



WEB COPY

C.M.A.No.1963 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.08.2023

CORAM:
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Civil Miscellaneous Appeal No.1963 of 2023

C.Yoganandhan

... Appellant

Vs.

1.K.Subramanian

2.Reliance General Insurance Company Limited,

Rai Towers, Plot No.054,

II Avenue, Anna Nagar,

Chennai - 600 040.

... Respondents

PRAYER : The Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 20.12.2022 in MCOP.No.246 of 2015 on the file of the Motor Accident Claims Tribunal, IV-Court of Small Causes, Chennai.

For Appellant : Mr.Amar D.Pandiya

For Respondents : Mr.P.Suresh Srinivasan for R2

No appearance for R1

J U D G M E N T

The Civil Miscellaneous Appeal is filed by the appellant challenging

the quantum of compensation awarded by the Tribunal in MCOP.No.246 of



2015, dated 20.12.2022, on the file of the Motor Accident Claims Tribunal,
IV-Court of Small Causes, Chennai

2. The appellant is the claimant in MCOP.No.246 of 2022 on the file of the Motor Accident Claims Tribunal, IV-Court of Small Causes, Chennai. He filed the said claim petition claiming a sum of Rs.15,00,000/- as compensation for the grievous injuries sustained by him in the accident that took place on 12.05.2014.

3. According to the appellant, on 12.05.2014 at about 12.30 p.m. while the appellant was travelling with other family members in a Car bearing Registration No.TN-07-BJ-1833 from Chennai to Trichy, the driver of the car drove the same in a rash and negligent manner applied sudden brake and the car got capsized. Due to the said impact, the appellant and others in the said car sustained multiple injuries.

4. The first respondent, the owner of the offending vehicle, remained *ex-parte* before the Tribunal.



5. The second respondent/Insurance Company filed counter statement denying all the averments made in the claim petition and stated that the accident did not happen due to the rash and negligent driving by the driver of the car and in any event, the compensation claimed by the appellant was excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.2 and marked Exs.P8 to P23. On the side of the second respondent/ Insurance Company neither oral nor documentary evidence was adduced.

7. The Tribunal considering the pleadings, oral and documentary evidence held that the accident occurred due to the rash and negligent the act of driver of the first respondent's vehicle and directed the second respondent being the insurer of the offending vehicle to pay a sum of Rs.2,74,913/- as compensation to the appellant. Aggrieved over the said award, the appellant have preferred the instant appeal.

8. The learned counsel for the appellant submitted that the award of the Tribunal under various heads are meagre and requested for enhancement of the same; that the Tribunal ought to have awarded Rs.5,000/- per percentage of disability; that the appellant had suffered



fracture in the femur bone and hence, prayed for enhancement of the compensation awarded by the Tribunal.

9. Learned counsel for the appellant submitted that the first respondent remained *ex-parte* before the Tribunal and therefore, requested this Court to dispense with the notice to the first respondent and had also made an endorsement to that effect in the Court bundle. Hence, notice to the first respondent is dispensed with.

10. Per contra, the learned counsel for the second respondent/Insurance Company submitted that the award of the Tribunal is just and reasonable and therefore, does not call for any interference and prayed for dismissal of the appeal.

11. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent/Insurance Company and perused all the materials available on record before this Court.



12. The only question involved in this case is whether the compensation awarded by the Tribunal is just and reasonable.

13. The accident was of the year 2014. As per the decision of this Court in ***C.M.A.No.4645 of 2019 in M.Chinnathambi Vs S.Deepa & National Insurance Company***, dated 10.01.2020, this Court has awarded Rs.4,000/- per percentage of disability and the said finding cannot be faulted. However, considering the nature of injuries, the compensation under the head “Pain and suffering” can be enhanced to Rs.35,000/-, “Transport Expenses” to Rs.10,000/- and “Attendant charges” to Rs.10,000/-. The Tribunal, however, had not considered “Loss of income” during the period of treatment. Admittedly, the appellant was in the hospital for nearly seven days. Considering the nature of injuries and treatment taken, this Court is of the view that he would have “Loss of income” for a period of three (3) months. No evidence has been let-in to prove his income. Considering the age, his avocation and the year of accident, this Court is of the view that it is reasonable to fix Rs.10,000/- as notional income. Hence, the appellant is entitled to Rs.30,000/- (Rs.10,000/- x 3) under the head “Loss of income”. The award of Tribunal under other heads are just and reasonable and the same are confirmed.



WEB COPY

C.M.A.No.1963 of 20



15. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	56,000	56,000	Confirmed
2.	Medical Expenses	1,30,113	1,30,113	Confirmed
3.	Future medical expenses	25,000	25,000	confirmed
4.	Pain and suffering	20,000	35,000	Enhanced
5.	Transportation Expenses	5,000	10,000	Enhanced
6.	Nutrition expenses	10,000	10,000	Confirmed
7.	Damages to clothes	1,000	1,000	Confirmed
8.	Attender charges	2,800	10,000	Enhanced
9.	Loss of Amenities	25,000	25,000	Confirmed
10.	Loss of income	----	Rs.30,000	Granted
	Total	Rs.2,74,913/-	Rs.3,32,113/-	Enhanced by Rs.57,200/-



WEB COPY

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,74,913/- is hereby enhanced to Rs.3,32,113/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The appellant is directed to pay necessary Court fee, if any, on the enhanced compensation. The second respondent/Insurance Company is directed to deposit the modified award amount now determined 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 a copy of this judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, after adjusting the amount if any, already withdrawn. No costs.

25.08.2023

Index: Yes/No

Internet: Yes/No

Speaking order: Yes/ No

gba

To

1.The Court of Small Causes - IV,
Motor Accident Claims Tribunal,
Chennai.

2.The Section Officer
VR Section
High Court of Madras, Chennai – 600 104.



WEB COPY

C.M.A.No.1963 of 20



SUNDER MOHAN,J.

gba

C.M.A.No.1963 of 2023

25.08.2023