



WEB COPY



C.M.A.No.1092 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No. 1092 of 2022

Govintharaj

Vs.

...Appellant

1.Aneesh

2.P.P.Polly

3.The United India Insurance Co. Ltd.
K.G.Towers, Thrissur Road
Angamaly
Ernakulam District
Kerala State – 683 572.

4.The United India Insurance Co. Ltd.
Divisional Office
No.1170, Muthiah complex
Mettur Road, Erode-638 011.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 27.08.2021 made in M.C.O.P.No.323 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.C.Paraneedharan

Page No.1/8



C.M.A.No.1092 of 2022

For R1 : No appearance

For R3 & R4 : Mrs.C.Harini
for M/s.M.B.Gopalan Associates

JUDGMENT

This appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 27.08.2021 made in M.C.O.P.No.323 of 2018 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode.

2. The facts of the case are that, on 06.12.2017 at about 9.30 p.m., while the appellant/claimant was standing on the Vellikulangara, Pothinchira to Nayattugundu road, Kerala State, the 1st respondent drove the car bearing Registration No.KL 63B 5500 belonging to the 2nd respondent, from East to West direction in a rash and negligent manner, hit against the appellant/claimant, causing him grievous injuries. According to the appellant/claimant, he was working as a bore well lorry driver and was earning income at Rs.22,000/- per month. Due to the injuries, he was not able to carry on his work and therefore, filed the above claim petition seeking compensation of Rs.15,00,000/-.

3. The respondents 1 & 2 remained exparte before the Tribunal and the



C.M.A.No.1092 of 2022

claim petition was contested by the respondents 3 & 4/Insurance Company, insurer of the car. The respondents 3 & 4 filed a detailed counter denying all the averments made in the claim petition including negligence, quantum and liability.

4. Before the Claims Tribunal, the appellant/claimant examined himself as P.W.1, Sub-Inspector, Vellikulangara Police Station was examined as P.W.2 and Manager of R.K. drillers as P.W.3 and 13 documents were marked as Exs.P1 to P13. On the side of the respondents 3 & 4, no oral and documentary evidence was filed. The disability certificate was marked as Ex.C1.

5. The Claims Tribunal, on an assessment of entire evidence on record, rendered the finding of negligence against the 1st respondent, driver of the car and awarded a sum of Rs.5,56,000/- along with 7.5% interest and mulcted the liability on the respondents 3 & 4/Insurance Company. Not satisfied with the compensation awarded by the Claims Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.

6. Learned counsel appearing for the appellant/claimant submitted that the



C.M.A.No.1092 of 2022

award of the Tribunal under various heads is meagre. The nature of injuries sustained by the appellant/claimant affected his avocation as a bore well lorry driver. He could not do the work as he was doing earlier and hence, prayed for enhancement of compensation.

7. Learned counsel appearing for the respondents 3 & 4/Insurance Company on the other hand submitted that the Medical Board examined the appellant/claimant, issued disability certificate Ex.C1, wherein it was found that the appellant/claimant suffered 20% permanent disability only. Learned counsel therefore submitted that the award was fair, just and reasonable and did not call for any interference by this Court.

8. Though notice has been served on the 1st respondent and his name is printed in the cause list, there is no representation for him.

9. I have heard both the learned counsel and perused the materials placed on record.

10. It is seen from the records that the Medical Board issued disability



C.M.A.No.1092 of 2022

certificate Ex.C1 and has clearly opined that the nature of disability sustained by the appellant/claimant was temporary in nature and therefore, assessed the disability at 20%. In my view, the Claims Tribunal has rightly awarded a sum of Rs.1,00,000/- as compensation towards permanent disability of 20%. Therefore, the award of the Claims Tribunal as regards the finding on disability is not interfered with. In my view, the award of the Tribunal towards extra nourishment and attendant charges are meagre. Due to the accident, the appellant/claimant sustained fractures of clavicle, ribs, shaft of femur, bimalleolar fracture, dislocation right ankle, fracture of femoral head with dislocation, blunt injury on chest and abdomen with diaphragmatic. Considering the nature of injuries sustained by the appellant/claimant, he could have suffered loss of earning for atleast a period of six months and therefore, I am of the view that award towards extra nourishment and attendant charges need to be enhanced from Rs.8,000/- to Rs.25,000/- and Rs.7,000/- to Rs.15,000/- respectively. The compensation awarded by the Tribunal under all other heads are hereby confirmed.

11. In view of the above discussions, the award of the Tribunal is modified

Page No.5/8



C.M.A.No.1092 of 2022

as follows :-

S.No	Various Heads	Awarded by the Tribunal	Awarded by this Court
1.	Loss of earnings	Rs.1,32,000/-	Rs.1,32,000/-
2.	Transport to hospital	Rs.15,000/-	Rs.15,000/-
3.	Extra nourishment	Rs.8,000/-	Rs.25,000/-
4.	Attendant charges	Rs.7,000/-	Rs.15,000/-
5.	Damages for clothes and articles	Rs.3,000/-	Rs.3,000/-
6.	Medical Expenses	Rs.2,31,000/-	Rs.2,31,000/-
7.	Pain and sufferings	Rs.60,000/-	Rs.60,000/-
8.	Permanent disability & Loss of earning power	Rs.1,00,000/-	Rs.1,00,000/-
	Total	Rs.5,56,000/-	Rs.5,81,000/- enhanced compensation Rs.25,000/-

The award of the Tribunal is therefore modified and the appellant/claimant is awarded a sum of Rs.5,81,000/- as compensation along with 7.5% interest.

12. It is submitted by the learned counsel for the appellant/claimant that respondents 3 & 4/Insurance Company have not deposited the award amount till date.

13. In view of the above submissions, there shall be a direction to the



C.M.A.No.1092 of 2022

respondents 3 & 4/Insurance Company to deposit the amount of Rs.5,81,000/- now determined by this Court, along with 7.5% interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the appellant/claimant shall be entitled to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn, by making appropriate application before the Claims Tribunal.

14. The appeal is accordingly partly allowed. There shall be no order as to costs.

12.06.2023

Speaking Order: Yes/No
Index: Yes/No
Neutral Citation: Yes/No

kj

N.MALA.J.,

Page No.7/8



WEB COPY



C.M.A.No.1092 of 2022

kj

To

1.The Special Subordinate Judge
(Motor Accident Claims Tribunal)
Erode.

2.The Section Officer,
V.R.Section,
High Court, Madras.

C.M.A.No. 1092 of 2022

12.06.2023

Page No.8/8