



WEB COPY

C.M.A.No.1132



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

C.M.A.No.1132 of 2022

R.Ashok Kumar

... Appellant

Vs.

1. A.David Benjamin

2. The Manager

Reliance General Insurance Co. Ltd.

No.6, Reliance House

6th floor, Haddows Road

Nungambakkam, Chennai-600 006.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 20.10.2021 made in M.C.O.P.No.4081 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II to deal with MCOP cases, (Small Causes Court), Chennai.

For Appellant : Mr.Amar Dineshbhai Pandiya

For R1 : No appearance

For R2 : Mr.P.Suresh Srinivasan

JUDGMENT

The appeal is filed by the appellant/claimant for enhancement of compensation granted by the Tribunal in the award dated 20.10.2021 made in M.C.O.P.No.4081 of 2015 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.II to



deal with MCOP cases, (Small Causes Court), Chennai.

WEB COPY

2. The brief facts leading to the appeal are that, on 02.04.2015 at about 8.00 a.m., while the claimant was riding his cycle at 3rd Main Road, Ambattur Estate below Pattaravakkam Bridge, near Ashok Leyland Company from South to North direction, the rider-cum-owner of the motor cycle bearing Registration No. TN-13 B 5991 rode the same in a rash and negligent manner, hit behind the claimant's bi-cycle, causing him grievous injuries. According to the claimant, the accident occurred due to rash and negligent riding by the rider of the motor cycle. The claimant was aged 19 years at the time of accident and was earning Rs.10,000/- per month as a drilling operator in Arunachalam Engineering Works, Ambattur Estate. The claimant therefore, filed the Claim Petition claiming Rs.20,00,000/- as compensation for the injuries suffered by him in the accident.

3. Both the respondents 1 & 2 contested the Claim Petition. They filed separate counters denying all the averments and allegations made in the Claim Petition apart from denying the negligence, liability and quantum of compensation.

4. Before the Claims Tribunal, in support of his claim, the claimant examined himself as P.W.1 and Exs.P1 to P11 were marked. The disability certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai,



was marked as Ex.C1. On the side of the respondents, no oral or documentary evidence was adduced.

WEB COPY

5. The Claims Tribunal, on an assessment of the entire evidence on record, returned a finding of negligence against the 1st respondent, assessed the compensation at Rs.1,55,600/- along with 7.5% interest and mulcted the liability on the 2nd respondent/Insurance Company. Not satisfied with the quantum of compensation awarded by the Claims Tribunal, the claimant has filed the present appeal for enhancement of compensation.

6. Learned counsel for the claimant submitted that the claimant sustained Grade-I open fracture of both bones of right leg and therefore, the Tribunal ought to have adopted the multiplier method for assessing compensation towards disability. The counsel further submitted that the assessment of notional income at Rs.9,500/- by the Tribunal was erroneous. On these grounds, the learned counsel prayed for enhancement of compensation.

7. Learned counsel for the 2nd respondent/Insurance Company on the other hand submitted that the Medical Board assessed the disability at 24% only and therefore, the Tribunal was right in not adopting the multiplier method for awarding compensation towards disability. Learned counsel further submitted that the award of



the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

8. Though notice was served on the 1st respondent and his name was printed in the cause list, there is no appearance.

9. I have heard the learned counsel for the appellant and the learned counsel for the 2nd respondent and perused the materials placed on record.

10. It is not disputed that the claimant was aged 19 years at the time of accident and he had sustained Grade-I open fracture of both bones right leg, which was grievous in nature. The Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai, assessed the permanent disability at 24% and issued Ex.C1 disability certificate. The finding of the Tribunal that the claimant did not suffer functional disability in my view, cannot be sustained. Considering the nature of injuries and the avocation of the claimant as a drilling operator, the Tribunal ought to have held that there was functional disability. It is seen that the claimant suffered fracture of both bones of right leg and therefore, it cannot be said that it would not impact his job as a drilling operator. Learned counsel for the claimant is right in his submission that as a drilling operator, the claimant would have to stand for a long hours and therefore, the injury did impact his earning capacity. The functional



WEB COPY

disability is assessed at 10% and instead of the unit method the multiplier method is adopted to assess the loss towards disability. As the appellant was aged 19 years at the time of accident, the appropriate multiplier would be '18'. As per the judgment of the Hon'ble Supreme Court in the case of *National Insurance Company Limited Vs. Pranay Sethi and others* reported in (2017) 16 SCC 680, 40% is to be added towards future prospects. If 40% is added towards future prospects, the income would be Rs.13,300/- (Rs.9,500/- + 3800). Thus, the claimant would be entitled to Rs.2,87,280/- towards disability (Rs.13,300/- X 12 X 18 X 10/100). I find that the compensation awarded by the Tribunal under other heads are just and reasonable and therefore they are confirmed.

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

S.No.	Various Heads	Award of the Tribunal	Award of this Court
1.	Disability	Rs.96,000/-	Rs.2,87,280/-
2.	Pain and suffering	Rs.25,000/-	Rs.25,000/-
3.	Transportation	Rs.4,000/-	Rs.4,000/-
4.	Medical expenses	Rs.1,000/-	Rs.1,000/-
5.	Extra nourishment	Rs.10,000/-	Rs.10,000/-
6.	Attender Charges	Rs.600/-	Rs.600/-
7.	Loss of earnings	Rs.19,000/-	Rs.19,000/-
Total Compensation		Rs.1,55,600/-	Rs.3,46,880/- Enhanced compensation amount Rs.1,91,280/-

The claimant is entitled to the total compensation of Rs.3,46,880/- along with interest



at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit.

WEB COPY

12. It is submitted by the learned counsel for the 2nd respondent/Insurance Company that the entire amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the 2nd respondent/Insurance Company to deposit the balance enhanced compensation of Rs.1,91,280/- along with 7.5% interest, within a period of eight weeks from the date of receipt of a copy of this judgment. On such deposit being made, the claimant shall be entitled to withdraw the same, by making proper application before the Claims Tribunal.

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

15.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

kj

To



C.M.A.No.1132

1.II Special Subordinate Judge
Motor Accidents Claims Tribunal
Small Causes Court, Chennai.

WEB COPY

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



WEB COPY

C.M.A.No.1132



kj

C.M.A.No.1132 of 2022

15.06.2023