



WEB COPY

C.M.A.No.1607 of



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

C.M.A.No.1607 of 2022
and C.M.P. No.11910 of 2022

The Manager
Untied India Insurance Company Ltd.
Durgabhavani Square, Opp.Railway Station
Denkanikottai Road, Hosur(Tk)
Krishnagiri District.

.. Appellant

Vs.

1.Periyannan

2.S.Pachiappan

.. Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988 against the award and decree dated 17.12.2021 made in MCOP.No.65 of 2019 on the file of the Motor Accidents Claims Tribunal (Additional Sub Judge), Hosur.

For Appellant : Mr.D.Bhaskaran

For Respondent : Mr.C.Prabakaran (R1)

R2 – Ex-parte

JUDGMENT

This Civil Miscellaneous Appeal has been preferred by the Appellant/Insurance Company, who is the second respondent before the



Motor Accident Claims Tribunal, challenging the quantum of compensation awarded by the Tribunal.

WEB COPY

2. The first respondent / Periyannan, who is the claimant, has filed the claim petition claiming a sum of Rs.15,00,000/- as compensation stating that while he was riding a motorcycle bearing Regn.No.TN-31-K-6676 from Krishnagiri to Hosur NH44 Road, a Tipper lorry bearing Regn.No.TN-70- F-8296, which came in an opposite direction in a rash and negligent manner, had dashed against the two - wheeler bearing Regn.No.TN31 K6676. In the said accident, the first respondent / Periyannan sustained grievous injuries on his head and all over the body. Immediately, he was taken to Cauvery Hospital, Hosur and took treatment in that hospital.

3. The Appellant / Insurance Company had filed a counter denying the averments made in the claim petition stating that there was no negligence on the part of the Tipper lorry bearing Regn.No.TN70 F8296 and that the first respondent / Periyannan, who had driven the two-wheeler at an uncontrollable speed, had dashed against the Tipper lorry invited the



accident. Hence, the driver of the second respondent is not responsible for the accident and the appellant is not liable to pay compensation; that in any event the compensation claimed was excessive and prayed for dismissal of claim petition.

4. The wife of the first respondent / Periyannan examined herself as PW1 and marked Exs.P.1 to P.11. The Disability Certificate issued by the Medical Board was marked as Ex.C1. On the side of the Appellant / Insurance Company, RW1 was examined and Ex.R1 to Ex.R4 were marked.

5. The Tribunal, after examining all the relevant documents and evidence, had held that accident occurred due to the rash and negligent driving by the driver of the lorry belonging to the second respondent and directed the Appellant / Insurance Company to pay Rs.12,27,100/- to the first respondent.

6. Aggrieved over the said award, the Appellant / Insurance Company has filed the present appeal.



WEB COPY

7. The learned counsel for the appellant submitted that the injured had not established that he had suffered Functional Disability to the extent of 40%. Though the injured was examined and Ex.C1 certificate was issued by the Medical Board, the same does not indicate that the first respondent had suffered Functional Disability. The nature of injuries suffered by the first respondent and the treatment taken by him would show that the Functional Disability assessed by the Tribunal is erroneous. In any event, the learned counsel submitted that the Tribunal ought not to have adopted Multiplier 13 for awarding compensation. Hence, the learned counsel prayed for reducing the compensation awarded by the Tribunal.

