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CMA No.1954 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.08.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

C.M.A.No.1954 of 2022

Ajay

... Appellant

Versus

1.Chandirakala

2.The Managing Director,
United India Insurance Company Ltd.,
Micro Office, No.170/6, 1st Floor,
M.R.Complex, I.O.B.Building, Nalliyam Road,
Ambai Bhavani Taluk,
Erode District – 638 312.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.10.2021 passed in M.C.O.P.No.9 of 2019, by the Motor Accident Claims Tribunal, Sub-Court, Jayankondam.

For Appellant	: Mr.P.Parthikannan
For R1	: No Appearance
For R2	: Mr.J.Chandran

JUDGMENT



CMA No.1954 of 2022

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.C.O.P.No.9 of 2019, dated 25.10.2021.

2.The claim petition was filed stating that on 19.11.2018 at about 02.00 p.m., the appellant was travelling as pillion rider in his motorcycle bearing Registration No.TN-61-P-7834 ridden by one Varunsarathy; that while they were nearing Co-operative Commercial Complex, Jayankondam to Trichy Main Road, a Ashok Leyland Tanker Lorry bearing Registration No. TN-52-7160, came in an opposite direction in a rash and negligent manner and rammed against the appellant's motorcycle; that due to the said accident, the appellant and the rider of the motorcycle were thrown away and the appellant sustained crush injuries in his right hand and fracture in his left leg. Thus, he was entitled for compensation.

3.The 1st respondent/owner of the offending vehicle remained *ex-parte* before the Tribunal.

4.The 2nd respondent/Insurance Company filed a counter denying all



CMA No.1954 of 2022

the averments made in the claim petition and stated that the rider of the motorcycle rode the same in high speed and dashed against the vehicle insured with them; that hence, the 2nd respondent was not liable to pay compensation to the appellant; that in any case, the compensation claimed was excessive and prayed for dismissal of the claim petition.

5.Before the Tribunal, the appellant examined himself as P.W.1 and marked Ex.P.1 to Ex.P.23 on his side. The 2nd respondent examined one witness on their side and marked Ex.R1 and Ex.R2.

6.The Tribunal after considering the oral and documentary evidence held that the accident occurred due to the rash and negligent driving by the driver of the lorry and being the insurer of the lorry belonging to the 1st respondent, directed the 2nd respondent to pay a sum of Rs.16,82,573/- as compensation to the appellant.

7.Aggrieved over the award passed by the Tribunal, the appellant has filed the present appeal seeking enhancement of compensation.



CMA No.1954 of 2022

WEB COPY

8.The learned counsel for the appellant submitted that the Tribunal had awarded a consolidated sum of Rs.6,00,000/- under the head future loss of earning and awarded a sum of Rs.3,00,000/- towards disability by adopting percentage method; that considering the fact that right arm of the appellant was amputated and artificial limb (Myoelectric Arm Prosthesis) was fixed, the Tribunal ought to have adopted multiplier method by assessing the functional disability.

8(a).The learned counsel further submitted that the appellant was a student pursuing Engineering degree and he was in his 3rd year at the time of accident; that the appellant on account of amputation in his right arm has suffered functional disability to an extent of 60% determined by the Medical Board as could be seen from his deposition before the Tribunal. The learned counsel therefore, submitted that the compensation must be awarded by adopting multiplier method. Further, the learned counsel relied upon the judgment of the Hon'ble Apex Court in the case of ***Mohd. Sabeer @ Shabir Hussain vs. Regional Manager, U.P State Road Transport Corporation*** reported in ***2023 (1) TN MAC 20 (SC)*** and submitted that the Tribunal



CMA No.1954 of 2022

considering the nature of injuries suffered by the appellant, ought to have awarded compensation under the head loss of amenities of life and towards disfigurement and hence, the appeal may be allowed.

9. Though notice was duly served on the 1st respondent and his name is printed in the cause list, none entered appearance on behalf of her.

10. The learned counsel for the 2nd respondent per contra submitted that the award of the Tribunal is just and reasonable; that the Tribunal had awarded a consolidated sum of Rs.6,00,000/- under the head loss of future earning and another sum of Rs.3,00,000 under the head disability which cannot be faulted and prayed for dismissal of the appeal.

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

12. The admitted facts are that the appellant was an Engineering student at the time of accident and Ex.P16 & Ex.P19, the certificates issued by the college authority were marked to prove that he was a student. The appellant had suffered injury in right upper limb with mangled arm and



forearm, ruptured brachial artery and median nerve, as could be seen from Ex.P14-certificate issued by the hospital, which treated the appellant. It is also an admitted fact that the right hand of the appellant was amputated and artificial limb was fixed which is called Myoelectric Arm Prosthesis. The Medical Board had assessed disability at 60% permanent. Considering the fact that right hand of the appellant was amputated and artificial limb was fixed, and also the fact that the appellant was an engineering student at the time of accident, this Court is of the view that the functional disability could be the same as assessed by the Medical Board (i.e) 60%. Thus, this Court is of the view that the Tribunal ought to have adopted multiplier method to award compensation. Considering the fact that the appellant was an Engineering student 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.13,000/- per month and the appellant is entitled to 40% enhancement towards future prospects. Thus the award of compensation under the head loss of future earnings is computed as follows:

$$\text{Rs.18200 (Rs.13,000 + 40\%)} \times 12 \times 18 \times 60/100 = \text{Rs.23,58,720/-}$$

