



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.443 of 2022

Sankar

..Appellant

.VS.

1.V.Manikandan

2.The Branch Manager

United India Insurance Company Ltd.,

Muthu Street, Kumbakonam,

Tanjavur District.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and Award of the Motor Accident Claim Tribunal (Spl. Court I) Jayankondam in MCOP No.29 of 2019 ([Ariyalur Principal District Court MCOP No.135 of 2017][Jayankondam Sub Court MCOP No.50 of 2018]) dated 12.02.2021.

For Appellant : Mr.P.Parthikannan

For Respondents : Ms.I.Malar for R2



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JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.29 of 2019, dated 12.02.2021, has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 06.12.2016, the claimant was riding a two wheeler in Parukkal to Tha.Keezhaveli main road and at about 9.30 a.m, when the vehicle came near the lands belonging to the Vaidyanathan Vathiyar, the offending vehicle which was coming in the opposite direction was driven in a rash and negligent manner and had dashed the two wheeler that was driven by the claimant and as a result, the claimant was thrown out of the vehicle and he sustained grievous injuries. In this accident, the claimant also lost his vision in the left eye. He was treated as an inpatient for nearly sixteen days. The disability faced by the claimant was also assessed by the Medical Board as 40% under Ex.C1. It is under these circumstances, the claimant filed the claim petition before the Tribunal seeking for payment of compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of the oral and documentary evidence, came to a conclusion



that the offending vehicle was driven in a rash and negligent manner by the 1st respondent and as a result, the accident had taken place. The Tribunal attributed 15% contributory negligence on the appellant on the ground that he was not wearing a helmet and therefore, 85% negligence was put against the respondent. Having rendered such a finding, the Tribunal proceeded to fix the compensation and the total compensation was fixed at Rs.3,42,656/- in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Partial Permanent Disability (5000 x 40)	2,00,000
2.	Medical Expenses	97,656
3.	Pain and sufferings	35,000
4.	Extra Nourishment	5,000
5.	Damage to clothes	1,000
6.	Attender Charges	4,000
	Total	3,42,656

4.Out of the above compensation, Rs.2,91,258 (85%) was directed to be paid along with interest at the rate of 7.5% per annum.



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5.The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement of compensation.

6.Heard Mr.P.Parthikannan, learned counsel appearing on behalf of the appellant and Ms.I.Malar, learned counsel appearing on behalf of the 2nd respondent.

7.This Court has carefully considered the submissions made on either side and the materials available on record and also carefully gone through the Award passed by the Tribunal.

8.The main ground that was urged by the learned counsel for the appellant was that the appellant lost vision in the left eye and the Medical Board had also assessed 40% permanent disability and considering the avocation of the appellant who was an agriculturist who has to drive a tractor and take the load from one place to another, the appellant will not be able to perform his work effectively and therefore, he has lost his livelihood.

Therefore, it was contended that the Tribunal ought to have adopted the



multiplier method by considering the functional disability suffered by the appellant. The learned counsel also urged this Court to enhance the compensation given under the other heads also, since it has been fixed on the lower side.

9.The learned counsel for the appellant also submitted that the Tribunal went wrong in attributing 15% contributory negligence on the ground that the appellant was not wearing the helmet.

10.Per contra, the learned counsel for the 2nd respondent Insurance Company submitted that the Tribunal has taken into consideration the entire materials and has properly appreciated the evidence and has fixed a reasonable compensation in this case. It was therefore argued that the Award passed by the Tribunal does not require the interference of this Court and the present appeal is liable to be dismissed.

11.The first issue to be gone into is regarding 15% contributory negligence that was attributed against the appellant on the ground that he did not wear the helmet. The mere fact that the appellant was not wearing a helmet, by itself will not result in attributing contributory negligence. Unless, the non-



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wearing of the helmet has also contributed to the negligence resulting in the accident. The Tribunal has come to a clear conclusion that the offending vehicle was driven by the first respondent in a rash and negligent manner and he was wholly responsible for the accident. In the light of this finding, the Tribunal ought not to have mechanically attributed 15% contributory negligence on the appellant only on the ground that he was not wearing a helmet. This finding of the Tribunal requires the interference of this Court and accordingly, the same is hereby set aside.

12. In the instant case, there is no doubt with regard to the fact that the appellant had lost his vision in the left eye. The same is also evident from the certificate issued by the Medical Board marked as Ex.C1. The appellant is an agriculturist who does agricultural work and also transport the load by riding a tractor from one place to another. The appellant must also ride the two wheeler to go to the agricultural lands. In the light of the disability that is suffered by the appellant, the Tribunal ought to have considered functional disability in this case. Just because the appellant is able to read newspaper with the available vision in the right eye and is able to do his regular chores, that does not mean that the appellant has not suffered functional disability. There is no doubt that the appellant has suffered functional disability in this case and he will not be



able to carry on with the agricultural work as he was doing before, since he has lost vision in the left eye. In view of the same, this Court is inclined to fix the functional disability at 20% and apply the multiplier method for calculating the compensation under the head of disability / loss of income.

13. In view of the above, the total compensation under the head of disability / loss of income is fixed at Rs.4,20,000/- (Rs.10,000/- + 25% F.P x 12 x 14 x 20%).

14. Insofar as the pain and sufferings is concerned, the Tribunal has awarded Rs.35,000/- as compensation. This Court is inclined to enhance the same to Rs.50,000/- That apart, the Tribunal has fixed the compensation under the head of 'Extra Nourishment' at Rs.5,000/- The appellant underwent treatment for nearly 16 days as an inpatient. Therefore, the compensation under the head of 'Extra Nourishment' is enhanced to Rs.15,000/- No compensation has been fixed under the head of 'Transport Charges' and this Court is inclined to fix Rs.10,000/- under this head. Insofar as the attendant charges are concerned, the Tribunal has only granted Rs.4,000/- under this head. Considering the period for which the appellant underwent treatment as an inpatient, this Court is inclined to enhance the same to Rs.15,000/-



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15. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Disability / Loss of Income (Rs.10,000/- + 25% F.P x 12 x 14 x 20%)	4,20,000
2.	Medical Expenses	97,656
3.	Pain and sufferings	50000
4.	Extra Nourishment	15000
5.	Damage to clothes	1,000
6.	Attender Charges	15000
7	Transport Charges	10000
	Total	6,08,656

16. The compensation awarded by the tribunal at Rs.3,42,656/- is enhanced to Rs.6,08,656/-. The second respondent insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at 7.5% p.a. from the date of claim petition till the date of deposit within a period of four weeks from the date of receipt of this judgment. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



WEB COPY 17. In the result, the Civil Miscellaneous Appeal stands allowed in the above terms. No costs.

24.04.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claim Tribunal (Spl. Court I) Jayankondam.



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N. ANAND VENKATESH., J

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