



WEB COPY



C.M.A.No.1102 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.1102 of 2023

Vigneshwaran

... Appellant

..Vs..

1. K.T. Benny

2. Arun

3. National Insurance Company Limited,
215, N.H. Road, Opposite Railway Station,
Railway Station, Coimbatore,
Tamil Nadu.

...Respondents

The Respondents 1 & 2 remained ex parte before Tribunal, hence notice may be dispensed with for the Respondents 1 and 2 in this Appeal.

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award passed by the Motor Accidents Claims Tribunal, Tiruppur in M.C.O.P.No.1804 of 2016 dated 02.11.2022.

For Appellant : Mr.Ma.P. Thangavel.

R1 & R2 : No appearance

For R3 : Mrs.N.B. Surekha



C.M.A.No.1102 of 2023

WEB COPY

2.2. According to the claimant, the rash and negligent driving of the driver of the bus bearing Registration No.KL 64 B 3232 was the cause of the accident and that since the said vehicle was insured with the third respondent, the National Insurance Company Limited, Coimbatore, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the first and second respondents (driver and the owner of the offending vehicle) remained absent and were set *ex parte*. The third respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal after analysing the evidence on record, held that the owner and the insurer of the vehicle are jointly and severally liable to pay compensation of Rs.1,45,000/- together with interest at the rate of 7.5% per annum to the appellant/claimant from the date of the petition till the date of realisation.



C.M.A.No.1102 of 2023

WEB COPY

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6. Heard Mr.Ma.P. Thangavel, learned counsel for the appellant and Mrs. N.B. Surekha, learned counsel for the third respondent.

7. Mr.Ma.P. Thangavel, learned counsel for the appellant contended that though the Medical Board assessed the Partial Permanent Disability of the claimant as 45%, the Tribunal had reduced it to 5% without any basis and therefore, the amount under the head of 'Partial Permanent Disability' should be enhanced. His further contention is that the claimant was working as a Heavy duty Motor vehicle driver and was earning Rs.20,000/- per month, but the Tribunal fixed his notional monthly income as Rs.10,000/-, which is on the lower side. He also contended that the Tribunal had refused to accept the medical bills amounting to Rs.70,812/- on the ground that the father's name of the claimant was wrongly indicated in the same. According to him, the



C.M.A.No.1102 of 2023

Tribunal had awarded meagre amounts under the other heads and therefore sought for enhancement of compensation.

8. Per contra, Mrs.N.B. Surekha, learned counsel appearing for the third respondent/Insurance Company contended that the Medical Board had not issued the disability certificate as per the guidelines of the Government of India and in compliance of the directions of this Court in *Arockiadoss vs. Syed Ibrahim* 2. *United India Insurance reported in 2022 (2) TN MAC 229*. The Tribunal had infact summoned the doctor and examined him and considering his evidence and the extract of the Register maintained by the Medical Board (Ex.C1), rightly assessed the partial permanent disability as 5% and therefore, there is no reason for this Court to enhance it to 50%. Her another contention is that the Tribunal had properly analysed the evidence on record and had granted just compensation and therefore the same need not be disturbed.

9. A perusal of the Disability Certificate shows that it has not been issued as per the guidelines of the Government of India and complying with the directions of this Court in *Arockiadoss vs. Syed*



Ibrahim 2. United India Insurance (cited supra). The doctor who issued the Disability Certificate was examined as P.W.2 before the Tribunal. He produced the extract of the Register maintained by the Medical Board and the same was marked as Ex.C1. In Ex.C1, the Partial Permanent Disability was shown as 5%. However in the last line it was mentioned as "Ortho 5%, Neuro 45%, Total 50%". The Medical Board did not mention that various tests conducted by them to show that neurological disability is 45%. Moreover, the discharge summary (Ex.P3) shows that the claimant had taken treatment only for comminuted fracture and not for any neurological problem. The neurological disability seems to have been added subsequently without any basis. Therefore, the percentage of disability fixed by the Tribunal at 5% is perfectly in order.

9.1. The Tribunal did not add the medical bills amounting to Rs.70,812/- on the ground that the father's name of the claimant was wrongly indicated. A perusal of the Discharge summary (Ex.P3) shows that an operation was performed in L.G Hospital and the claimant was treated as an inpatient for four days. In the circumstances the medical bills adduced by the claimant has to be taken into consideration while



C.M.A.No.1102 of 2023

computing the compensation payable to him. The ground that father's name does not match is not acceptable. Accordingly, as per the medical bills, a sum of Rs.70,812/- has to be added.

9.2. According to the claimant he is a Heavy duty Motor vehicle driver earning a sum of Rs.20,000/- per month. However, he did not adduce any documentary evidence to show that he was actually earning a sum of Rs.20,000/- per month. In the circumstances, the notional income of the claimant can be fixed as Rs.12,000/- per month. Since he suffered comminuted fracture in his left fore arm, he would have been out of action for atleast four months and therefore, awarding a sum of Rs.48,000/- (12,000 x 4) towards loss of income for four months to the claimant would meet the ends of justice. The following tabular column would show the amount awarded by the Tribunal and the enhanced amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Loss of income	30,000/- (Rs.10,000/- x 3 months)	48,000/- (Rs.12,000/- x 4 months)



C.M.A.No.1102 of 2023

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
2.	Partial Permanent Disability	25,000/-	25,000/-
3.	Transportation	10,000/-	10,000/-
4.	Extra nourishment	15,000/-	20,000/-
5.	Attender's charges	10,000/-	10,000/-
6.	Damage to clothes	5,000/-	5,000/-
7.	Pain and sufferings	50,000/-	75,000/-
8.	Medical Expenses	-	70,812/-
	TOTAL	1,45,000/-	2,63,812/-

10. Thus, the compensation awarded by the Tribunal is enhanced from Rs.1,45,000/- to Rs.2,63,812/- which would carry interest at the rate of 7.5% per annum.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The compensation awarded by the Tribunal is enhanced from Rs.1,45,000/- to Rs.2,63,812/-.

(iii) The appellant / claimant is directed to pay the court fee for



C.M.A.No.1102 of 2023

the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.

(iv) The third respondent, the National Insurance Company Limited, Coimbatore, is directed to deposit the enhanced compensation amount i.e., Rs.2,63,812/- (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit to the credit of MCOP.No.1804 of 2016 on the file of the Motor Accident Claims Tribunal, Tiruppur, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.

09.08.2024

Index : Yes/No
Internet : Yes/No
bga

To

1. Motor Accident Claims Tribunal, Tiruppur.
2. National Insurance Company Limited,
215, N.H. Road, Opposite Railway Station,
Railway Station, Coimbatore,
Tamil Nadu.



C.M.A.No.1102 of 2023

3. The Section Officer, VR Section, High Court, Madras.

WEB COPY



WEB COPY



C.M.A.No.1102 of 2023

R. HEMALATHA, J.

bga

C.M.A.No.1102 of 2023

09.08.2024