13.Since this Court adopted multiplier method to award compensation under the head loss of future earnings, the compensation awarded by the



CMA No.1954 of 2022

Tribunal under the head loss of earning at Rs.30,000/- and disability at Rs.3,00,000/- are set aside. That apart, it is seen that on account of injuries, the appellant is entitled to compensation towards loss of marriage prospects at Rs.50,000/- and the same is awarded. It is seen that the Hon'ble Apex Court in the case of **Mohd. Sabeer case (Cited Supra)** awarded compensation of Rs.2,00,000/- each under heads loss of amenities of life and disfigurement. Considering the facts of the present case, a sum of Rs.1,00,000/- is awarded towards disfigurement and a sum of Rs.1,50,000/- towards loss of amenities of life. The amounts awarded by the Tribunal under other heads is just and reasonable and the same is confirmed. It is well settled that the Tribunal and the Courts have to award just compensation. Though the claimants have claimed lesser compensation, the Courts have power to grant just compensation more than the amount claimed by the claimants. 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
1.	Loss of Earning	30,000	-	Set aside



CMA No.1954 of 2022

2.	Transportation	30,000	30,000	Confirmed
3.	Pain and Sufferings	2,00,000	2,00,000	Confirmed
4.	Extra Nourishment	20,000	20,000	Confirmed
5.	Attender Charges	30,000	30,000	Confirmed
6.	Damages of Clothes	2,000	2,000	Confirmed
7.	Medical Expenses	1,33,822	1,33,822	Confirmed
8.	Loss of future earnings	6,00,000	25,58,720	Enhanced
9.	Expenses incurred for fixation of artificial limb	3,36,751	3,36,751	Confirmed
10.	Disability	3,00,000	-	Set aside
11.	Loss of Marriage prospects	-	50,000	Awarded
12.	Disfigurement	-	1,00,000	Awarded
13.	Loss of amenities of life	-	1,50,000	Awarded
	Total	16,82,573	36,11,293	Enhanced by Rs.19,28,720/-

14. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.16,82,573/- is hereby enhanced to Rs.36,11,293/- 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 2nd respondent/Insurance Company is directed to deposit the award amount now determined by this Court along



CMA No.1954 of 2022

with interest and costs, less the amount already deposited, if any, within a period of four (4) weeks from the date of a receipt of copy of this Judgment.

On such deposit the appellant/claimant is permitted to withdraw the entire award amount along with interest and cost, less amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

18.08.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To:

- 1.The Motor Accident Claims Tribunal,
Sub-Court, Jayankondam.
- 2.The Section Officer,
VR Section, High Court, Madras.



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CMA No.1954 of 2022

SUNDER MOHAN, J.

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CMA No.1954 of 2022

C.M.A.No.1954 of 2022

18.08.2023

CMA No.1954 of 2022

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 18.08.2023 made in CMA No.1954 of 2022.

2. Heard the learned counsel for the appellant and perused the judgment.

Page 11 of 15



3. It was brought to my notice that though the compensation under the head, 'loss of future earnings', was awarded at Rs.23,58,720/-, which is found in Para No.12 of the judgment, while tabulating the total compensation at Para No.13, the amount awarded by this Court, under the head 'Loss of future earnings', was shown as Rs.25,58,720/-, which is a typographical error.

4. In view of the typographical error pointed out, this Court deems it necessary to correct the computation/tabulation mentioned at Para No.13 and the final compensation amount stated in Para No.14.

5. Accordingly, the computation/tabulation at paragraph No.13 and paragraph No.14, shall be replaced as below:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of Earning	30,000	-	Set aside
2.	Transportation	30,000	30,000	Confirmed
3.	Pain and Sufferings	2,00,000	2,00,000	Confirmed
4.	Extra Nourishment	20,000	20,000	Confirmed
5.	Attender Charges	30,000	30,000	Confirmed



6.	Damages of Clothes	2,000	2,000	Confirmed
7.	Medical Expenses	1,33,822	1,33,822	Confirmed
8.	Loss of future earnings	6,00,000	23,58,720	Enhanced
9.	Expenses incurred for fixation of artificial limb	3,36,751	3,36,751	Confirmed
10.	Disability	3,00,000	-	Set aside
11.	Loss of Marriage prospects	-	50,000	Awarded
12.	Disfigurement	-	1,00,000	Awarded
13.	Loss of amenities of life	-	1,50,000	Awarded
	Total	16,82,573	34,11,293	Enhanced by Rs.17,28,720/-

14. With the above modification, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.16,82,573/- is hereby enhanced to Rs.34,11,293/- 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 2nd respondent/Insurance Company 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 four (4) weeks from the date of a receipt of copy of this Judgment. On such deposit the appellant/claimant is permitted to withdraw the entire



CMA No.1954 of 2022

award amount along with interest and cost, less amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

Except the above, the judgment dated 18.08.2023 made in C.M.A.No.1954 of 2022, remains unaltered.

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

7. Registry shall refund the excess Court fee, if any paid, to the appellant.

26.07.2024

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Issue order copy immediately.



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CMA No.1954 of 2022

SUNDER MOHAN, J.,

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CMA No.1954 of 2022

26.07.2024