



C.M.A.(MD).No.512 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD).No.512 of 2023

P.Manoharan

... Appellant

-Vs-

1.M.Natchiyappan

2.The Branch Manager,
Oriental Insurance Company Limited,
No.39/40, Saratha Shopping Complex,
Work Shop Road,
Simakkal,
Madurai.

... Respondents

PRAYER: The Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988, against the order dated 13.06.2022 in M.C.O.P.No. 1645 of 2018 on the file of the Motor Accident Claims Tribunal, Special Sub Judge, Madurai.

For Appellant : Mr.K.Kumaravel

For R2 : Mr.G.Chandrasekaran



C.M.A.(MD).No.512 of 2023

WEB COPY

J U D G M E N T

Challenging the award passed by the Motor Accident Claims Tribunal, Special Sub Judge, Madurai in M.C.O.P.No.1645 of 2018, dated 13.06.2022, the present appeal has been filed by the claimant for enhancement of compensation.

2. The brief facts leading to the filing of this appeal are as follows:

The petitioner was aged about 26 years and driver by profession and he was earning a sum of Rs.18,000/- per month. On 23.04.2018, at about 4.00 p.m., while he was riding a motorcycle bearing Registration No.TN 59 AB 6976 even with helmet, a motorcycle bearing Registration No.TN 59 BS 4695 came with three persons in a rash and negligent manner and dashed against the motorcycle driven by the petitioner. As a result, the petitioner sustained fracture below the right leg and fracture in tibia and ankle and he has been treated in the Government Rajaji Hospital, Madurai as in-patient from 23.04.2018 to 01.08.2018 and again from 28.01.2019 to 01.03.2019 and the plate was fixed and he has been treated as in-patient for more than 32 days. Hence, he claimed the compensation of Rs. 20,00,000/- before the Tribunal. The second respondent has not disputed the accident.



C.M.A.(MD).No.512 of 2023

WEB COPY

3. Before the Tribunal, on the side of the petitioner, P.Ws.1 and 2 were examined and Exs.P1 to P8 were marked and on the side of the respondents, R.Ws.1 and 2 were examined and Ex.R1 was marked and Ex.C1 also marked.

4. Based on the evidence and materials, the Tribunal has found that only the first respondent, the rider of the vehicle rode the vehicle in a rash and negligent manner without any licence and caused the accident. The negligent aspect has not been disputed. However, while assessing the compensation, the Tribunal taking note of the fact that the petitioner has sustained 60% disability, awarded a sum of Rs.3,30,000/- by fixing a sum of Rs.5,500/- per 1% disability and totally awarded a sum of Rs.6,03,600/- in the following manner:

Description	Amount
For partial permanent disability (Rs.5,500/- x 60)	Rs.3,30,000/-
For loss of income	Rs.80,000/-
For pain and suffering	Rs.1,00,000/-
For nutrition	Rs.10,000/-
For attendant charges	Rs.53,600/-
For loss of amenities	Rs.25,000/-
For transportation	Rs.5,000/-
Total	Rs.6,03,600/-



C.M.A.(MD).No.512 of 2023

WEB COPY

Challenging the same, the present appeal has been filed by the claimant for enhancement of compensation.

5. The main contention of the learned counsel appearing for the appellant is that the petitioner is a driver by profession and due to multiplier fracture in tibia and ankle, he is not able to continue the job as a driver and even there was a shortening of 2 cms. in the right leg. Therefore, there is a complete functional disability. Hence, proper method of multiplier ought to have been adopted by the Tribunal.

6. The learned counsel appearing for the second respondent/Insurance Company would submit that it is only a fracture in tibia, which has already set right and in the absence of any evidence to prove the functional disability, the method of multiplier cannot be adopted.

7. In the light of the above submissions, now the point for consideration in this appeal is whether the Tribunal is right in adopting the percentage method, despite 60% of the disability proved?



C.M.A.(MD).No.512 of 2023

WEB COPY

8. This Court, in the last hearing, directed the presence of the appellant. Today, the appellant is present before this Court. On seeing the appellant, this Court seen that the appellant is incapacitated and there is a complete surgery mark on the right leg and he is not able to hold the legs properly. Therefore, merely because there is no permanent disability noted in the disability certificate and it is only noted as permanent partial disability, what is required to be seen is whether the disability suffered by the petitioner will not cause any difficulty in performing the duties. On seeing the appellant, this Court found that he is not in a position to hold his legs properly. Besides, he is not in a position to walk properly. This fact clearly substantiated the submission of learned counsel for the appellant and there is a shortening of the right leg also. When the person was a driver by profession, legs are very important to continue the profession and the same has been affected severely, he may not be in a position to continue his driving activities. This Court is of the view that since the Medical Officer assessed the disability at 60% and it has to be held as functional disability.



C.M.A.(MD).No.512 of 2023

WEB COPY

9. In such a view of the matter, this Court is inclined to award the compensation on the basis of the multiplier method. The petitioner is aged about 26 years and he was a driver by profession, which is not seriously disputed. Therefore, this Court fixed the notional income of the petitioner at the rate of Rs. 12,000/- per month and added 40% towards future prospects (Rs.12,000/- + Rs. 4,800/- = Rs.16,800/-. Thus, the total loss of income comes to Rs.34,27,200/- (Rs. 16,800/- x 12 x 17 = Rs.34,27,200/-). In respect of the other aspects, the amount awarded by the Tribunal is confirmed.

10. The modified award amount is as follows:

Description	Amount
For loss of income	Rs.34,27,200/-
For pain and suffering	Rs.1,00,000/-
For nutrition	Rs.10,000/-
For attendant charges	Rs.53,600/-
For loss of amenities	Rs.25,000/-
For transportation	Rs.5,000/-
Total	Rs.36,20,200/-



C.M.A.(MD).No.512 of 2023

WEB COPY

11. In the result, the Civil Miscellaneous Appeal is allowed. The second respondent / Insurance Company is directed to deposit the entire award amount within a period of one month from the date of receipt of a copy of this judgment with interest at the rate of 7.5% per annum. On such deposit, the petitioner is entitled to withdraw the same with accrued interest and cost. No costs.

28.06.2023

akv

To

- 1.The Motor Accident Claims Tribunal,
Special Sub Judge,
Madurai.
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.512 of 2023

N.SATHISH KUMAR,J.

akv

C.M.A.(MD).No.512 of 2023

28.06.2023