



WEB COPY

C.M.A.No.239.



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2023

CORAM:

THE HONOURABLE MRS. JUSTICE N.MALA

**C.M.A.No.2394 of 2022
and C.M.P.Nos.18647 of 2022 & 6568 of 2023**

The Divisional Manager
ICICI Lombard General Insurance Co. Ltd.
No.142, 1st floor, ECR Main Road
Near Latha Steel house
Kottupalayam, Pondicherry-5.

... Appellant

Vs.

1.Mohamed Faizul

2.Venkatesan

(2nd respondent remained exparte before the
Tribunal and hence, notice to the
2nd respondent is dispensed with)

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying against the judgment and decree dated 22.03.2022 made in M.C.O.P.No.219 of 2021 on the file of the Additional Motor Accidents Claims Tribunal, Puducherry.

For Appellant : Mr.B.Siva Kollappan

For R1 : Mr.V.Elangovan



JUDGMENT

The appeal is filed by the appellant/Insurance Company challenging the award dated 22.03.2022 made in M.C.O.P.No.219 of 2021 on the file of the Additional Motor Accidents Claims Tribunal, Puducherry.

2. The brief facts leading to the appeal are that, on 03.02.2021 at about 9.30 p.m., while the claimant was riding his motor cycle bearing Registration No.PY-01-CK-5308 from Pondicherry to Tindivanam Bye-pass road, near Irumbai road junction, while trying to cross the bye-pass road, he waited near the centre median. At that time, the driver of the Maruthi Suzuki Baleno car came in a rash and negligent manner from the opposite side and hit the claimant's motor cycle, causing him grievous injuries. According to the claimant, he was working as a Photographer and was earning Rs.45,000/- per month. Due to the grievous injuries sustained in the accident, he was not able to work as before. The 1st respondent/claimant therefore, filed the Claim Petition claiming Rs.75,00,000/- as compensation for the injuries suffered by him in the accident.

3. The 2nd respondent, owner of the car remained exparte before the Claims Tribunal. The Claim Petition was contested by the appellant/Insurance Company. The appellant filed a detailed counter denying all the averments made in the Claim Petition apart from denying the negligence, liability and quantum of compensation.



WEB COPY

4. Before the Claims Tribunal, in support of his claim, the 1st respondent/claimant examined himself as P.W.1 and Exs.P1 to P18 were marked. The disability certificate issued by the Medical Board was marked as Ex.C1. On the side of the appellant/Insurance Company, neither any oral evidence was let in nor any documentary evidence was marked.

5. The Claims Tribunal, on an assessment of the entire evidence on record, found that the 1st respondent/claimant had contributed to the accident and therefore, apportioned the negligence at 15% & 85% of the claimant and driver of the car. The Tribunal on the basis of the evidence, arrived at a compensation of Rs.50,89,000/-, deducted 15% towards the claimant's negligence and awarded Rs.43,26,000/- @ 7.5% interest as compensation. The Tribunal mulcted the entire liability on the appellant/Insurance Company. Aggrieved by the compensation awarded by the Tribunal, the appellant/Insurance Company has preferred the present appeal.

6. Learned counsel for the appellant/Insurance Company submitted that the assessment of disability at 65% by the Tribunal was erroneous and disproportionate to the nature of injuries sustained by the 1st respondent/claimant. Learned counsel further submitted that the award of the Tribunal under other heads were also exorbitant and the same deserved to be interfered with in the appeal.



WEB COPY

7. Learned counsel for the 1st respondent/claimant on the other hand submitted that the claimant's right leg below knee was amputated and considering the nature of injuries sustained by the claimant, the award of the Tribunal was fair, just and reasonable and therefore, the award did not call for any interference in the appeal.

8. I have heard the learned counsel for the appellant and the learned counsel for the 1st respondent and perused the materials placed on record.

