



CMA No. 1487 / 2023

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

DATED: 30.08.2023

CORAM :

**THE HONOURABLE MR. JUSTICE SUNDER MOHAN**

Civil Miscellaneous Appeal No. 1487 of 2023

Govinthan ... Appellant

Versus

1.Mohandass

2.Abbas Ali

3.The United India Insurance Co.,Ltd.,  
D.O.129c, Kovai Main Road,  
Mettupalayam – 641 301.

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and Decree in M.C.O.P. No. 354 of 2020 dated 15.12.2023 on the file of the Motor Accident Claims Tribunal / Special Subordinate Judge No. I, Salem.

For Appellant : Mr. T.S. Arthanareeswaran.

For Respondents : Ms. I. Malar for R3.

R1 & R2 – ex parte.



CMA No. 1487 / 2023

WEB COPY

## J U D G M E N T

The appeal has been filed challenging the award passed by the Tribunal in M.C.O.P. No. 354 of 2020 dated 15.12.2022.

2.The appellant had filed claim petition seeking compensation before the Tribunal stating that on 11.05.2019, when the appellant was riding a motorcycle bearing Registration No. TN 24 Z 8966 in Chinnasalem to Thalaivasal Main Road opposite to Sivasakthi Petrol Bunk, a car belonging to the second respondent bearing Registration No. TN 40 M 5680 driven by the first respondent in a rash and negligent manner dashed his motorcycle and as a result of which the appellant sustained grievous injuries and was admitted in hospital.

3.The first and second respondents remained ex parte before the Tribunal.

4.The third respondent filed counter denying all the averments made in the claim petition stating that the accident occurred due to the negligence of the deceased; that the appellant tried to cross the road



CMA No. 1487 / 2023

without minding the car coming from behind and caused the accident; that the appellant did not possess valid driving license, insurance policy and did not wear helmet at the time of the accident, which are in violation of the policy conditions as well as the Motor Vehicles Act Rules; and that in any case, the compensation claimed by the appellant is excessive and prayed for dismissal of the petition.

5.The appellant examined PW.1 and marked Ex.P.1 to Ex.P.13. On the side of the respondents, no witness has been examined. However, the third respondent has marked Ex.R.1. The disability certificate was marked as Ex.C.1.

6.The Tribunal after considering the oral and documentary evidence found that the accident occurred due to the rash and negligent driving of the first respondent of the car belonging to the second respondent and awarded a compensation of Rs. 2,50,623/- to the appellant to be paid by the third respondent. Aggrieved by the said award, the appellant had preferred the instant appeal.

7.The learned counsel for the appellant submitted that the



*CMA No. 1487 / 2023*

compensation awarded by the Tribunal is meagre inasmuch as the Tribunal had taken only two months for the purpose of computing loss of income and fixed very meagre notional income. Further, the award under the head pain and sufferings is also meagre and prayed for enhancement.

8.The first and second respondents remained ex parte before the Tribunal and notice to them has been dispensed with by the order of this Court dated 18.07.2023.

9.The learned counsel for the third respondent, per contra, submitted that the award is just and reasonable and no interference is called for.

10.The only question that arises for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable?

11.It is seen from the records that the Medical Board had examined the appellant and assessed the permanent disability at 10%. The Tribunal adopted percentage method to award compensation in the absence of any



CMA No. 1487 / 2023

evidence to show the functional disability. There is no infirmity in the said finding of the Tribunal. However, this Court finds that the Tribunal ought to have fixed higher notional income considering the year of the accident and the avocation of the appellant. The appellant had stated that he was working as agricultural labourer and was earning more than Rs. 18,000/- per month. However, there is no documentary evidence to prove the income of the appellant. Considering the age, avocation and the year of the accident, this Court is of the view that it would be just and reasonable to fix Rs. 15,000/- as notional income of the appellant. Considering the nature of injuries sustained by the appellant, this Court is of the view that it would be just and reasonable to fix three months for computing the loss of income. Hence, the award under the head loss of income would be Rs. 15,000/- x 3 = Rs. 45,000/-. The award under the head pain and sufferings is enhanced to Rs. 30,000/-. Considering the nature of injuries, the award under the head extra nourishment is enhanced to Rs. 15,000/-. The award under the other heads are just and the same are confirmed. Thus, the award of the Tribunal is modified as follows;

| S. No | Description | Amount awarded by | Amount awarded | Award confirmed or |
|-------|-------------|-------------------|----------------|--------------------|
|-------|-------------|-------------------|----------------|--------------------|



CMA No. 1487 / 2023

|    |                         | <b>Tribunal<br/>(Rs)</b> | <b>by this<br/>Court<br/>(Rs)</b> | <b>enhanced or<br/>granted</b> |
|----|-------------------------|--------------------------|-----------------------------------|--------------------------------|
| 1. | Pain and sufferings     | 20,000                   | 30,000                            | Enhanced                       |
| 2. | Loss of income          | 20,000                   | 45,000                            | Enhanced                       |
| 3. | Medical expenses        | 1,14,623                 | 1,14,623                          | Confirmed                      |
| 4. | Transportation expenses | 15,000                   | 15,000                            | Confirmed                      |
| 5. | Extra nourishment       | 10,000                   | 15,000                            | Enhanced                       |
| 6. | Attender charges        | 10,000                   | 10,000                            | Confirmed                      |
| 7. | Damages to clothes      | 1,000                    | 1,000                             | Confirmed                      |
| 8. | Loss of amenities       | 10,000                   | 10,000                            | Confirmed                      |
| 9. | Permanent disability    | 50,000                   | 50,000                            | Confirmed                      |
|    | Total                   | 2,50,623/-               | 2,90,623/-                        | Enhanced by<br>Rs. 40,000/-    |

12. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,50,623/- is hereby enhanced to Rs.2,90,623/- 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 third respondent is directed to deposit the award amount now determined by this Court along with interest and costs, 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 proportionate interest and costs, less the



CMA No. 1487 / 2023

amount if any, already withdrawn. The appellant is directed to pay the necessary court fee if any on the enhanced award amount. No costs.

ay

**30.08.2023**

Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. Motor Accident Claims Tribunal / Special Subordinate Court No. I,  
Salem.

2. The Section Officer,  
V.R. Section,  
High Court of Madras,  
Chennai.



WEB COPY



*CMA No. 1487 / 2023*

**SUNDER MOHAN, J**

*ay*

C.M.A. No. 1487 of 2023

Dated: 30.08.2023