



CMA No. 1142 / 2022

CMA No.1142 of 2022

WEB CO **SUNDER MOHAN, J.,**

Today, this Civil Miscellaneous Appeal is listed at the instance of the Registry, under the caption 'For Being Mentioned', since typographical errors are noticed at paragraph Nos.13 and 14 of the judgment dated 13.09.2023 made in CMA No.1142 of 2022.

2. Heard the learned counsel on either side and perused the judgment.

3. Though the other amounts mentioned in the calculation table at paragraph No.14, is correct, inadvertently, Rs.7,76,000/-, is mentioned at Column No.3 instead of Rs.7,77,600/-. Similarly, at paragraph No.13, though the physiotherapy charges is calculated by applying multiplier '18', inadvertently, it is mentioned as (Rs.72,000/- x 12) instead of (Rs.72,000/- x 18). Hence, the same are modified.

4. Registry is directed to issue a fresh order copy forthwith, after making the necessary corrections.

17.04.2024

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Issue order copy immediately.



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No. 1142 of 2022

Balakrishnan

... Appellant

Versus

1. J.Sivalingaraj

2. The Oriental Insurance Company Limited,
III Floor, Buil Tech Foundations,
Chiththur Road, Fort Maidan,
Palakad – 678 013,
Local Branch Office,
No. 59, Raja Street,
Gobi Town and Taluk, Erode District.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 441 of 2015 dated 31.01.2020 on the file of the Motor Accident Claims Tribunal, Subordinate Judge, Gobichettipalayam.

For Appellant : Mr. SP.Yuvaraj

For Respondents : R1 - Exparte

Mr. J.Chandran (for R2)



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J U D G M E N T

WEB COPY The claimant has preferred the above appeal seeking enhancement of compensation awarded by the Tribunal in M.C.O.P. No. 441 of 2015 dated 31.01.2020.

2.The appellant had filed the claim petition stating that on 14.06.2015 at about 22.00 hours, while the appellant was traveling in an Indigo car belonging to the first respondent and insured with the second respondent, the driver of the said car drove the same in a rash and negligent manner, lost the control of the vehicle, as a result of which, the car capsized. The appellant sustained serious injuries all over the body and hence stated that the respondents are liable to pay compensation.

3.The first respondent remained exparte before the Tribunal.

4.The second respondent filed counter stating that the accident did not take place due to the negligence of the car driver; that the car driver had to stop the vehicle since a pedestrian had crossed the road due to which the car capsized. The second respondent had filed an additional counter to the enhanced compensation claimed by the appellant denying



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the averments made in the petition for enhanced compensation; and stated that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.

5.The appellant examined himself as PW.1 and two other witnesses on his side as PW.2 and PW.3 and marked Ex.P.1 to Ex.P.13. On the side of the second respondent, RW.1 has been examined and Ex.R.1 was marked.

6.The Tribunal after taking into consideration the oral and documentary evidence, held that the accident took place due to the rash and negligent driving of the driver of the vehicle in which the appellant travelled and held that the second respondent is liable to pay the compensation of Rs. 9,46,700/-.

7.The learned counsel for the appellant submitted that the appellant had sustained grievous injuries. The Medical Board had assessed the disability as 90% permanent disability; that this Court had directed that the appellant be examined once again by the Medical Board and the Medical Board once again reiterated the disability as 90% permanent



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disability; that the Tribunal rightly fixed the functional disability as 100% since the appellant was in a paralytic condition. However, the Tribunal had fixed a meagre sum of Rs. 6,000/- as notional income and had not awarded any compensation under the head future medical expenses and prayed for enhancement of compensation.

8. Since the first respondent remained *exparte* before the Tribunal, the learned counsel for the appellant sought permission of this Court to dispense with the notice to the first respondent and has made an endorsement to that effect. Hence, the notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent, *per contra*, submitted that the award of the Tribunal is just and reasonable and no interference is called for and prayed for dismissal of the appeal.

10. The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.



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11. On perusal of the records, it is seen that the appellant had sustained very severe injuries on the spinal cord, head, right chin, left hand, right leg, both elbows, chest and all over the body. The appellant was examined twice by the Medical Board once during the trial and then during the pendency of this appeal. The disability of the appellant assessed by the Medical Board on both the occasions was 90% permanent disability. The Medical Board had stated that the appellant suffered from paraplegia. Based on the evidence, the Tribunal was right in holding that the appellant suffered from 100% functional disability. There is no infirmity in the said finding of the Tribunal.

12. However, it is seen that the Tribunal had fixed a very low notional income of Rs. 6,000/- and had not granted enhancement towards future prospects. The appellant had deposed before the Tribunal stating that he was working as a tailor. However, he had not produced any document to prove his income. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix the notional income of the appellant at Rs. 14,000/- including future prospects. Since the appellant was aged 25 years at the time of the accident, the multiplier applicable is 18. Thus, the



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award under the head permanent disability has to be Rs. 14,000/- x 12 x 18 = Rs. 30,24,000/-.

13. The appellant had stated earlier that he is suffering from paraplegia which means that there is a total loss of function. The disability certificate issued by the Medical Board suggests that there is a total loss of function below the hip. Therefore, the appellant requires continuous medical treatment including physiotherapy. The Hon'ble Supreme Court in *Abhimanyu Partap Singh Vs. Namita Sekhon* reported in **2022 (2) TN MAC 192 (SC)** while considering a similar case had awarded Rs. 150 per day towards physiotherapy charges and by adopting multiplier 18 awarded, the total compensation of Rs. 9,76,000/- towards physiotherapy charges. This Court is of the view that in the instant case also considering the nature of injuries and disability suffered by the appellant, he is entitled to physiotherapy charges in the same manner. However, in the instant case, the accident is of the year 2015. Hence, this Court is of the view that a sum of Rs. 6,000/- can be awarded per month towards the same. Thus, the annual charges would be Rs. 6,000/- x 12 = Rs. 72,000/- and by applying multiplier 18, Rs. 12,96,000/- (Rs. 72,000/- x 12) is awarded towards physiotherapy



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charges.

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14. Even taking conservative view, the appellant would be entitled to Rs. 2,00,000/- towards future medical expenses. The attender charges also requires enhancement since the Tribunal had awarded only a sum of Rs. 30,000/- under the said head. The appellant would be entitled to Rs. 1,50,000/- under the said head considering the nature of injuries. The award under the other heads are just and reasonable and hence, are confirmed. Thus, the award of 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.	Permanent disability	7,76,000	30,24,000	Enhanced
2.	Pain and suffering	1,00,000	1,00,000	Confirmed
3.	Transport to Hospital	20,000	20,000	Confirmed
4.	Extra Nourishment	10,000	10,000	Confirmed
5.	Attender charges	30,000	1,50,000	Enhanced
6.	Damages to cloth and articles	1,000	1,000	Confirmed
7.	Medical expenses	8,100	8,100	Confirmed
8.	Future medical expenses	---	2,00,000	Granted
9.	Physiotherapy charges	---	12,96,000	Granted
	Total	9,46,700	48,09,100	Enhanced by Rs. 38,62,400/-



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15. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.9,46,700/- is hereby enhanced to Rs.48,09,100/- together with interest at 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The second respondent 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, if not already deposited. 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 further directed to pay the requisite court fee, if any, on the enhanced award amount. No costs.

13.09.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Motor Accident Claims Tribunal,



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Subordinate Judge,
Gobichettipalayam.

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2. The Section Officer,
VR Section,
Madras High Court,
Chennai – 600 104.



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SUNDER MOHAN, J

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Dated: 13.09.2023