



C.M.A. No.1901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1901 of 2023

Gunasekaran

...Appellant/Petitioner

Vs.

1. Papathi,

2. The Divisional Manager,  
The National Insurance Company Limited,  
No.19, Officer's Line,  
Vellore – 632 009.

...Respondents/Respondents

**Prayer:** This Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree dated 25-11-2022 and made in M.A.C.T.O.P.No.1312 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Thiruvanamalai.

For Appellant : M/s. M. Sunithi Abirami  
For Respondents : R1 - Notice Dispensed with  
R2- Mr.C.Parandhaman



C.M.A. No.1901 of 2023

### **JUDGMENT**

The claimant has preferred the instant appeal seeking enhancement of compensation.

2. The appellant filed the claim petition stating that on 03.04.2016 at about 7 p.m, while the appellant was walking on a public road, the lorry bearing Reg.No.TN 30 AL 9959, belonging to the first respondent and insured with second respondent/insurance company, came in a rash and negligent manner and dashed against the appellant, as a result of which the appellant sustained grievous injuries.

3. The first respondent remained ex-parte before the Tribunal.

4. The second respondent/insurance company filed a counter stating that the accident took place only due to the negligence of the appellant, who suddenly crossed the road; and that in any event, the compensation claimed was excessive and prayed for dismissal of the claim petition.



C.M.A. No.1901 of 2023

5. Before the Tribunal, the appellant examined P.W.1 to P.W.3 and marked thirteen documents as Exs.P.1 to P.13. The second respondent neither examined any witness nor marked any document. The Disability Certificate of the Medical Board was marked as Ex.C1.

6. The Tribunal, after taking into consideration the oral and documentary evidence, held that the accident took place due to the negligence of the driver of the lorry belonging to the first respondent and directed the second respondent, being the insurer, to pay a compensation of Rs.3,35,140/- to the appellant.

7. The learned counsel for the appellant submitted that the appellant suffered serious injuries, such as fractures on the right leg thigh bone, right side clavicle bone, hip bone, and suffered other injuries; that considering the avocation of the appellant, the Tribunal ought to have awarded compensation by adopting the multiplier method and therefore prayed for enhancement of compensation.



C.M.A. No.1901 of 2023

8. Since the first respondent remained ex-parte before the Tribunal, the learned counsel for the appellant made an endorsement to dispense with notice to the first respondent. Hence, notice to the first respondent is dispensed with.

9. The learned counsel for the second respondent/insurance company per contra submitted that, in the absence of any evidence to show that the appellant suffered functional disability, the Tribunal had rightly awarded compensation by adopting the percentage method and hence, prayed for dismissal of the appeal.

10. Heard the learned counsel for the appellant as well as the learned counsel for the second respondent and perused the materials available on record.

11. It is seen from the award of the Tribunal and from the Discharge Summary/Ex.P4 that the appellant sustained “fracture of left forearm,



C.M.A. No.1901 of 2023

subtrochanteric fracture with shaft extension of right femur with right clavicle fracture, tenderness over the right clavicle, deformity and tenderness over the middle 1/3<sup>rd</sup> of right thigh with limb” and the Medical Board had assessed the disability at 20%.

12. Considering the nature of the injuries suffered by the appellant as evident from the Discharge Summary/Exs.P3 to P5, the Disability Certificate issued by the Medical Board, and the fact that the appellant was working as a Mason, this Court is of the view that the appellant had suffered functional disability. In the facts and circumstances, this Court is of the view that it would be just and reasonable to fix the functional disability at 10%. Considering the age, avocation and year of accident, the notional income of the appellant can be fixed at Rs.12,000/- per month. Since the appellant was aged 53 years at the time of the accident, the multiplier applicable is '11'. Therefore, the award under the head “Permanent Disability” has to be:-

**Rs. 12,000/- X 12 X 11 X 10/100 – Rs.1,58,400/-**



C.M.A. No.1901 of 2023

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Therefore, the compensation awarded by the Tribunal under the head “Personal Disability” is enhanced from Rs.1,00,000/- to Rs.1,58,400/-.

13. Further, the award under the head “Loss of income during the treatment period” may not arise in the facts since the compensation is awarded by adopting the multiplier method. Therefore, the compensation awarded by the Tribunal under the head “Loss of income during the treatment period, i.e., (Rs.9,000/- X 3 – Rs.27000/-) is set aside. Considering the period of treatment and the nature of injuries, the award under the head “Attender Charges” is enhanced from Rs.15,000/- to Rs.20,000/- and the award under the head “Transportation Expenses” is enhanced from Rs.10,000/- to Rs.15,000/-. The award under the other heads is just and reasonable, and hence, the same is confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.3,35,140/- to Rs.3,76,540/-, break-up as follows:-



C.M.A. No.1901 of 2023

| Sl. No | Description                                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|--------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Permanent Disability                       | 1,00,000/-                      | 1,58,400/-                        | Enhanced                               |
| 2.     | Pain and Sufferings                        | 50,000/-                        | 50,000/-                          | Confirmed                              |
| 3.     | Extra Nourishment                          | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 4.     | Medical Expenses                           | 68,140/-                        | 68,140/-                          | Confirmed                              |
| 5.     | Attender Charges                           | 15,000/-                        | 20,000/-                          | Enhanced                               |
| 6.     | Transportation Expenses                    | 10,000/-                        | 15,000/-                          | Enhanced                               |
| 7.     | Loss of Amenities                          | 50,000/-                        | 50,000/-                          | Confirmed                              |
| 8.     | Loss of Income during the treatment period | 27,000/-                        | ---                               | Set aside                              |
|        | <b>Total</b>                               | <b>Rs.3,35,140/-</b>            | <b>Rs.3,76,540/-</b>              | <b>Enhanced by Rs.41,400/-</b>         |



C.M.A. No.1901 of 2023

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14. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.3,35,140/- is hereby enhanced to Rs.3,76,540/- 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 second respondent/Insurance Company is directed to deposit the award amount, now determined by this Court, 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 award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to pay the necessary Court Fee, if any, on the enhanced award amount. No Costs.

**27.09.2023**

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



C.M.A. No.1901 of 2023

Copy to:-

1. The Special Sub Court,  
Motor Accident Claims Tribunal,  
Thiruvanamalai.
2. The Section Officer,  
VR Section,  
High Court,  
Madras.



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C.M.A. No.1901 of 2023

**SUNDER MOHAN, J.**

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**C.M.A. No. 1901 of 2023**

**27.09.2023**

10/10