



CMA No.2093 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM :

THE HONOURABLE **MR.JUSTICE RMT.TEEKAA RAMAN**

C.M.A.No.2093 of 2021

Judgment reserved on 15.02.2024	Judgment pronounced on 26.02.2024
--	--

S.Venkadesh

...

Appellant

Vs.

1.Mep Chennai Bypass Toll Road Pvt. Ltd.,
P2 CRA Precint Rhonela Celeste
No.22/1, Nethaji Street, Raja Rajeswari Nagar
Porur, Chennai – 116.

2.The TATA AIG General Insurance Co. Ltd.,
No.1, Raheja Towers, II Floor,
177 Anna Salai, Chennai – 2.

...

Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 19.02.2019 made in MCOP No.27 of 2016 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Poonamallee.

For Appellant : Mr.K.Varadha Kamaraj

For R-1 : No appearance

For R2 : Mr.K.Vinod



WEB COPY



CMA No.2093 of 2021

JUDGMENT

The claim petitioner is the appellant herein seeking enhancement of compensation awarded in MCOP No.27 of 2016 on the file of the Motor Accident Claims Tribunal (Subordinate Judge), Poonamallee.

2. The factum of accident, manner of accident, rash and negligent driving on the part of the driver of the vehicle belonging to the first respondent and the vehicle being insured with the second respondent/insurance company and the injuries sustained by the appellant in the road accident are not in dispute. Accordingly, the findings rendered by the Trial Court with regard to negligence are hereby confirmed.

3. On the point of quantum of compensation, heard the counsel for the appellant as well as second respondent.

4. The learned counsel appearing for the appellant/claim petitioner contended that considering the nature of injuries sustained by the appellant/claim petitioner, the Tribunal ought to have adopted multiplier method and hence prayed for enhancement of compensation.



CMA No.2093 of 2021

WEB COPY

5. On the other hand, the learned counsel appearing for the second respondent/insurance company made his submissions in support of the award passed by the Tribunal.

6. Heard both the learned counsel appearing for the appellant as well as the second respondent/insurance company and perused the materials on record.

7. Before the Tribunal, the appellant/claim petitioner examined himself as PW1 and marked Exs.P1 to P19. The disability certificate issued by the District Medical Educational Board, Tiruvallur was marked as Ex.X1.

8. Considering the nature of injuries sustained by the appellant/claim petitioner, this Court is of the considered view that appellant had sustained bone fracture of right distal radius, resolving primary brain stem contusion, displaced fracture of bilateral medial and lateral pterygoid space, displaced fracture of bilateral zygomatic arch. Displaced fractures noted in the lateral wall of the orbit on the right and lateral wall and floor of



CMA No.2093 of 2021

the orbit on the left side, resolved left temporal thin EDH, resolving right ambient cistern bleed, mid face fracture, left eye totally damaged, right eye wrong sight, head injury of left side, right side ear injury, dislocation of jaw. Left eye total damaged colour vision defective left III CN palsy 'C' aberrant regeneration. - with unilateral third cranial nerve palsy (oculomotor nerve palsy). The involved eye usually is deviated “down and out”. (i.e. parducted and abducted) and there may be partial or complete ptosis. A painful pupil involved oculomotor nerve palsy may result from a life – threatening intracranial aneurysm.

9. The appellant has produced Ex.P2, Ex.P3, Exs.P7 to P15 to show that he appellant had sustained injuries in the accident and the same are grievous in nature. Ex.P2 is the accident register, Ex.P7 is the discharge summary, Ex.P8 is the Government dental hospital treatment records, Ex.P9 is the CT Scan report, Exs.P10 to P13 are medical treatment records of the appellant. Perusal of these documents would prove that the injuries sustained by the appellant are grievous one and the appellant had been under continuous treatment for more than two years.



