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C.M.A.No.1726 of 2023

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

DATED: 23.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

C.M.A. No.1726 of 2022

Gubendiran

... Appellant

Versus

1.Sureshkumar

2.The Chief Litigation Manager,  
Liberty Videocon General Insurance Company Limited,  
10<sup>th</sup> floor, Tower A Peninsula Business Park,  
Ganapath Rao Kadam Mar Lower Parel,  
Mumbai-400 013, Maharashtra State.

(R1 remained *ex-parte* before the Tribunal)

... Respondents

**PRAYER:** Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 25.07.2022 passed in M.A.C.T.O.P.No.201 of 2016, by the Motor Accident Claims Tribunal, Special Sub-Court, Tiruvannamalai.

For Appellant : Ms.A.Subadra

For R2 : Ms.C.Harini  
Mr.M.B.Gopalan Associates



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C.M.A.No.1726 of 2023

## **JUDGMENT**

This appeal has been filed by the appellant/claimant challenging the compensation awarded by the Tribunal in M.A.C.T.O.P.No.201 of 2016, dated 25.07.2022.

2.The claim petition was filed stating that on 03.09.2015, at about 04.20 a.m, the appellant was travelling as a coolie in the 1<sup>st</sup> respondent's lorry bearing registration No. T.N.14/C-1577 from Chennai towards Hosur; that when the said lorry was proceedings near a bridge at Vellakkalnatham Village in Vaniyambadi to Krishnagiri N.H road, the driver of the lorry drove the same in a rash and negligent manner and dashed against the unknown vehicle which was going in the same direction in front of the lorry, due to which, the appellant sustained serious injuries and thus, the appellant was entitled for compensation.

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



C.M.A.No.1726 of 2023

WEB COPY 4.The 2<sup>nd</sup> respondent/Insurance Company filed a counter denying all the averments made in the claim petition and stated that the appellant was working in construction company as mason and he travelled as an unauthorised passenger in goods vehicle; that the 1<sup>st</sup> respondent had allowed a gratuitous passenger to travel in the lorry and hence, the 2<sup>nd</sup> respondent is not liable to pay any 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.10 on his side. On behalf of the 2<sup>nd</sup> respondent, one witness was examined and Ex.R1 was marked.

6.The Tribunal after considering the oral and documentary evidence had 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, directed the 2<sup>nd</sup> respondent to pay a sum of Rs.4,83,610/- as compensation to the appellant.



C.M.A.No.1726 of 2023

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

8. The learned counsel for the appellant submitted that the compensation awarded by the Tribunal is meagre; that the Tribunal ought to have adopted multiplier method to award compensation since the appellant who was a coolie suffered “Grade III fracture both bone left leg and fracture fibula right” and the Medical Board had assessed the disability of the appellant as 20% partial permanent disability. The learned counsel for the appellant further submitted that the award of compensation under other heads are also meagre are prayed for enhancement of compensation.

9. The learned counsel for the appellant submitted that the 1<sup>st</sup> respondent remained *ex-parte* before the Tribunal and therefore, he prayed to dispense with notice to the 1<sup>st</sup> respondent. Hence, notice to the 1<sup>st</sup> respondent is dispensed with.



C.M.A.No.1726 of 2023

WEB COPY

10.The learned counsel for the 2<sup>nd</sup> respondent per contra submitted that the Tribunal awarded just and reasonable compensation; that the 2<sup>nd</sup> respondent had preferred an appeal challenging the finding of liability in C.M.A.No.2831 of 2022 and this Court dismissed the said appeal on 09.01.2023; that therefore, no interference is called for in the award of the Tribunal 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.On perusal of the records, it is seen that, the appellant had suffered “Grade III fracture both bone left leg and fracture fibula right” and the Medical Board had assessed disability of the appellant as 20% partial permanent. The appellant has stated that he was working as coolie and load man with the 1<sup>st</sup> respondent. Further, no document has been produced either to prove his income or avocation. Considering that the appellant was working as coolie worker with the 1<sup>st</sup> respondent and the nature of injuries suffered by him, this Court is of the view that, he would have suffered functional disability to an extent of 8%. Hence, the



C.M.A.No.1726 of 2023

multiplier method can be adopted to award compensation. Considering the accident, age of the appellant and his avocation, this Court is of the view that it would be reasonable to fix Rs.12,000/- as notional monthly income and the multiplier applicable is 11. Hence, the award under the head disability is computed as follows:

$$\text{Rs.12,000} \times 12 \times 11 \times 8/100 = \text{Rs.1,26,720/-}$$

Since the multiplier method is adopted, the amount of Rs.24,000/- awarded by the Tribunal under the head loss of income during treatment period is set aside. The compensation awarded by the Tribunal under the heads pain and sufferings and loss of amenities is meagre and hence, the same is enhanced to Rs.50,000/- each. The amounts awarded by the Tribunal under other heads are just and reasonable and the same are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:



C.M.A.No.1726 of 2023

WEB COPY

| S. No | Description                                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|-------|--------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Disability                                 | 80,000                          | 1,26,720                          | Enhanced                               |
| 2.    | Pain and Sufferings                        | 35,000                          | 50,000                            | Enhanced                               |
| 3.    | Extra Nourishment                          | 10,000                          | 10,000                            | Confirmed                              |
| 4.    | Medical Expenses                           | 2,79,610                        | 2,79,610                          | Confirmed                              |
| 5.    | Attender Charges                           | 10,000                          | 10,000                            | Confirmed                              |
| 6.    | Loss of Income during the treatment period | 24,000                          | -                                 | Set aside                              |
| 7.    | Transportation Expenses                    | 10,000                          | 10,000                            | Confirmed                              |
| 8.    | Loss of Amenities                          | 35,000                          | 50,000                            | Enhanced                               |
|       | Total                                      | 4,83,610                        | 5,36,330                          | Enhanced by Rs.52,720/-                |

13. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,83,610/- is hereby enhanced to Rs.5,36,330/-, 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 2<sup>nd</sup> respondent/Insurance Company is directed to deposit the award amount now determined by this Court along



C.M.A.No.1726 of 2023

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 is permitted to withdraw the entire award amount now determined by this Court, along with interest and costs, less the amount already withdrawn, if any. The appellant is directed to pay the necessary Court fee, if any on the enhanced award amount. No costs.

**23.08.2023**

rst/dpa

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

**To:**

- 1.The Special Sub Judge,  
The Motor Vehicle Accident Tribunal,  
Thiruvannamalai.
- 2.The Section Officer,  
VR Section,  
High Court, Madras.



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C.M.A.No.1726 of 2023



WEB COPY



C.M.A.No.1726 of 2023

**SUNDER MOHAN, J.**

rst/dpa

**C.M.A.No.1726 of 2023**

**23.08.2023**