



WEB COPY



C.M.A.No.1327 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2023

CORAM

THE HON'BLE MRS.JUSTICE N.MALA

C.M.A.No.1327 of 2022

Velusamy

... Appellant

vs.

1.Ponnusamy

2.The New India Assurance Company Limited,
1st Floor, Amman Complex,
1360, EVN Road,
Erode – 638 011.

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the present appeal award enhanced compensation in Judgment and Decree dated 08.10.2021 in M.C.O.P.No.111 of 2017 on the file of the Motor Accidents Claims Tribunal Subordinate Judge, Perundurai as prayed for in this Civil Miscellaneous Appeal with cost.

For Appellants : Mr.R.Nalliyappan

For R1 : No appearance

For R2 : Mr.T.Jayaraman

* * * * *



C.M.A.No.1327 of 2022

J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed to allow the present appeal award enhanced compensation in Judgment and Decree dated 08.10.2021 in M.C.O.P.No.111 of 2017 on the file of the Motor Accidents Claims Tribunal Subordinate Judge, Perundurai as prayed for in this Civil Miscellaneous Appeal with cost.

2.The appeal is filed by the claimant for enhancement of compensation.

3.On 01.03.2017 at about 12.00 hrs., while the claimant was riding his motor cycle along with his wife and son, the first respondent drove his car in a rash and negligent manner and dashed against the claimant's motor cycle, thus causing him grievous injuries.

4.According to the claimant, he was aged about 45 years at the time of accident and as a carpenter he was earning a sum of Rs.10,000/- per month. Due to the injuries sustained by him in the accident, he was unable to



C.M.A.No.1327 of 2022

carryout his work as a carpenter as before. The claimant therefore filed the claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries sustained in the accident.

5.The first respondent in the Claim petition remained ex-parte before the Tribunal and the claim petition was contested by the second respondent/Insurance company. The second respondent/Insurance Company filed it's counter denying all the averments made in the claim petition, apart from disputing the negligence, quantum and liability.

6.Before the Claims Tribunal, the claimant examined himself as PW1 and marked Ex.P1 to Ex.P3, Ex.P14, Ex.P21, Ex.P24 and Ex.P25 in support of his claim. The Claims Tribunal on an assessment of the entire evidence on record held that the accident occurred only due to the negligence of the first respondent i.e. the driver of the car, assessed the compensation at Rs.14,56,180/- along with 7.5% interest and mulcted the liability on the second respondent/Insurance Company. Not satisfied with the award passed by the Claims Tribunal, the claimant has filed the above appeal for



C.M.A.No.1327 of 2022

enhancement of compensation.

WEB COPY

7.The learned counsel appearing for the appellant submitted that the Tribunal erred in fixing the functional disability at 50%. According to the learned counsel, the Tribunal having found that the claimant suffered partial hearing impairment in the right ear and visual disorder in the right eye, ought not to have fixed the functional disability at 50%. According to the learned counsel the functional disability ought to have been assessed at 72%. As regards other heads, the learned counsel fairly submitted that he was not disputing the same.

8.The learned counsel for the respondent on the other hand submitted that the Tribunal erred in awarding double compensation for permanent disability at Rs.3,60,000/- adopting the unit method and Rs.9,45,000/- for functional disability assessed at 50%. The learned counsel therefore submitted that the award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.



C.M.A.No.1327 of 2022

9.I have heard both the learned counsels and have perused the materials placed on record.

10.It is seen that due to the accident the claimant had suffered hearing loss in the right ear and vision disorder in the right eye. The claimant was a carpenter by profession and was earning a sum of Rs.10,000/-. The Medical Board assessed the permanent disability at 72%. In my view, considering the avocation of the claimant and the disability suffered by him the functional disability can be fixed at 65%, therefore the award towards permanent disability is modified.

11.Considering that the claimant was a skilled carpenter, the income of the claimant is fixed at Rs.10,000/- per month and 25% of the income is added towards future prospects. The loss towards permanent disability is arrived at $\text{Rs.}12,500 \times 12 \times 14 \times 65/100 = \text{Rs.}13,65,000/-$. The learned counsel for the respondent is justified in his submission that the Tribunal having adopted the multiplier method for assessing functional disability



C.M.A.No.1327 of 2022

ought not to have awarded any sum towards the permanent disability.

Therefore, the order of the Tribunal towards permanent disability assessed at Rs.3,60,000/- is set aside. The learned counsel fairly submitted that he was not questioning the award under other heads. Therefore, the award under the other heads is confirmed and the award of the Tribunal is modified as follows:

Sl.No.	Heads	Award of the Tribunal	Award of this Court
1	Transport to Hospital	Rs. 10,000/-	Rs. 10,000/-
2	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
3	Medical Expenses	Rs. 48,181/-	Rs. 48,181/-
4	Pain and Sufferings	Rs. 50,000/-	Rs. 50,000/-
5	Total permanent disability $72\% \times \text{Rs.}5000 = \text{Rs.}3,60,000/-$	Rs. 3,60,000/-	-
6	Functional disability	Rs. 9,45,000/- $(\text{Rs.}5625 \times 12 \times 14 = \text{Rs.}9,45,000/-)$	Rs.13,65,000/- $(\text{Rs.}12,500 \times 12 \times 14 \times 65/100 = \text{Rs.}13,65,000/-)$
7	Attender Charges	Rs. 30,000/-	Rs. 30,000/-
8	Damages to cloths and articles	Rs. 3,000/-	Rs. 3,000/-
TOTAL		Rs.14,56,181/- rounded to Rs.14,56,180/-	Rs.15,16,181/- rounded to Rs.15,16,180/-



C.M.A.No.1327 of 2022

WEB COPY

12.In the result, the claimant shall be entitled to Rs.15,16,180/- along with 7.5% interest. The second respondent/Insurance company is directed to deposit the enhanced compensation of Rs.15,16,180/- along with 7.5% interest, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the same by making proper application before the Claims Tribunal.

13.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

28.06.2023

Index : yes/no

Internet : yes/no

ah

To

1.The Motor Accidents Claims Tribunal
Subordinate Judge,
Perundurai.

2.The Section Officer,

7/9



V.R.Section,
High Court, Madras.

WEB COPY



C.M.A.No.1327 of 2022

N.MALA, J.

ah

C.M.A.No.1327 of 2022



WEB COPY



C.M.A.No.1327 of 2022

28.06.2023