



WEB COPY

C.M.A.No.1881 of 20



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1881 of 2023

Suresh

... Appellant

Vs.

1.Gopi

*(R-1 remained exparte before the Tribunal,
hence notice to R-7 is dispensed with)*

2. The Divisional Manager,

Reliance General Insurance Company Limited,

Raji's Tower, 2nd Floor, 2nd Avenue,

Plot No.2054, Next to GRT Jewellery,

Anna Nagar, Chennai.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 19.04.2017 in MACT.OP.No.347 of 2015 on the file of the Motor Accident Claims Tribunal, Special Sub Court Judge, (MCOP), Tiruvannamalai

For Appellant : Ms.A.Subadra

For Respondents : Mr.P.Suresh Srinivasan

Notice to R1 is dispensed with

J U D G M E N T



The claimant has preferred the instant appeal seeking enhancement of compensation awarded by the Tribunal.

2. The appellant filed the claim petition stating that, on 05.05.2015 at about 9.30a.m., while he was riding pillion in a bike, the driver of the offending vehicle, which is a 407 vehicle, insured with the second respondent herein, drove the same in a rash and negligent manner and dashed against the two wheeler, as a result of which the appellant sustained greivous injuries all over the body and hence, entitled for compensation.

3. The first respondent, the owner of the offending vehicle, remained *ex-parte* before the Tribunal.

4. The second respondent/Insurance Company resisted the claim petition stating that the appellant is not entitled for any compensation, since, the owner of 407 vehicle, alleged to be insured with the second respondent did not have a valid insurance policy and that in any case, the claim petition made by the appellant is excessive and prayed for dismissal of the claim petition.



5. Before the Tribunal, the appellant examined himself as P.W.1 and two other witnesses as P.W.2 and P.W.3 and marked twelve documents as Exs.P1 to P12. On the side of the second respondent/ Insurance Company R.W.1 and R.W.2 were examined and marked eight documents as Ex.R1 and R8. The Disability Certificate issued by the Medical Board was marked as Ex.C-1.

6. The Tribunal after considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent act of the driver of the offending vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.2,70,000/- as compensation to the appellant at the first instance and recover the same from the 1st respondent. Aggrieved over the said award, the appellant has preferred the instant appeal.

7. The learned counsel for the appellant submitted that the appellant had suffered a crush injury on the right foot and had lost his first and second toe. Considering the nature of injuries, the Medical Board has assessed the disability as 30%. The appellant is an AC mechanic and has suffered functional disability due to the above injuries. The learned counsel further



submitted that the Tribunal ought to have adopted multiplier method to award compensation and hence, he prayed for enhancement of the compensation awarded by the Tribunal.

8. The learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, prayed to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to first respondent is dispensed with.

9. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the appellant had travelled as a second pillion rider, which is a violation under the Motor Vehicles Act and hence, the Tribunal ought to have fixed contributory negligence on the appellant. As regards the quantum of compensation, the award of the Tribunal is just and reasonable and therefore, does not call for any interference and prayed for dismissal of the appeal.

10. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance



Company and perused all the materials available on record before this Court.

11. The only question involved in this instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

12. It is seen from records that the Wound Certificate marked as Ex.P.4, shows that the appellant has suffered the following injuries:

- (i) Right Great Toe amputation*
- (ii) PTS left knee*
- (iii) Soft Tissue Contracture in the left leg*

The appellant was examined by the Medical Board, which had assessed the disability as 30% permanent disability. The appellant was working as an AC mechanic and has established the same by marking Ex.P.8, copy of certificate of Diploma in Air Conditioning and Refrigeration Course. He had also marked Ex.P.9, copy of certificate of completing the course of Tally Financial Accounting Program. Considering the fact that the appellant's big toe had been amputated and the fact that he had deformity and disfigurement in the left leg. as observed by the Tribunal on perusal of Ex.P.10, (the photographs), this Court is of the view that the functional disability can be



assessed as 14% which is the percentage of functional disability prescribed under **Schedule-I of Methods of Compensation** for the injuries suffered by the appellant. Considering the fact that the appellant is an AC mechanic and the year of the accident, this Court is of the view that it would be just and reasonable to fix the monthly notional income as Rs.12,000/-. The appellant would not be entitled to future prospects in the facts and circumstances of the case. Therefore, the appellant would be entitled to compensation under the head “Disability” in the following manner $\text{Rs.12,000/-} \times 12 \times 17 \times 14/100 = \text{Rs.3,42,700/-}$. Since, the driver of the offending vehicle was not examined by the second respondent/Insurance Company to show that the appellant was also guilty of contributory negligence as a second pillion rider, this Court is of the view that contributory negligence cannot be fixed on the appellant as claimed by the learned counsel for the second respondent/Insurance Company merely because there were two pillion riders. The award of compensation by the Tribunal under the other heads are just and reasonable and the same is confirmed. The award of the Tribunal directing the second respondent/Insurance Company to pay and recover from the first respondent is hereby confirmed.



13. Thus, the compensation awarded by 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 or reduced
1.	Disability	90,000	3,42,700	Enhanced
2.	Pain and suffering	1,50,000	1,50,000	Confirmed
3.	Extra nourishment	10,000	10,000	Confirmed
4.	Loss of earning during treatment period	10,000	10,000	Confirmed
5.	Attender charges	5000	5,000	Confirmed
	Transportation charges	5000	5000	Confirmed
	Total	Rs.2,70,000/-	Rs.5,22,700/-	Enhanced by Rs.2,52,700/-

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,70,000/- is hereby enhanced to Rs.5,22,700/- together 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. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company



is directed to deposit the modified award amount now determined by this Court along with 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, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. It is made clear that the appellant shall not be entitled for any interest on the enhanced award amount for the delay period of 1688 days in filing the appeal, as per the order of this Court dated 03.08.2023 made in C.M.P.No.18493 of 2022 in C.M.A.SR.No.47516 of 2022. No costs.

12.09.2023

Index: Yes/No
Internet: Yes/No
Speaking order: Yes/ No
gba

To

- 1.The Special Sub Court - I,
Motor Accident Claims Tribunal/
Small Causes Court, Chennai.
- 2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



WEB COPY

C.M.A.No.1881 of 20



SUNDER MOHAN,J.

gba



WEB COPY

C.M.A.No.1881 of 20



C.M.A.No.1881 of 2023

12.09.2023