



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

WEB COPY

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.498 of 2024

R.Krishna Kumar

..Appellant

.VS.

1Mr.J.John Robinson

2.The Manager,
United Insurance Co Ltd.,
Motor T.P. Claims,
No.134, 4th Floor, Greaves Road,
Chennai 600 006.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the order made in MCOP No.559 of 2020, dated 21.11.2023, on the Motor Accident Claims Tribunal (in the III Court of Small Causes, Chennai).

For Appellant : Mr.K.Balaji

For Respondents : Mr.K.Swaminathan for R2

JUDGMENT

This appeal has been filed by the claimant seeking for enhancement of compensation against the Award passed by the Motor Accident Claims Tribunal, Chennai in MCOP.No.559 of 2020 by Award dated 21.11.2023.



WEB COPY

2.The appellant was travelling in two wheeler as a pillion rider which was driven by one Velayutham on 24.11.2014 and at about 21.30 hours, when the two wheeler reached Rathinamangalam, the van belonging to the 1st respondent was driven in a rash and negligent manner and it hit the two wheeler as a result of which both the rider and the pillion rider were thrown out of the vehicle. The appellant suffered fracture left tibia/fibula M/3RD, Right 5th metacarpal fracture. The Medical Board assessed the permanent disability at 20%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for compensation.

3.The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence came to a conclusion that the van was driven in a rash and negligent manner. But however, the rider of the two wheeler was also under the influence of alcohol. Therefore, the Tribunal attributed 70% negligence on the part of the van driver and 30% negligence on the part of the two wheeler rider.

4.After having rendered the above finding, the Tribunal proceeded to fix the total compensation at Rs.1,93,400 in the following manner:



WEB COPY



Compensation awarded under the head	Amount (in Rs.)
Disability	1,00,000
Pain and Sufferings	30,000
Transportation	4,000
Medical Expenses	96,984
Extra Nourishment	10,000
Attender Charges	1,200
Damage of Clothes	1,000
Loss of Amenities	5,000
Loss of earnings	28,000
Total Compensation is fixed at	2,76,184
Rounded off to	2,76,200
70% of the compensation	1,93,340
Rounded of to	1,93,400

5.The claimant aggrieved by the quantum of compensation fixed by the Tribunal and attributing contributory negligence of 30%, has filed the present appeal seeking for enhancement of compensation.

6.Heard Mr.K.Balaji, learned counsel appearing on behalf of the appellant and Mr.K.Swaminathan, learned counsel appearing on behalf of the 2nd respondent.

7.This Court has carefully considered the submissions made on either side and

also the materials available on record.

<https://www.mhc.tn.gov.in/judis>



WEB COPY

8. In the considered view of this Court, the rider of the two wheeler was found to be under the influence of alcohol. It is also specifically found by the Tribunal that the van driver had driven the van in a very rash and negligent manner. There is absolutely no material to show that the appellant who was the pillion rider was also under the influence of alcohol. Even otherwise, the crucial question is as to whether after drinking alcohol, the rider of the two wheeler actually contributed to the cause of accident. In the absence of the same, just because alcohol had been consumed by the rider, it cannot be assumed that the contributory negligence can be attributed as against the pillion rider. Therefore, this Court is inclined to interfere with the 30% contributory negligence that was attributed against the appellant and the same is hereby set aside.

9. The learned counsel for the appellant submitted that the appellant was a pillion driver and considering the nature of injuries sustained by him and the disability that was assessed by the Medical Board, the appellant had sustained functional disability and therefore, the Tribunal ought to have applied the multiplier method.

10. This Court is not able to agree with the above submission made by the learned counsel for the appellant. The Tribunal has specifically found that there is



WEB COPY

absolutely no evidence to show that the appellant has suffered from functional disability. A person suffering from functional disability is not a matter of assumption and it has to be based on some evidence. In the absence of any such evidence, there is no question of applying the multiplier method and hence, the Tribunal was perfectly right in applying the per percentage method for determining the compensation under the head of disability.

11.While determining the compensation under the head of disability, the Tribunal fixed Rs.5000/- per percentage. In the instant case, the accident had happened during the year 2019. Therefore, this Court is inclined to fix Rs.7000/- per percentage as per the judgment of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022. Thus, the total compensation under the head of disability is Rs.1,40,000/- (Rs.7000/- x 20%).

12.Insofar as the loss of income of the appellant, the Tribunal has fixed at Rs.28,000/- (Rs.14,000/- x 2 months). Considering the nature of injuries sustained by the appellant and the avocation that is carried on by the appellant, the appellant would have been out of work for atleast six months. Therefore, this Court is inclined to fix the compensation under the head of loss of earning at Rs.90,000/- (Rs.15,000/- x 6 months).



13. Insofar as the transportation charges and attender charges are concerned, this Court is inclined to increase the same to Rs.10,000/- under each head.

14. In the light of the above discussion, the compensation awarded by the Tribunal is modified/enhanced as follows:

Compensation awarded under the head	Amount (in Rs.)
Disability (7000 x 20%)	1,40,000
Pain and Sufferings	30,000
Transportation	10,000
Medical Expenses	96,984
Extra Nourishment	10,000
Attender Charges	10,000
Damage of Clothes	1,000
Loss of Amenities	5,000
Loss of earnings (15000 x 6)	90,000
Total Compensation is fixed at	3,92,984
Rounded off to	3,93,000

15. The compensation awarded by the tribunal at Rs.1,93,400/- is enhanced to Rs.3,93,000/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.3,93,000/-, 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

16. This Civil Miscellaneous Appeal is allowed in the above terms. No costs.

10.04.2024

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

To

The Motor Accident Claims Tribunal (in the III Court of Small Causes, Chennai).
Chennai.



WEB COPY



N. ANAND VENKATESH., J

SSR

CMA No.498 of 2024



WEB COPY



10.04.2024