



C.M.A.Nos.578 & 579 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2024

CORAM :

The Hon'ble Mr. Justice Krishnan Ramasamy

C.M.A.Nos.578 & 579 of 2024

Devendiran

... Appellant in C.M.A.No.578 of 2024

Shamshath

... Appellant in C.M.A.No.579 of 2024

Vs.

1. Selvadoss

2. The Divisional Manager,
United India Insurance Company Limited,
TP Claims Hub, No.81, Katpadi Road,
T.K.M. Complex, 2nd Floor, Vellore.

... Respondents in both C.M.A's

Prayer in C.M.A.No.578 of 2024: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 18.12.2017 and made in M.A.C.T.O.P.No.381 of 2017 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.



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Prayer in C.M.A.No.579 of 2024: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 18.12.2017 and made in M.A.C.T.O.P.No.44 of 2017 on the file of the Motor Accident Claims Tribunal, the Special Sub Court, Tiruvannamalai.

Appearance in both C.M.A's.

For Appellants : Mr.A.G.F.Terry Chella
Raja
For R2 : Ms.R.Sree Vidhya

COMMON JUDGEMENT

These Civil Miscellaneous Appeals have been filed by the appellants/claimants, challenging the quantum of compensation awarded by the Tribunal in M.A.C.T.O.P.Nos.381 & 44 of 2017, dated 18.12.2017.

2. Since both the appeals arise out of the common order, they have been taken up together and, being disposed of by this common judgement.

3. On 17.03.2016 at about 08.30 a.m., while the appellants were travelling as passengers in a Maxi Cab Van bearing Reg.No.TN-72-AU-9405 from Chengam towards Thirvannamalai, driven by its driver in a



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rash and negligent manner and capsized the said vehicle at the left side of the Road. Due to the impact, the appellants sustained grievous injuries all over their body. Hence, the appellants/claimants have filed claim petitions before the Tribunal seeking a sum of Rs.40,00,000/- in C.M.A.No.578 of 2024 and a sum of Rs.5,00,000/- in C.M.A.No.579 of 2024 respectively as compensation.

4. On consideration of oral and documentary evidence, the Tribunal has awarded a sum of Rs.16,62,500/- in C.M.A.No.578 of 2024 and a sum of Rs.50,000/- in C.M.A.No.579 of 2024 respectively towards compensation to the appellants. Being not satisfied with the quantum of compensation, both the appellants have filed these appeals.

5. The learned counsel for the appellants submitted that, the appellants seek enhancement of compensation awarded by the Tribunal under different heads. However, during the course of hearing, the appellant/claimant in C.M.A.No.579 of 2024 have restricted her claims only with regard to the amount awarded under the head “disability”. Further, he submitted that, based on the percentage method, the Tribunal



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has awarded a sum of Rs.3,000/- per percentage, which is on the lower side. Hence, he requested this Court to fix a sum of Rs.6,000/- per percentage under the head “disability”, which is just and reasonable. Further, he fairly submitted that the amount awarded by the Tribunal under other heads are just and reasonable, and the same may be confirmed by this Court. Accordingly, he prays for appropriate modification of the Tribunal's award in respect of disability.

5.1. As far as the quantum of compensation in C.M.A.No.578 of 2024 is concerned, at the time of accident, the injured was aged about 38 years, was working as a Tailor in Sands Wisdom Export Company, Adayur, and earning a sum of Rs.15,000/- per month. Without considering the same, the Tribunal has fixed a monthly income of the injured at Rs.7,000/- per month, which is on the lower side. Further, he relied upon the judgment of Hon'ble Division Bench of this Court in the case of *Andal vs. Avinav Kannan and another reported in 2019 (1) TNMAC 54, (Madras)*, based on the Cost of Living Index, the notional income of the injured would come around Rs.13,705/-. Hence, he requested this Court to fix the notional income of the injured at



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Rs.13,000/- per month, which is just and reasonable. Accordingly, he prayed for appropriate enhancement of compensation in favour of the appellant.

6. The learned counsel for the second respondent/Insurance Company fairly submitted that, any reasonable amount of compensation may be awarded under the head “disability” in respect of C.M.A.No.579 of 2024.

6.1. The learned counsel for the second respondent further would submit that, as far as the notional income of the injured in C.M.A.No.578 of 2024 is concerned, the appellant/claimant stated that he was working as a Tailor at Sands Wisdom Export Company, however, the appellant/claimant has failed to produce an income proof before the Tribunal, and in the absence of any proof for income, the Tribunal had rightly fixed the notional income of the injured at Rs.7,000/- per month, which is just and fair. Further, he fairly submitted that the notional income of the injured may be taken at Rs.12,000/- per month, which is just and reasonable.



