



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on :07.03.2024

Judgment Delivered on :18.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKA RAMAN

C.M.A.No.2114 of 2021

Imayavaramban

...Appellant

.Vs.

1.R.Thangavel

(The 1st respondent remained ex-parte
before Tribunal. Hence, notice may be
dispensed with)

2.M/s.United India Insurance Company Limited,
Rep.by its Branch Manager,
No.50-A, Pallivasal Street,
Perambalur - 621 212

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decretal order in M.C.O.P.No.533 of 2017 dated 23.03.2021, on the file of Motor Accident Claims Tribunal / Principal District Judge, Perambalur.

For Appellant	: Mr.S.Kamadevan
For R1	: Mr.C.Prabakaran
For R2	: Mr.M.J.Vijayaraaghavan

**JUDGMENT**

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The claim petitioner is the appellant herein seeking enhancement of compensation of the award in M.C.O.P.No.533 of 2017.

2. The factum of accident, manner of accident, rash and negligent on the part of the driver of the offending vehicle and vehicle being insured with the second respondent/Insurance company are not in dispute.

3. It is the case of injury.

4. On the date of the accident, the claim petitioner's age is 22 years old, working as a Installer of Digital Banner Boards, sustained injury. He was referred to Medical Board wherein Ex.C1 Disability Certificate was issued by the District Medical Board, has assessed his physical impairment at 45% and the trial Court has granted an award of Rs.1,90,000/- and hence the appeal.

5. Heard the learned counsel appearing for the appellant and the learned counsel appearing for the respondent.

6. The learned counsel for the appellant stated that the multiplier method has to be applied as he suffered functional disability.

7. Perusal of Ex.P1 clearly reveals that sutured wound of 2cm left side SCH (+), periorbital edema (+), tenderness (-) maxillary region and tenderness (+) infraclavicular region. The petitioner was admitted on



25.04.2017 and surgery was done on 27.04.2017 and discharged on 06.05.2017. Ex.P2 is the CT Scan report and Ex.P3 is the medical prescription.

8. Hence, I find that these injuries sustained by the claim petitioner has not resulted in any loss of his earning power and therefore does not satisfied the ratio laid down in *Rajkumar's* case. Accordingly, the said contention of the learned counsel for the appellant/claim petitioner stands negatived.

9. The claim petitioner was referred to District Medical Board for ascertaining the disability. The District Medical Board issued Disability Certificate and his physical impairment is 40%. The disability percentage for the purpose of calculating compensation is fixed at 40% and fixed Rs.3,000/- for 1% of disability and the same is hereby enhanced at Rs.5,000/- ($\text{Rs.}5000 \times 40\% = \text{Rs.}2,00,000/-$)

10. Considering the year of accident and nature of work, the notional income is fixed at Rs.5,000/- per month and the same is hereby enhanced to Rs.7,000/- ($\text{Rs.}7000 \times 6 = \text{Rs.}42,000/-$)

11. The Tribunal has not awarded any compensation towards loss of amenities. Accordingly, this Court is inclined to award Rs.5,000/- towards loss of amenities. The amounts awarded by the Tribunal under



other heads are just and reasonable and hence those are confirmed.

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12. Before the Tribunal, taking into consideration of the admission made by R.W.1 in the cross-examination that in the goods vehicle, the claim petitioner was working as a coolie to load & unload the goods. At the time of the accident more than 5 persons has appeared to have been travelled as a gratitude passenger and hence the Tribunal has exonerated the second respondent-Insurance Company for violation of the policy condition and ordered pay and recovery and such a finding by the Tribunal does not suffer from any illegality or irregularity warranting interference.

13. The break-up details of the compensation is as under :

<i>Sl. No</i>	<i>Heads under which the amount is awarded</i>	<i>Amount awarded by the Tribunal – Rs.</i>	<i>Amount awarded by this Court – Rs.</i>
1.	Disability	Rs. 1,20,000/-	Rs. 2,00,000/-
2.	Loss of earning	Rs. 30,000/-	Rs. 42,000/-
3.	Extra Nourishment	Rs. 10,000/-	Rs. 10,000/-
4.	Pain and suffering	Rs. 20,000/-	Rs. 20,000/-
5.	Transportation and medical expenses	Rs. 10,000/-	Rs. 10,000/-
6.	Loss of amenities	-----	Rs. 5,000/-
	Total	Rs. 1,90,000/-	Rs. 2,87,000/-



In total, the claim Petitioner is entitled to a sum of Rs.2,87,000 (**Rupees Two lakhs and eighty seven thousand only**).

14. In fine,

(i) this Civil Miscellaneous Appeal stands partly allowed, enhancing the award amount from **Rs.1,90,000/- to 2,87,000/-** to the extent indicated above, along with 7.5% interest per annum. No costs.

(ii) the 2nd Respondent/United India Insurance Company Limited is directed to deposit the enhanced award amount before the Tribunal, within a period of eight weeks from the date of receipt of a copy of this order, less the amount, if any already deposited. Accordingly pay and recovery is ordered.

(iii) on such deposit being made, the claim Petitioner/Appellant is permitted to withdraw the entire enhanced award amount with accrued interest and costs, less the award amount, if any, already withdrawn, by filing necessary application before the Tribunal.

(iv) the claim Petitioner/Appellant is directed to pay the court fee, if any, for the enhanced compensation amount and the Registry is directed to draft the decree only after the receipt of Court fee.

(v) The second respondent/Insurance Company is directed to pay



6

and recovery from the first respondent.

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18.03.2024

nvi

Index : Yes/No

Speaking/non-speaking order

To

1. The Principal District Judge, Perambalur.
2. The Section Officer,
V.R.Section, High Court, Chennai.

RMT.TEEKAA RAMAN,J.,



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nvi

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