9. It is seen from Ex.C1/disability certificate that the claimant's right leg below knee was amputated and hence, the Medical Board assessed the disability at 65%. The Tribunal fixed the functional disability arising out of the injury at 65% as in its view the claimant was not prevented from doing any other work. Though the 1st respondent/claimant claimed monthly income at Rs.45,000/-, the Tribunal in the absence of evidence, assessed the income at Rs.15,000/- per month. On its finding that the claimant had suffered 65% functional disability, the Tribunal awarded Rs.29,49,000/- towards loss of earning due to disability. In my view, the compensation under the head loss of earning due to disability is fair and reasonable and therefore, the award of the Tribunal under the said head is not interfered with in the appeal.

10. Learned counsel for the appellant/Insurance Company submitted that the compensation awarded by the Tribunal under other heads like extra nourishment,



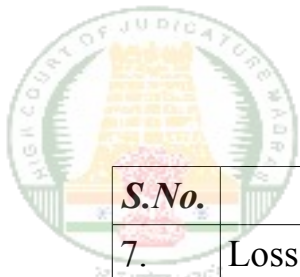
attender charges, transportation, pain & suffering, loss of marital prospects and loss of expectation of life are exorbitant and therefore, pleaded that the same may be reduced.

WEB COPY

In my view, considering that the 1st respondent/claimant was aged only 20 years at the time of accident and also that his right leg below knee was amputated, the compensation awarded by the Tribunal under the heads like extra nourishment, attender charges, transportation, pain & suffering and loss of marital prospects are not interfered with. The Tribunal has adopted the multiplier method for awarding compensation towards loss of earning due to disability, therefore, I am of the view that the award of the Tribunal towards loss of expectation of life at Rs.5,00,000/- is not warranted, hence the same is modified. The 1st respondent/claimant shall be entitled to Rs.1,00,000/- under this head.

11. In view of the above discussions, the award of the Tribunal is modified as follows:

<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
1.	Loss of earning due to disability	Rs.29,49,000/-	Rs.29,49,000/-
2.	Extra nourishment	Rs.30,000/-	Rs.30,000/-
3.	Attender charges	Rs.60,000/-	Rs.60,000/-
4.	Medical expenses	Rs.3,35,000/-	Rs.3,35,000/-
5.	Transportation charges	Rs.15,000/-	Rs.15,000/-
6.	Pain and suffering	Rs.5,00,000/-	Rs.5,00,000/-



<i>S.No.</i>	<i>Various Heads</i>	<i>Award of the Tribunal</i>	<i>Award of this Court</i>
7.	Loss of marital prospects	Rs.5,00,000/-	Rs.5,00,000/-
8.	Loss of expectation of life	Rs.5,00,000/-	Rs.1,00,000/-
9.	For fixing artificial leg	Rs.2,00,000/-	Rs.2,00,000/-
	Total Compensation	Rs.50,89,000/- less 15% towards contributory negligence Rs.43,26,000/-	Rs.46,89,000/- after deducting 15% towards contributory negligence Rs.39,85,650/-

The 1st respondent/claimant is entitled to total compensation of Rs.39,85,650/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.

12. It is submitted by the learned counsel for the appellant/Insurance Company that 50% of the amount awarded by the Tribunal along with accrued interest and costs was already deposited before the Tribunal. In view of the said submission, there shall be a direction to the appellant/Insurance Company to deposit the balance compensation amount along with 7.5% interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the 1st respondent/claimant shall be entitled to withdraw the same, less the amount if any, already withdrawn, by making proper application before the Claims Tribunal.



C.M.A.No.239.

13. The appeal is accordingly partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

WEB COPY

20.06.2023

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

kj

To

1.The Additional Motor Accidents Claims Tribunal
Puducherry.

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



WEB COPY



C.M.A.No.239.

N.MALA.J.,

kj

C.M.A.No.2394 of 2022
and C.M.P.Nos.18647 of 2022 & 6568 of 2023

20.06.2023