



C.M.A.No.1641 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM : JUSTICE N.SESHASAYEE

C.M.A.No.1641 of 2022
and CMP.No.12247 of 2022

The Divisional Manager
National Insurance Company Limited
D.O.No.110, J.N.Street
Puducherry - 605 001.

..... Appellants / 2nd Respondent

Vs

1.R.Sivakumar

..... 1st Respondent / Petitioner

2.R.Senthilkumar

..... 2nd Respondent / 1st Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 praying to set aside the award that has been passed in this matter by the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Cuddalore, in MCOP.No.1963 of 2018, dated 27-09-2021, allow the appeal.

For Appellant : Ms.R.Sree Vidhya

For Respondents : Ms.Ramya V.Rao for R1
R2 - No appearance



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JUDGMENT

This appeal is preferred by the Insurance company challenging the award passed by the Tribunal in MCOP.No.1963 of 2018, on the ground that the compensation awarded is unrealistically high.

2. On 10.01.2018, the first respondent, an auto rickshaw driver suffered serious injuries to his right leg, when he was hit by another auto rickshaw, while he was standing on the road margin. He suffered fractures to his both right tibia and right fibula, besides other fractures to his heel area. The medical board had assessed his disability vide Ext.C1 at 51% . The Tribunal had treated the same as functional disability, and determined the compensation payable at Rs.8,99,640/- after reckoning Rs.7,000/- as his notional monthly income. Including the compensation paid on other non-conventional heads, the Tribunal arrived at a total compensation of Rs.9,99,896/-. This is now under challenge.

3. The learned counsel for the appellant/insurance company submitted that



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the claimant is an auto rickshaw driver by avocation, and since the fractures are only to his right leg, the Tribunal ought not to have treated the entire 51% disability as functional disability.

4. Heard both sides. Since it is not disputed that the victim of the accident is an auto rickshaw driver, and that the accident itself had taken place in 2018, it would be reasonable to expect that he would be making atleast Rs.10,000/- per month. And this Court also finds merit in the submissions of the counsel for the appellant and considers that the Tribunal ought not to have treated the disability as functional disability entirely. Therefore, this Court considers that 25% would be appropriate towards functional disability. So far as the conventional heads of compensation is concerned, this Court finds that the Tribunal has not awarded for loss of amenities, and makes certain modifications to the compensation awarded. The below table provides the details of the Tribunal award and the revised award now granted by this Court :

<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Award of Tribunal (Rs.)</i>	<i>Revised Award Amount (Rs.)</i>
1.	Loss of earning power	8,99,640.00	6,30,000.00
2.	Pain and suffering	40,000.00	40,000.00
3.	Medical expenses	16,256.00	16,256.00



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<i>Sl.No.</i>	<i>Heads of Compensation</i>	<i>Award of Tribunal (Rs.)</i>	<i>Revised Award Amount (Rs.)</i>
4.	Nourishment	5,000.00	5,000.00
5.	Damage to clothing	2,000.00	2,000.00
6.	Transportation	5,000.00	5,000.00
7.	Attendant charges	32,000.00	32,000.00
8.	Loss of amenities	NIL	25,000.00
Total :			7,55,256.00
Rounded off to : Rs.7,55,250/-			

5. To conclude, the appeal is partly allowed, and the award of the Tribunal is modified to an extent and reduced from Rs.9,99,896/- to Rs.7,55,250/-. The appellant is now directed to pay the said sum of Rs.7,55,250/- to the first respondent/claimant with interest at the rate of 7.5% less any amount which has been already deposited within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

11.12.2023

Index : Yes / No

Internet : Yes / No

Speaking order / Non-speaking order
ds



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WEB COPY To:

1. The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Cuddalore.
2. The Section Officer
VR Section
High Court, Madras.



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N.SESHASAYEE.J.,

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