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7. Heard the learned counsel for the appellants as well as the learned counsel appearing on behalf of the second respondent and perused the materials available on record.

8. On perusal of the records, it shows that the Tribunal has taken percentage of disability at 10% as assessed by the Medical Board in C.M.A.No.579 of 2024, and awarded a sum of Rs.30,000/- towards “disability” by fixing a sum of Rs.3,000/- per percentage, which is on the lower side. Taking into consideration and submissions made by the learned counsel for the appellant and as per the law laid down by Apex Court, and this Court is inclined to award a sum of Rs.5,000/- per percentage, since the accident occurred in the year of 2016. Hence, the amount awarded by the Tribunal under the head “disability” is modified and enhanced to a sum of Rs.50,000/-.

9. Insofar as the compensation awarded by the Tribunal under other heads are concerned, this Court finds the same is just and proper and the same are hereby confirmed.

10. Thus, the compensation awarded by the Tribunal in



C.M.A.No.579 of 2024 is modified as under :-

<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Disability	30,000/-	50,000/- (enhanced)
Pain and sufferings	10,000/-	10,000/-
Loss of earning during the treatment period	5,000/-	5,000/-
Extra nourishment	5,000/-	5,000/-
Total	50,000/-	70,000/-

11. Consequently, the total compensation amount of **Rs.50,000/-** awarded by the Tribunal is hereby modified and enhanced to **Rs.70,000/-** which shall carry interest at the rate of **7.5%** per annum from the date of claim petition till the date of deposit.

12. As far as the quantum of compensation in C.M.A.578 of 2024 is concerned, the Tribunal had fixed the notional income of the injured at Rs.7,000/- per month, which is on the lower side. Considering the nature of injuries sustained by the claimant, and on relying upon the judgment of Hon'ble Division Bench of this Court in the case of *Andal* cited supra, this Court is inclined to fix the notional income of the injured at



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Rs.12,500/- per month, which would be just and reasonable. Further, this Court noticed, that the Medical Board assessed disability at 80%, however, the appellant left arm above elbow was amputated, he cannot able to perform his work well as before. Hence, this Court is inclined to take functional disability at 100% and multiplier method thereon. Thus by fixing the notional income of the injured at Rs.12,500 per month; adding 25% future prospects, the total income of the injured is quantified at Rs.15,625/-; and adopting right multiplier '14' as per the decision of Hon'ble Apex Court, the compensation towards "Loss of Income" is worked as $\text{Rs.15,625/-} \times 14 \times 12 \times (100\%) = \text{Rs.26,25,000/-}$.

13. Consequently, the sum of **Rs.14,70,000/-** awarded by the Tribunal under the head of 'Loss of Income' is hereby modified and enhanced to **Rs.26,25,000/-**.

14. Insofar as the compensation awarded by the Tribunal under other heads are concerned, this Court finds that the same are just and proper and are hereby confirmed. Thus, the total compensation payable to the appellant/claimant under various Heads is as hereunder:-



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<i>Heads</i>	<i>Awarded by the Tribunal (Amount in Rs.)</i>	<i>Awarded by this Court (Amount in Rs.)</i>
Loss of income	14,70,000/-	26,25,000/- (enhanced)
Pain and sufferings	1,50,000/-	1,50,000/-
Medical and Transportation	7,500/-	7,500/-
Attender charges	25,000/-	25,000/-
Extra nourishments	10,000/-	10,000/-
Total	16,62,500/-	28,17,500/-

15. Consequently, the total compensation amount of Rs.16,62,500/- awarded by the Tribunal is hereby modified and enhanced to Rs.28,17,500/- which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

16. In the result, both the Civil Miscellaneous Appeals filed by the appellants/claimants are partly allowed on the following terms:-

(i) The second respondent, Insurance Company is directed to deposit the entire amount awarded by this Court along with interest at the



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rate of 7.5 % p.a. and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

(ii) On such deposit being made by the second respondent/Insurance Company, the Tribunal shall transfer the amount directly to the claimants' respective bank accounts through RTGS within a period of three weeks thereon.

(iii) It is made clear that the appellants/claimants are not entitled for interest for the delay period by vide order dated 13.02.2024 in C.M.P.Nos.24752 and 24755 of 2023 and delay in filing the both appeals.

(iv) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any.

(v) There shall be no order as to costs.

19.03.2024



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Index : Yes / No
NCC : Yes / No
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To

1. The Motor Accident Claims Tribunal,
Special Sub Court,
Tiruvannamalai.
2. The Section Officer,
V.R. Section,
High Court, Madras.

Krishnan Ramasamy,J.,
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