



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2702 of 2023

Kishore @ Kishore Kumar

..Appellant

.vs.

1.Ashok Kumar

2.The Divisional Manager,
Bharti AXA General Insurance Co Ltd.,
100 Feet Road, Marappalam, Opposite to SDA School,
Mudaliarpeta,
Pondicherry

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award dated 15.11.2017 made in MACTOP NO.81 of 2016 on the file of the Motor Accident Claims Tribunal, Principal Sub Judge, Puducherry.

For Appellant : Mr.T.Ananthasekar

For Respondents : Mr.K.Poomalai for R2

R1 – Dispensed with



JUDGMENT

The claimant not being satisfied with the compensation fixed by the Tribunal has filed this appeal seeking for enhancement of compensation against the Award passed by the Motor Accident Claims Tribunal, Puducherry in MATCOP.No. 81 of 2016, dated 15.11.2017.

2.The appellant who claims to be a Priest in a temple was riding a two wheeler on 20.10.2015 and at about 7.30 a.m. when the vehicle was proceeding at the 100 feet road, the lorry belonging to the 1st respondent was driven in a rash and negligent manner and as a result, it dashed against the two wheeler driven by the appellant and as a result, the appellant and the pillion rider were thrown away. The appellant sustained serious injuries and it was assessed by the Medical Board that the appellant suffered 36% disability. It is under these circumstances, the claim petition came to be filed before the Tribunal.

3.The Tribunal on considering the facts and circumstances of the case and on appreciating the oral and documentary evidence, came to a conclusion that the accident had taken place only due to the rash and negligent driving of the lorry belonging to the 1st respondent. Having rendered such a finding, the Tribunal proceeded to fix the compensation under various heads. The total compensation was

fixed at Rs 2,31,235/- in the following manner:



Compensation awarded under the head	Amount (in Rs.)
Pain and Sufferings	25,000
Medical Expenses	68,235
Rich and Nutritious Food	5,000
Attendee Charges	5,000
Loss of Income	15,000
Transport Expenses	5,000
Permanent Disability	1,08,000
Total	2,31,235

4.The Tribunal directed the above compensation to be paid with interest at the rate of 7.5% per annum. The claimant not being satisfied with the quantum of compensation fixed by the Tribunal has filed the present appeal seeking for enhancement of compensation.

5.Heard Mr.T.Ananthasekar, learned counsel appearing on behalf of the appellant and Mr.K.Poomalai, learned counsel appearing on behalf of the 2nd respondent.

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



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7.This Court has also carefully gone through the Award passed by the Tribunal.

8.In the instant case, the appellant claimed to be a Priest working in a temple. The age of the appellant was 23 years. The Tribunal had fixed the notional income of the appellant at Rs.5,000/- per month and has calculated the compensation under the head of Loss of Income at Rs.15,000/- (Rs.5000 x 3 months). Considering the fact that the accident had taken place in the year 2015 and also considering the rise in index, this Court is inclined to fix the notional income at Rs.10,000/- instead of Rs.5,000/- Accordingly, the compensation towards loss of income is fixed at Rs.30,000/- (Rs.10000/- x 3 months).

9.The Tribunal while fixing the compensation under the head of permanent disability, fixed Rs.3,000/- per percentage and calculated the total compensation at Rs.1,08,000/- The accident had taken place in the year 2015. Hence, considering the judgment of the Division Bench in CMA No.3334 of 2021, dated 15.06.2022, Rs.5000/- can be fixed per percentage. Accordingly, the total compensation under the head of 'Permanent Disability' can be arrived at Rs.1,80,000/- (Rs.5000 x 36%)

10.Insofar as the compensation fixed for nutrition, attender charges and transportation expenses, considering the nature of injuries sustained by the appellant



and also of the fact that the appellant was taking treatment as an inpatient for six days, the compensation under these heads can be enhanced from Rs.5,000/- to Rs.10,000/-

11.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.)
Pain and Sufferings	25,000
Medical Expenses	68,235
Rich and Nutritious Food	10,000
Attendee Charges	10,000
Loss of Income	30,000
Transport Expenses	10,000
Permanent Disability	1,80,000
Total	3,33,235

12.The compensation awarded by the tribunal at Rs.2,31,235/- is enhanced to Rs.3,33,235/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.3,33,235/-, 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. Insofar as the enhanced compensation of Rs.1,02,000/- is concerned, the appellant/claimant will



N. ANAND VENKATESH., J

SSR

not be entitled for interest for the period of delay period of 736 days as was ordered by this Court in C.M.P.No.8923 of 2021, dated 07.09.2023. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

13.This Civil Miscellaneous Appeal is disposed of 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, Principal Sub Judge, Puducherry.

CMA No.2702 of 2023