



WEB COPY



C.M.A.No.2468 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2023

CORAM:

THE HON'BLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.2468 of 2021

Manivannan

...Petitioner

Versus

1.M/s TSR Transport Pvt. Ltd.,
213, Alagessan, Saibaba Colony,
Coimbatore – 641 018.

2.United India Insurance Co, Ltd.,
No.3, P.B.No.1122, D.B.Road,
R.S.Puram, Coimbatore

...Respondents

Prayer:Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the award passed in Judgment and Decree dated 19.12.2019 made in MCOP No.306 of 2011 on the file of the Motor Accidents Claims Tribunal and the Subordinate Judge, Sankagiri.

For Appellants	:	Mr.SP.Yuaraj
For Respondents	:	
[R1]	:	Address cannot be located.
[R2]	:	M/s.I.Malar.



C.M.A.No.2468 of 2021

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal is filed by the claimant under Section 173 of Motor Vehicle Act, 1988 seeking enhancement of compensation awarded in Judgment and Decree dated 19.12.2019 made in MCOP No.306 of 2011 on the file of the Motor Accidents Claims Tribunal and the Subordinate Judge, Sankagiri.

2.The case of the claimant is that on 16.12.2010 at about 7.30 pm, he was travelling from Coimbatore to Erode in TSR Private bus bearing registration No.TN 38 AR 7356. While the bus reached near Maharaja Women's College between Perundurai to Erode, the driver of the private bus has driven the bus in a rash and negligent manner and dashed on the cyclist and subsequently hit on the Maruti car and lost control, which resulted in fracture in right shoulder and right arm to the claimant and injuries to the passengers. After taking treatment at the Government Hospital and after discharge, he come forward with a claim petition for a sum of Rs.25,00,000/-, by invoking Section 166 of the Motor Vehicles Act.



C.M.A.No.2468 of 2021

3.The 1st respondent/M/s TSR Transport Pvt. Ltd., owner of the bus has not contested the claim and remained *ex-parte*. The 2nd respondent/United India Insurance Co, Ltd., contested the claim on the ground that the compensation claimed by the claimant is on the higher side and the driver of the Maruti Car is responsible for the accident and bus driver is not responsible.

4.The Tribunal/Motor Accidents Claims Tribunal, Sankagiri after considering the evidence placed on record has held that the Driver of the bus has driven the bus in a rash and negligent manner and caused the accident. The Tribunal quantified the compensation and awarded a sum of Rs.3,00,000/-. Aggrieved over the quantum of compensation awarded, the claimant has come forward with this appeal for enhancement of compensation.

5.The learned counsel for the claimant submitted that the claimant subjected himself for the assessment of his disability and the Medical Board, Sankagiri has also fixed the disability to the extent of 30 per cent but



the Tribunal has not awarded any amount or any compensation under the head “disability”. Hence, seeks compensation under the head Disability. He would further submit that the compensation awarded on the other heads are also on the lower side, and prays to modify the same.

6.*Per-contra* learned counsel for the Insurance Co. submitted that there is a calculation error committed by the Tribunal while quantifying the compensation and the compensation awarded is also on the higher side. Hence prays to reduce the award.

7.Heard both sides and perused all the available materials on record.

8.The claimant subjected himself for Medical Board Examination to assess his disability. The Tribunal has also adverted into the disability certificate, and after taking note of the fact that the claimant has obtained promotion in his employment, the Tribunal has held that there is no disability sustained by the claimant. But Ex.C1 speaks for itself to state that the claimant has sustained 30 per cent disability based on the fracture on his



C.M.A.No.2468 of 2021

right hand. Apart from the fracture, the claimant has also sustained other grievous injuries and this was not taken up for consideration by the Tribunal.

9.The Tribunal has considered the evidence of the claimant that the claimant was promoted to the post of Assistant Manager and subsequently, he attained superannuation. He is also receiving pension for a sum of Rs.60,000/- per month, and held that there was no loss of income. It is true that the claimant has got promotion and subsequently he is receiving pension. However, he has sustained grievous fractures that too on his right hand at the age of nearly 60 years. This injury has also resulted in causing disability to an extent of 30 per cent, which has been assessed by the medical board. Even though there is no loss of income of the claimant, he has sustained the disability and this disability is to be compensated since the *tort-feasor* is liable to compensate the disability caused to the claimant for the negligent act committed by him.



WEB COPY

10.It is a well settled law that if the injuries sustained is not resulted in any loss of earning capacity, the injured is entitled to get compensation by way of adopting percentage method and accordingly, he is entitled to Rs.3,000/- per percentage of injury, as the claimant's disability is 30%. The compensation under the head Disability Rs.90,000/- is hereby awarded.

11. The Tribunal has also awarded medical expenses of Rs. 85,000/-, Rs.50,000 under the head pain and suffering and Rs.30,000/- for extra nourishment). This court finds that there is no infirmity in awarding the same. The claimant is also entitled for attender charges for a sum of Rs.10,000/- considering his period for inpatient treatment. However, the Tribunal has awarded, transport charges of Rs.30,000/-, which is on the higher side and the same is hereby modified and this court awards a sum of Rs.20,000/- and there is no evidence placed on record before the Tribunal for awarding any future medical treatment. In the absence of any requirement of future medical treatment, compensation awarded under the head future medical expenses is hereby cancelled.



C.M.A.No.2468 of 2021

12. Accordingly, the compensation awarded under various heads by

this Court is as follows:

Sl.No.	<i>Various Heads</i>	<i>Awarded by Claims Tribunal</i>	<i>Awarded by this Court</i>
1.	Medical Expenses	Rs.85,000/-	Rs.85,000 /-
2.	Pain and Suffering	Rs.50,000/-	Rs.50,000/-
3.	Transport	Rs.30,000/-	Rs.20,000/-
4.	Maintenance	Rs.30,000/-	Rs.30,000/-
5.	Future Medical Expenses	Rs.50,000/-	Cancelled
6.	Extra Nourishment	Rs.30,000/-	Rs.30,000/-
6.	Disability		Rs.90,000/-
7.	Attender Charges		Rs.10,000/-
7.	Total	Rs.2,75,000/-	Rs.3,15,000/-
8.	Rounded off	Rs.3,00,000/-	Rs.3,15,000/-

13. In the result, this civil miscellaneous appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,00,000/- is hereby modified to **Rs.3,15,000/- [Rupees Three Lakh Fifteen Thousand Only]** together along with interest at the rate of 7.5 % per annum from the date of



C.M.A.No.2468 of 2021

claim petition till the date of deposit. The Respondent-Transport Corporation is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of copy of this judgment to the credit of MCOP No.306 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Judge, Sankagiri. On such deposit, the appellant/claimant is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellants/claimants are directed to pay the necessary court fee, if any, on the enhanced compensation. The claimant is not entitled to any interest for default period if any. There shall be no order as to costs in the present appeal. The appeal is partly allowed. No costs.

28.11.2023

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No

nst



WEB COPY



C.M.A.No.2468 of 2021

To:

- 1.The Motor Accidents Claims Tribunal
- 2.The Subordinate Judge, Sankagiri.
- 3.The Section Officer,
VR Section,
High Court,
Madras.



WEB COPY



C.M.A.No.2468 of 2021

K.RAJASEKAR ,J

nst

C.M.A.No.2468 of 2021

28.11.2023