



C.M.A No.872 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 16.11.2023

CORAM

MR.JUSTICE N.SESHASAYEE

C.M.A.No.872 of 2022

P.Sundaramoorthy

... Appellant

Vs.

1.M.Raja

2.Reliance General Insurance Co. Ltd.,
No.6, Reliance House,
VI Floor, Haddows Road,
Nungambakkam,
Chennai-600 034.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award of the Motor Accidents Claims Tribunal Special Sub Court II, Small Causes Court, Chennai) and made in M.C.O.P.No.1458 of 2017 dated 08.04.2021 praying to set aside the same.

For Appellant : Ms.P.T.Saleem Fathima



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For Respondent : Mr.P.Suresh Srinivasan
for R2

R1 - No Appearance

JUDGMENT

The appellant, while traveling as a pillion rider in a motorcycle bearing Reg. No.TN-10-AD-9607, fell when the rider suddenly applied the breaks. The accident resulted in a fracture of the appellant's femur near the hip joint. The injury was surgically corrected, for which the appellant was in the hospital for about 4 days. Seeking compensation against the owner and the insurance company of the vehicle, the appellant approached the Tribunal. The appellant relied on Ex.C1, a certificate of the Medical Board, which assessed the extent of disability at 4%, and taking the same into consideration, the Tribunal had passed an award of Rs.96,164/-. The details of which are as below:

<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1.	Permanent Disability	Rs.20,000/-
2.	Pain and suffering	Rs.4,000/-
3.	Transport expenses	Rs.2,000/-
4.	Extra nourishment	Rs.3,000/-
5.	Damages to clothing and belongings	Rs.2,000/-



<i>Sl.No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
6.	Assistance	Rs.3,000/-
7.	Loss of livelihood	Rs.4,000/-
8.	Loss of income	Rs.11,000/-
9.	Medical expenses	Rs.44,164/-
10.	Future medical expenses	Rs.3,000/-
	Total	Rs.96,164/-

2.Ms.P.T.Saleem Fathima, learned counsel for the appellant, submitted that where the percentage of disability is rated below 10%, and where the disability is not functional, the victim of the injury is entitled to a minimum of Rs.1,00,000/-, as per the ratio in *Master Mallikarjun vs. Divisional Manager*, [CDJ 2013 SC 740]. She also submitted that the compensation awarded in every head of compensation is far too inadequate, and is distant from anything that approximates reality.

3.Heard Mr.P.Suresh Srinivasan, learned counsel for the second respondent, who argued that the amount of compensation awarded is just and reasonable, more so because the appellant has not proved that the injury he had suffered has disabled him functionally.

4.This Court perused the records and finds that the approach of the Tribunal in awarding compensation for each of the heads is hardly realistic. A



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fracture is suffered near the hip, for which the Tribunal had paid only Rs.4,000/-. This is far too unrealistic.

5.This Court, therefore, has to interfere with every heads of the award. The appellant is stated to be an auto driver. For an auto driver in 2017, at least Rs.12,000/- can be determined as reasonable notional income. Accordingly, the loss of income is determined as Rs.72,000/-. The award of the Tribunal is modified by this Court, and the breakup is as below:

Sl. No.	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent disability	Rs.20,000/-	Rs.1,25,000/-	enhanced
2.	Pain and suffering	Rs.4,000/-	Rs.25,000/-	enhanced
3.	Transport expenses	Rs.2,000/-	Rs.10,000/-	enhanced
4.	Extra nourishment	Rs.3,000/-	Rs.20,000/-	enhanced
5.	Damages to clothing and belongings	Rs.2,000/-	Rs.2,000/-	confirmed
6.	Assistance	Rs.3,000/-	Rs.20,000/-	enhanced
7.	Loss of amenities	Rs.4,000/-	Rs.20,000/-	enhanced
8.	Loss of income	Rs.11,000/-	Rs.72,000/-	enhanced



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9.	Medical expenses	Rs.44,164/-	Rs.44,164/-	confirmed
10.	Future medical expenses	Rs.3,000/-	Rs.20,000/-	enhanced
	Grand Total	Rs.96,164/-	Rs.3,58,164/-	Enhanced by Rs.2,62,000/-

6.This appeal is accordingly allowed, and the compensation amount is enhanced from **Rs.96,164/-** to **Rs.3,58,164/-**. This Court is informed that the second respondent / insurance company has already deposited the amount as awarded by the Tribunal. The insurance company is now required to deposit the differential sum with interest at 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, within a period of six (6) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant is permitted to withdraw the award amount, along with proportionate interest and costs as awarded by the Tribunal, less, the amount, if any already withdrawn. The claimant is directed to pay the necessary Court fee for the enhanced

N.SESHASAYEE,J.

Anu

compensation amount, if required. The Tribunal below shall not disburse



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the enhanced amount till such time the certified copy showing proof of payment of Court fee is produced by the claimants. No Costs.

16.11.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

The Motor Accidents Claims Tribunal Special Sub Court II,
Small Causes Court, Chennai)

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