



Civil Miscellaneous Appeal No.1551 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.1551 of 2024

Rajkumar
S/o.Sivalingam

... Appellant

Vs.

1.Saravanan
S/o.Perumal

2.M.Sivakumar
S/o.Marimuthu

3.ICICI Lombard General Insurance Company Ltd.,
No.84 & 85, Arihant Plaza,
1st Floor, Walltax Road
Chennai - 600 003.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 06.10.2023 made in M.C.O.P.No.4217 of 2021 on the file of Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai.



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For Appellant : Mr.K.Balaji
for Mr.Amar D.Pandiya

For Respondents : Ms.A.Salomi [R3]

JUDGMENT

The appellant/claimant, not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal, Special Sub Court No.1, Chennai, in M.C.O.P.No.4217 of 2021, dated 06.10.2023, has filed this appeal.

2. The case of the claimant is that he was driving a lorry on 26.08.2021 from Ariyalur to Arakkonam and at about 22.15 hours, the offending vehicle, a Goods Carrier Lorry, abruptly halted the vehicle as a result of which the claimant was not able to stop the lorry in spite of applying brake. Therefore, the lorry rammed on the offending vehicle and the claimant sustained open both bone fracture on the right leg. The claimant underwent treatment as an inpatient from 27.08.2021 to 30.08.2021. He also underwent an operation. The Medical Board assessed the disability at 11%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking compensation.



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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 accident had taken place only due to the negligence on the part of the offending vehicle. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.2,49,000/- under various heads as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Medical expenses	1,13,476/-
2.	Disability	55,000/-
3.	Pain and sufferings	30,000/-
4.	Loss of earnings	25,000/-
5.	Loss of amenities	10,000/-
6.	Extra nourishment	10,000/-
7.	Transportation	4,000/-
8.	Attender charges	900/-
	Total	2,48,376/-
	Rounded off to	2,49,000/-

The above compensation was directed to be paid along with interest at 7.5% p.a.



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4. The claimant, not being satisfied with the quantum of compensation awarded by the Tribunal, has filed this appeal seeking compensation.

5. Heard Mr.K.Balaji, learned counsel for appellant/claimant and Ms.A.Salomi, learned counsel for third respondent.

6. This Court carefully considered the submissions made on either side and the materials available on record.

7. This Court also carefully went through the award passed by the Tribunal.

8. In the instant case, the accident had taken place in the year 2021 and the claimant was carrying on with the occupation as a lorry driver. The Tribunal had adopted per percentage method and fixed a sum of Rs.5,000/- per percentage and had granted a total compensation of Rs.55,000/- under the head 'disability'.



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9. Even though learned counsel for appellant submitted that the Tribunal ought to have adopted multiplier method, this Court finds that there is no proof for any functional disability suffered by the claimant and therefore, per percentage adopted by the Tribunal cannot be faulted.

10. The Division Bench of this Court had an occasion to deal with the amount to be fixed per percentage in ***C.M.A.No.3334 of 2021, dated 15.06.2022 [Future General India Insurance Company Limited v. Manivannan and others]***. The Division Bench took into account the fact that a sum of Rs.4,000/- was fixed per percentage for the accidents that took place in the year 2014-15. Thereafter, a sum of Rs.5,000/- was fixed per percentage for accidents, which took place from the year 2016. In that case, since the accident took place in the year 2017, the Division Bench fixed a sum of Rs.7,000/- per percentage considering the rise in cost of living. This amount fixed by the Division Bench cannot remain static. As the years progress, the amount that is fixed per percentage must also increase considering the cost of living. In the instant case, the accident had taken place in the year 2021 and therefore, this Court is



inclined to fix an amount of Rs.8,000/- per percentage.

11. In the light of the above discussion, the compensation granted under the head 'disability' is enhanced to Rs.88,000/- [8000 x 11].

12. Insofar as the loss of earnings is concerned, the Tribunal has fixed a sum of Rs.25,000/- under this head. This was done on the premise that the claimant would not have worked for at least two months during the treatment period. Considering the fact that the claimant was a lorry driver and the accident had taken place in the year 2021, this Court is inclined to grant a sum of Rs.15,000/- p.m. as notional income. The claimant would not have been able to drive the lorry for at least four months. Therefore, the compensation granted under the head 'loss of earnings' is enhanced to Rs.60,000/- [15000 x 4].

13. The claimant had undertaken treatment as an inpatient for four days. Therefore, this Court grants a sum of Rs.2,500/- towards attender charges.

14. The compensation granted under the other heads is justified



and does not require the interference of this Court.

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15. For the foregoing reasons, the compensation awarded by the Tribunal is modified as follows:

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1.	Medical expenses	1,13,476/-	1,13,476/-
2.	Disability	55,000/-	88,000/-
3.	Pain and sufferings	30,000/-	30,000/-
4.	Loss of earnings	25,000/-	60,000/-
5.	Loss of amenities	10,000/-	10,000/-
6.	Extra nourishment	10,000/-	10,000/-
7.	Transportation	4,000/-	4,000/-
8.	Attender charges	900/-	2,500/-
	Total	2,48,376/-	3,17,976/-
	Rounded off to	2,49,000/-	3,18,000/-

16. The compensation awarded by the Tribunal at Rs.2,49,000/- is enhanced to Rs.3,18,000/-. The third respondent insurance company is directed to deposit the compensation awarded by this Court, 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 (4) weeks from the date of receipt of this judgment. Insofar as the enhanced



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compensation is concerned, the deficit court fee, if not paid, shall be paid

N.ANAND VENKATESH, J.

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by the appellant. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

In the result, the Civil Miscellaneous Appeal is partly allowed. No costs.

10.07.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal,
Special Sub Court No.1,
Chennai.

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