



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 02.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.2067 of 2022

Kathirvel

...Appellant

Vs.

1.Santhana Raman

2.National Insurance Company Limited,

Third Party Motor Claims Office,

3rd Floor, No.751, Anna Salai,

Chennai 600 002.

...Respondents

(1st respondent remained exparte before the
Tribunal and hence, notice may be dispensed
with for 1st respondent)

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 24.03.2021 in M.A.C.T,O.P.No.516 of 2012 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Ponneri.

For Appellant : M/s.A.Subadra

For Respondents : M/s.R.Rathna Thara for R2



JUDGMENT

The Civil Miscellaneous Appeal is filed for enhancement of compensation granted by the Tribunal in the award dated 24.03.2021 in M.A.C.T.O.P.No.516 of 2012 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Ponneri.

2. The appellant/claimant filed the claim petition claiming a sum of Rs.4,20,000/- as compensation for the injuries sustained by him in the accident that took place on 29.07.2012. According to the appellant, on the date of accident i.e., on 29.07.2012 at about 16.00 hours, when he was riding in the bicycle at Nandhanam Signal, a Innova car bearing registration No. TN 07 AP 3364 belonging to the first respondent, driven by its driver in a rash and negligent manner, dashed against the appellant and caused the injuries. Hence, he filed claim petition claiming compensation against the respondents.

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

4. The second respondent/Insurance Company filed a counter statement, denying the averments made in the claim petition and stated that the accident



was not due to rash and negligent driving of the car belonging to the first respondent and that in any case the appellant was also responsible for the accident. In any event, the compensation claimed 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 marked 8 documents as Exs.P1 to P8. The second respondent/Insurance Company did not let in any oral and documentary evidence. The disability certificate issued by the Medical Board was marked as Ex.C1.

6. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to the rash and negligent driving by the driver of the car belonging to the first respondent and directed the second respondent being insurer of the offending vehicle to pay a sum of Rs.2,04,000/- as compensation to the appellant.

7.The learned counsel for the appellant submitted that the appellant has suffered fracture in his left knee. He was working as a driver prior to the accident. The Tribunal has awarded compensation by adopting percentage method instead of multiplier method. Further, the appellant had also marked Ex.P8/Salary slip to prove that he was earning a sum of Rs.12,000/- per month.



Even, in the earliest versions (i.e.,) in the FIR lodged before the Police and in Ex.P2/Accident Register, he had stated that he was working as a driver. Considering the nature of injuries, which was assessed as partial permanent disability, the Tribunal should have assessed the functional disability and adopted multiplier method for awarding compensation. Further, the Tribunal has not awarded any compensation under the head Attender charges, though the appellant had taken treatment as an in-patient in the hospital. Hence, he prayed for allowing the appeal.

8. Per contra, the learned counsel for the second respondent/ Insurance Company submitted that the Tribunal awarded compensation by adopting percentage method, in the absence of any evidence to show that the appellant has suffered functional disability. Further, the compensation under the other heads are also just and reasonable and there is no reason to interfere with the award passed by the Tribunal and prayed for dismissal of the appeal.

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



10. From the award of the Tribunal, it is seen that the appellant was examined by the Medical Board which issued the disability certificate, marked as Ex.C1. The Medical Board stated that the appellant suffered 40% partial permanent disability; and suffered post traumatic sequelae left knee tibia plateau fracture. As submitted by the learned counsel for the appellant, the appellant had mentioned his avocation in Ex.P1/FIR and to the Doctor, which is recorded in Ex.P2/Accident Registrar. Considering the fact that the appellant has suffered a knee fracture, as a result of which, his movement was restricted, this Court is of the view that the appellant has suffered functional disability and hence, the multiplier method can be adopted to award compensation. Considering the nature of injuries, Ex.C1/disability certificate and the avocation of the appellant, this Court is of the view that the functional disability for the whole body can be fixed as 20%. Though the appellant has marked Ex.P8/salary certificate, the employer/author of the said certificate has not been examined. Considering the facts and circumstances of the case, the notional income can be fixed as Rs.10,000/- per month. Hence, a sum of Rs.1,68,000/- $[10,000 \times 12 \times 7 \times 20/100]$ is awarded under the head loss of future earning capacity. The compensation awarded under the head partial permanent disability is hereby set aside. The Tribunal has taken the notional income at Rs.6,000/- and awarded compensation of Rs.18,000/- towards loss of



income for three months. Due to the injuries, the appellant would not have attended the work atleast for a period of 3 months. Hence, a sum of Rs.30,000/- (Rs.10,000/- x 3months) is awarded towards loss of income during treatment period. The appellant had also taken treatment as an in-patient in the hospital. However, the Tribunal has not awarded any amount towards attendant charges. Considering the period of treatment taken by the appellant, a sum of Rs.10,000/- is awarded towards attendant charges. The amount of compensation awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. 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.	Loss of Income	18,000	30,000	Enhanced
2.	For partial Permanent Disability	1,40,000	-	Set aside
3.	Attender charges	-	10,000	Granted
4.	Loss of future earning capacity	-	1,68,000	Granted
5.	Medical	20,000	20,000	Confirmed



	expenses			
6.	Transportation	2,000	2,000	Confirmed
7.	Extra nourishment	3,000	3000	Confirmed
8.	Damage to clothing and articles	1,000	1,000	Confirmed
9.	Pain & sufferings	10,000	10,000	Confirmed
10.	Loss of amenities	10,000	10,000	Confirmed
	Total	Rs.2,04,000/-	Rs.2,54,000/-	Enhanced by Rs.50,000/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,04,000/- is hereby enhanced to Rs.2,54,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit (excluding the default period, if any). The appellant/claimant is directed to pay necessary Court fee, if any, on the enhanced compensation. The 2nd respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court i.e., Rs.2,54,000/- 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, now determined by this Court, along with interest and costs, less the



amount if any, already withdrawn. No costs.

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Index: Yes/No
Internet: Yes/No
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To

- 1.The Motor Accident Claims Tribunal /
Additional Subordinate Judge, Ponneri.
- 2.The Section Officer
VR Section, High Court of Madras.

SUNDER MOHAN,J.



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