8. Per contra, the learned counsel for the first respondent submitted that the first respondent was unable to pursue his avocation and in fact, the Claim Petition was filed through his wife; that the Disability certificate issued by the Medical Board was rightly accepted by the Tribunal, while awarding compensation by adopting the Multiplier method; and that there is no reason to interfere in the said finding of the Tribunal and hence 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. On perusal of the records, it is seen that the first respondent has not examined himself before the Tribunal. The wife of the first respondent was examined as P.W.1. According to P.W.1, the first respondent was unable to pursue the avocation after the accident. The discharge summary was marked as Ex.P2, Wound Certificate was marked as Ex.P3 and the Disability Certificate of the Medical Board was marked as Ex.C1. The discharge summary reveals that the first respondent's condition improved after the management in the hospital and he was discharged in stable condition. The disability certificate issued by the Medical Board also confirms the fact that the first respondent was under conservative treatment and that he was having headache and loss of memory. From the Medical records, it cannot be inferred that the injured had suffered Functional Disability to the extent of 40% and consequential loss of earning capacity. Ex.C1, the disability certificate issued by the Medical Board shows that the injured had 40%



Partial permanent disability. In the absence of any evidence, apart from the interested testimony of P.W.1, the Tribunal erred in fixing the percentage of disability fixed by the Medical Board as Functional Disability. However, considering the Discharge Summary, nature of injuries mentioned in the Wound certificate and the injuries noted by the Medical Board in Ex.C1, this Court is of the view that it would be just and reasonable to fix the Functional Disability at 25%. The Tribunal had fixed Rs.8,000/- as Notional income. Considering the facts and circumstances of the case, the fixing of Notional income cannot be faulted and hence, the same is confirmed. Thus, the first respondent is entitled to compensation under the Head of Disability as follows:

$$\text{Rs.8,000/-} \times 12 \times 17 \times 25/100 = \text{Rs.4,08,000/-}$$

$$\text{Future Prospects} = 3200 \times 12 \times 17 \times 25/100 = 1,63,200/-$$

11. The learned counsel for the appellant is unable to point out any error in the award of compensation under the other heads. However, this Court finds that the Tribunal had awarded Rs.4,200/- under the Head Attendant Charges. Considering the nature of injury and period of treatment,



the injured is entitled to Rs.20,000/- under the said head. Thus, the award is modified as follows:-

WEB COPY

Heads	Compensation awarded by the Tribunal	Compensation awarded by this Court
Disability	Rs.6,52,800.00/-	Rs.4,08,000.00/-
Future Prospects	Rs.2,61,120.00/-	Rs.1,63,200.00/-
Pain and Suffering	Rs. 40,000.00/-	Rs. 40,000.00/-
Extra nourishment	Rs. 10,000.00/-	Rs. 10,000.00/-
Transport and Hospital	Rs. 10,000.00/-	Rs. 10,000.00/-
Damages to Clothes	Rs. 1,000.00/-	Rs. 1,000.00/-
Medical Expenses	Rs.2,23,000.00/-	Rs.2,23,000.00/-
Attendant Charges	Rs. 4,200.00/-	Rs.20,000.00/-
Future Medical Expenses	Rs. 10,000.00/-	Rs.10,000.00/-
Loss of Amenities	Rs.15,000.00/-	Rs.15,000.00/-
Total	Rs.12,27,120.00/-	Rs.9,00,200.00/-

12. In the result, this Civil Miscellaneous Appeal is partly allowed by reducing the compensation awarded by the Tribunal from Rs.12,27,120/- to Rs.9,00,200/- together with interest @ 7.5% from the date of petition till the date of deposit. The appellant is directed to deposit the compensation awarded by this Court along with interest and costs, less the amount already deposited if any to the credit of MCOP.No.65 of 2019 on the file of the Motor Accidents Claims Tribunal (Additional Sub Court), Hosur within a period of six weeks from the date of receipt of copy of this judgment. On



such deposit, the first respondent is permitted to withdraw the award amount along with interest and costs after adjusting the amount if any already withdrawn. The appellant /insurance company is permitted to withdraw the excess amount lying in the deposit if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

11.08.2023

Index: Yes/No
Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No
kak

To

1. The Additional Sub-Judge,
Motor Accidents Claims Tribunal,
Hosur.

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



WEB COPY

C.M.A.No.1607 of



SUNDER MOHAN, J.

kak

C.M.A.No.1607 of 2022

11.08.2023