CMA No.2093 of 2021

WEB COPY

10. It is also seen that the appellant as PW1 had deposed about the treatment undergone by him and fixing of plates and non-removal of the same till date and also about the injuries sustained by him in his right and left eye. Hence, the appellant was directed to appear before the Medical Board and the Medical Board has assessed the disability of the appellant as 10% for visual impairment and 45% for other injuries sustained by him.

11. Taking into consideration that the avocation of the appellant/claim petitioner, the nature of injuries that was found in the discharge summaries as reflected in the medical report and percentage of disability assessed by the Medical Board, I find that the injuries has caused functional disability to the appellant / claim petitioner. Accordingly, I hold that the ratio laid down by the Hon'ble Supreme Court in RAJKUMAR's case has been satisfied and hence multiplier method has to be adopted for computing loss of earning capacity to the appellant.

12. According to the appellant/claim petitioner, at the time of accident, he was working as an electrician and was earning a sum of Rs.13,000/- per month. However, he has not produced any document to



CMA No.2093 of 2021

prove his avocation and income. In the absence of any documentary evidence, this Court is of the considered view that a sum of Rs.9,000/- can be fixed as notional monthly income of the appellant. Thus, a sum of Rs.14,13,720/- is awarded towards disability, details as follows -

$$9000 + 3600 (9000 \times 40\%) \times 12 \times 17 \times 55\% = 14,13,720/-$$

13. Taking into consideration the nature of injuries, various kinds of treatment and the period of treatment, the appellant would have visited the hospital number of times. Hence, the amount awarded by the Tribunal towards transportation is enhanced to Rs.15,000/-. The amounts awarded by the Tribunal towards pain & suffering and extra nourishment are excessive and hence the same are reduced to Rs.50,000/- and Rs.20,000/- respectively. The amount of Rs.5,44,344/- awarded by the Tribunal towards medical expenses as per Ex.P15 is hereby confirmed. The Tribunal has not awarded any compensation towards attendant charges, loss of amenities and loss of future marital prospects. Considering the nature of injuries and the disability suffered by the appellant, Rs.10,000/- is awarded towards attendant charges, Rs.15,000/- towards loss of amenities and Rs.50,000/- towards loss of marital prospects. In view of the injuries sustained in the accident, the appellant/claim petitioner would not have



CMA No.2093 of 2021

attended his work atleast for a period of three months. Hence, the amount awarded by the Tribunal towards loss of earning at Rs.2,00,000/- is hereby reduced and a sum of Rs.27,000/- (Rs.9000 x 3) is awarded towards loss of earning during treatment period. Accordingly, the compensation awarded by the Tribunal is enhanced from **Rs.12,69,344/- to Rs.21,45,064/-**, break-up as follows -

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Disability	1,65,000/-	14,13,720/-
2.	Transportation	10,000/-	15,000/-
3.	Pain & Suffering	3,00,000/-	50,000/-
4.	Extra Nourishment	50,000/-	20,000/-
5.	Medical expenses	5,44,344/-	5,44,344/-
6.	Loss of earning during treatment period	2,00,000/-	27,000/-
7.	Attendant charges	-	10,000/-
8.	Loss of amenities	15,000/-	15,000/-
9.	Loss of marital prospects	50,000/-	50,000/-
	Total	12,69,344/-	21,45,064/-

14. In total, the appellant / claim petitioner is entitled to a sum of Rs.21,45,064/- (Rupees Twenty One Lakh Forty Five Thousand and Sixty Four only).



CMA No.2093 of 2021

15. In fine,

WEB COPY

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.12,69,344/- to Rs.21,45,064/-**, to the extent indicated above, alongwith 7.5% interest per annum. No costs.

(ii) the second respondent/Insurance Company is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited.

(iii) on such deposit being made, the claim petitioner/appellant is permitted to withdraw the entire enhanced award amount, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim petitioner/appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

26.02.2024

rg

Index : Yes/No

Speaking/Non-speaking order

RMT.TEEKAA RAMAN, J.



WEB COPY



CMA No.2093 of 2021

rgr

To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Poonamallee.

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

Judgment in
C.M.A.No.2093 of 2021

26.02.2024