



WEB COPY



C.M.A.No.1085 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1085 of 2023

Anson

... Appellant

Vs

The Managing Director,
Metropolitan Transport Corporation [Ltd],
Pallavan House, Pallavan Salai,
Chennai – 600 002.

... Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 13.02.2023 in MACT.O.P.No.2796 of 2018 on the file of the Motor Accident Claims Tribunal, in the IV Court of Small Causes, Chennai.

For Appellant : Mr.K.Ayyadurai

For Respondent : Mr.Vinoth Raj



C.M.A.No.1085 of 2023

J U D G M E N T

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant challenging the quantum of compensation granted by the Tribunal in the award dated 13.02.2023 made in MACT.O.P. No.2796 of 2018 on the file of the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai.

2. The appellant filed M.C.O.P. No.2796 of 2018 on the file of the the Motor Accident Claims Tribunal, IV Court of Small Causes, Chennai claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him in the accident that took place on 07.04.2018.

3. According to the appellant, on the date of accident, i.e. 07.04.2018 while he was riding the motorcycle bearing Registration No.TN-04-AS-5419, at Rajaji Salai, in front of Parrys Building, Chennai, the driver of the bus bearing Registration No.TN-01-AN-0616 belonging to the respondent, drove the same in a rash and negligent manner and hit against the motorcycle and caused the accident. In the above said accident, the appellant / Anson sustained grievous injuries and hence filed claim petition claiming compensation against the respondent.



C.M.A.No.1085 of 2023

4. The respondent filed counter statement denying all the averments made by the appellant in the claim petition. According to the respondent, accident occurred only due to the negligent act of the motorcyclist who drove the vehicle in a rash and negligent manner without wearing helmet, lost his control and invited the accident. Hence, the respondent is not liable to pay compensation to the appellant. The total compensation claimed by the appellant is excessive and prayed for dismissal of the claim petition.

5. The appellant examined himself as PW1 and one Dr.K.J.Mathiazhagan, was examined as PW2. Eleven documents were marked as Exs.P.1 to Exs.P.11. On the side of the respondent, one Magesh / Driver of the bus was examined as RW1 and no document was marked.

6. The Tribunal after considering the evidence and documents filed on the side of the appellant, awarded a sum of Rs.50,000/- as compensation to the appellant. Aggrieved by the said judgment, the appellant has preferred the present appeal seeking enhancement of compensation.



C.M.A.No.1085 of 2023

7. The learned counsel for the appellant submitted that though the appellant had marked the discharge summary / Ex.P3, which shows that the appellant suffered fracture in the ribs 5th, 6th and 7th, the Tribunal had erroneously reduced the percentage of disability fixed by P.W.2 / Doctor. The Tribunal had assessed the disability at 5% and awarded Rs.5,000/- per percentage of disability. The Tribunal had also not awarded compensation towards loss of amenities, pain and sufferings, transportation charges, extra nourishment and attendant charges. Therefore, the learned counsel prayed for enhancement of compensation.

8. Per contra, the learned counsel for the respondent / Insurance Company submitted that the appellant was not examined by the Medical Board. P.W.2 is a private doctor, his evidence cannot be accepted and therefore, the Tribunal had rightly fixed the percentage of disability as 5%. The learned counsel therefore submitted that the award of the Tribunal is just and reasonable and there is no reason to interfere with the same and prayed for dismissal of the appeal.



C.M.A.No.1085 of 2023

WEB COPY

9. The only question in the instant appeal is -

Whether the award of compensation by the Tribunal
is just and reasonable?

10. The appellant had taken treatment in Government Stanley Hospital, Chennai. The discharge summary was marked as Ex.P3. As per the discharge summary, the appellant suffered fracture on the right scapula, 5th 6th and 7th ribs. P.W.2 / Doctor, had assessed the disability at 25%. In a similar case, the Hon'ble Apex Court in *S.Perumal Vs. K.Ambika and Ors.* reported in **2015 (1) TN MAC 337 (SC)** had accepted the evidence of Doctor assessing the disability at 25% for fracture in the 5th to 8th ribs. In the light of the above, though P.W.2 was a private Doctor, the Tribunal ought not to have discarded his evidence and reduced the percentage of the disability to 5%. This Court is of the view that the award does not disclose any reason for discarding except for stating that the appellant was not subjected to examination by the Medical Board. Considering the nature of injuries namely fractures in the ribs 5th, 6th and 7th besides in the scapula, this Court is of the view that P.W.2's evidence has to be accepted. Therefore, the disability is assessed as 25%. The appellant is entitled to



C.M.A.No.1085 of 2023

Rs.5,000/- for a percentage of disability as the accident took place in the year 2018.

11. Therefore, the compensation under the head disability has to be $\text{Rs.5,000} \times 25 = 1,25,000/-$. The appellant is entitled to Rs.10,000/- towards pain and suffering, Rs.10,000/- towards loss of amenities, Rs.5,000/- towards transportation expenses, Rs.5,000/- towards extra nourishment and Rs.5,000/- towards attendant charges. Considering the nature of injuries, the notional income of the deceased is taken as Rs.10,000/-. Therefore, the loss of income during the period of treatment is taken as one month at the rate of Rs.10,000/- per month. Thus, the compensation awarded by the Tribunal is enhanced in the following manner:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	50,000/-	1,25,000/-	Enhanced
2.	Pain and Sufferings		10,000/-	Enhanced
3.	Transportation Expenses		5,000/-	Enhanced



C.M.A.No.1085 of 2023

4.	Extra Nourishment		5,000/-	Enhanced
5.	Medical Expenses		-	Enhanced
6.	Attendant Charges		5,000/-	Granted
7.	Loss of Amenities	-	10,000/-	Granted
8.	Loss of Income during the treatment period	-	10,000/-	Granted
	Total	50,000/-	1,70,000/-	Enhanced by Rs.1,20,000/-

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.50,000/- is hereby enhanced to Rs.1,70,000/- 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 respondent / Transport Corporation is directed to deposit the enhanced 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. On such deposit, the appellant is permitted to withdraw the same, along with proportionate interest and costs, less the amount if any,



C.M.A.No.1085 of 2023

already withdrawn. The appellant is directed to pay the necessary Court

Fee, if any, on the enhanced award amount. No costs.

10.08.2023

Index: Yes/No

Neutral Citation: Yes/No

AT

To

1.The Motor Accident Claims Tribunal
IV Court of Small Causes, Chennai.

2. The Section Officer,
VR Section,
High Court, Madras.



WEB COPY



C.M.A.No.1085 of 2023

SUNDER MOHAN, J.

AT

C.M.A.No.1085 of 2023

10.08.2023