex-parte before the Tribunal and therefore, the learned counsel for the appellant prayed to dispense with notice to the 1<sup>st</sup> respondent and made an endorsement to that effect. Hence, the notice to the 1<sup>st</sup> respondent is dispensed with.

10.Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent/Insurance Company submitted that the award of the Tribunal is just and reasonable and the appellant was not examined by the Medical Board; that PW2 and PW3 were not the Doctors who treated the



C.M.A.No.2200 of 2023

appellant and therefore, the Tribunal was right in fixing the disability at 20% and hence, prayed for dismissal of the appeal.

11.The only question arises in the present appeal is whether the compensation awarded by the Tribunal is just and reasonable.

12.On perusal of the records, it is seen that the appellant has sustained the following injuries:

*“Diffuse Cerebral injury, (R) Frontal compound comminuted depressed # multiple contusion-Brain/# (R) ZMC (R) Both bone #, Forearm/(L) metacarpal #, and the procedures being done for “(R) Subcapsula hematoma-conservatively, would debridement / excision / partial elevation done, # distal radius/Ulna/Styloid process (R)/ #4<sup>th</sup> and 5<sup>th</sup> meta carpal left hand, Below elbow slab (R) nad volar below elbow slab (L).”*

13. The appellant examined PW2 to prove the disabilities suffered by him due to the fracture and PW3 to prove the disabilities suffered by the appellant due to the head injuries. However, the appellant was not examined by the Medical Board. PW2 and PW3 were not the Doctors who treated the appellant. Therefore, considering the above facts, this



C.M.A.No.2200 of 2023

Court is of the view that the evidence of PW2 and PW3 cannot be accepted as such. However, considering the nature of injuries, it would be just and reasonable to fix the disability at 40%. The appellant is entitled for a sum of Rs.3,000/- per percentage and hence, the compensation under the head “Disability” is enhanced as follows:

$$40\% \times \text{Rs.}3,000/- = \text{Rs.}1,20,000/-$$

14.It is also seen that the appellant had deposed before the Tribunal that he is working as Loan Executive in a Private concern. He produced Ex.P11 to show that he had taken leave for 5 months. Considering the said fact, this Court is of the view that the appellant would be entitled for compensation under the head “Loss of income” during the treatment period. The loss of income can be assessed for the period of 5 months. Considering the avocation and the year of accident, this Court is of the view that it would be just and reasonable to fix the notional income of the deceased as Rs.11,000/- per month. Therefore, the award of compensation under the head loss of income is calculated as follows:

$$\text{Rs.}11,000/- \times 5 \text{ months} = \text{Rs.}55,000/-$$



C.M.A.No.2200 of 2023

15. The compensation awarded by the Tribunal under the other heads are just and reasonable and the same is confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

| S. No | Description                              | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                               | 80,000                          | 1,20,000                          | Enhanced                               |
| 2.    | Pain and Sufferings                      | 50,000                          | 50,000                            | Confirmed                              |
| 3.    | Attender Charges                         | 10,000                          | 10,000                            | Confirmed                              |
| 4.    | Extra Nourishment                        | 20,000                          | 20,000                            | Confirmed                              |
| 5.    | Transportation                           | 15,000                          | 15,000                            | Confirmed                              |
| 6.    | Medical Expenses                         | 25,000                          | 25,000                            | Confirmed                              |
| 7.    | Loss of Amenities                        | 25,000                          | 25,000                            | Confirmed                              |
| 8.    | Loss of Income (during treatment period) | Nil                             | 55,000                            | Enhanced                               |
|       | Total                                    | 2,25,000                        | 3,20,000                          | Enhanced by Rs.95,000/-                |

16. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,25,000/- is hereby enhanced to Rs.3,20,000/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of



C.M.A.No.2200 of 2023

petition till the date of deposit. The 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six (6) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

**27.09.2023**

nsa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

**To:**

- 1.The Motor Vehicle Accident Tribunal,  
II Court of Small Causes, Chennai.
- 2.The Section Officer,  
VR Section,  
High Court, Madras.



WEB COPY



C.M.A.No.2200 of 2023

**SUNDER MOHAN, J.**

nsa

C.M.A. No. 2200 of 2023

27.09.2023