



WEB COPY



C.M.A. No.2550 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.04.2024

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

C.M.A. No.2550 of 2021

Gunasekaran

... Appellant

vs.

1. Arun Agencies,
No.10 M, Eswara Nagar,
K. Vadamadurai,
Coimbatore.

(Notice for R1 may be dispensed with for the time being
and separate petition is filed for the same)

2. National Insurance Company Ltd.,
Rep. By its Manager,
Karthikeya Complex,
408, B-10, Mettur Main Road,
Bhavani.

.... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the order made in M.C.O.P. No.363 of 2013 on the file of the Motor Accident Claims Tribunal cum IV Additional District Judge, Erode District at Bhavani, dated 22.11.2017 and for enhancement of compensation.

For Appellant

: Mr.C. Kulanthaivel

For Respondents

: R1 - Exparte

Mr.K. Padmanabhan for R2

**JUDGMENT**

This appeal has been filed by the claimant seeking enhancement of compensation. The findings rendered by the Tribunal with regard to the negligence has attained finality as no appeal has been filed by the Insurance Company challenging the adverse findings with regard to the negligence.

2. The Tribunal under the impugned award has directed the Insurance Company to pay a total compensation of Rs.5,41,476/- to the appellant as detailed hereunder :-

<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>
Compensation towards Disability	1,20,000
Compensation towards pain and sufferings	30,000
Compensation towards medical bills	3,23,476
Compensation towards Future Medical expenses	30,000
Compensation towards extra nourishment	10,000
Compensation towards transportation	10,000
Loss of income during treatment	18,000
Total	5,41,476/-



C.M.A. No.2550 of 2021

3. Heard Mr.C. Kulanthaivel, learned counsel for the appellant / claimant and Mr.K. Padmanabhan, learned counsel for the 2nd respondent / Insurance Company. The 1st respondent has remained ex-parte both before the Tribunal as well as this Court.

4. This Court has perused and examined the impugned award passed by the Tribunal.

5. The accident happened in the year 2013. The Medical Board has assessed the disability of the appellant as a result of an accident caused by a vehicle insured with the 2nd respondent / Insurance Company at 40%. Based on the said assessment, the Tribunal has fixed the disability of the appellant /claimant at 40%. No contra evidence is also available to disprove the said assessment. Therefore, this Court is of the considered view that the Tribunal has rightly assessed the disability of the appellant / claimant at 40%.

6. The appellant / claimant has sustained the following injuries as a result of the accident caused by a vehicle insured with the 2nd respondent / Insurance Company:-

1) Closed comminuted fracture shaft of (Rt) femur mid third and distal third



- 2) *Comminuted fracture both bone (Rt) leg mid third and distal 3rd*
- 3) *Laceration ver (Rt) skin of lg and posterior aspect of distal 3rd leg.*

7. The appellant / claimant has also taken the following treatments in the hospital, as seen from the discharge summary (Ex.P9) :-

Treatment taken on 05.04.2013

- 1) *Closed reduction and internal fixation with intramedullary interlocking nail for femur (Rt.)*
- 2) *Closed reduction and internal fixation with intramedullary interlocking nail for (Rt) tibia*
- 3) *Wound debridement for lacerated wounds*

Treatment taken on 12.04.2013

- 1) *Wound debridement, muscle flap and SSG*

8. The appellant / claimant was hospitalised for a period of 12 days from 05.04.2013 to 17.04.2013. The Tribunal has awarded a compensation of Rs.1,20,000/- towards the appellant's / claimant's disability, calculated at Rs.3,000/- per percentage of disability for the 40% disability suffered by the appellant / claimant. The accident happened in the year 2013. This Court is of the considered view that even though the Tribunal has rightly assessed the disability, the Tribunal ought to have awarded compensation at Rs.4,000/- per percentage of



C.M.A. No.2550 of 2021

disability as the accident happened in the year 2013. Accordingly, this Court enhances, the disability compensation payable to the appellant / claimant from Rs.1,20,000/- to Rs.1,60,000/-, calculated at Rs.4,000/- per percentage of disability for the 40% disability suffered by the appellant / claimant. The appellant / claimant was a Coolie (Labourer) at the time of the accident. He had claimed that he was earning Rs.9,000/-p.m. at the time of the accident. The Tribunal has awarded a compensation of Rs.18,000/- towards loss of income during the treatment period to the appellant / claimant. As (Labourer) Coolie, the appellant / claimant would have certainly earned Rs.6,500/-p.m. in the year 2013. This Court after giving due consideration to the nature of injuries sustained by the appellant / claimant, the period of his hospitalisation and the time spent for medical treatment subsequent to his discharge from the hospital is of the considered view that the loss of income granted by the Tribunal at Rs.18,000/- is low. This Court is of the considered view that atleast for a period of four months considering the nature of injuries sustained by the appellant / claimant, the appellant / claimant would have been unable to perform his regular employment. Therefore, this Court fixes the notional monthly income of the appellant / claimant at Rs.6,500/-p.m. and if loss of income is calculated for a period of four months, the total



C.M.A. No.2550 of 2021

compensation payable to the appellant / claimant towards loss of income would be Rs.6,500/- x 4 = Rs.26,000/-. Accordingly, the loss of income granted by the Tribunal at Rs.18,000/- is enhanced to Rs.26,000/- by this Court.

9. With regard to the compensation awarded by the Tribunal under various other heads viz., pain and suffering, future medical expenses, extra nourishment and transportation are concerned, this Court is of the considered view that the compensation awarded by the Tribunal under those heads is a just compensation and it does not call for any interference.

10. Insofar as the compensation awarded by the Tribunal towards medical bills at Rs.3,23,476/- is concerned, the same is confirmed by this Court as it is supported by medical bills, which were marked as Ex.P.10 (Series).

11. For the foregoing reasons, the compensation awarded by the Tribunal is enhanced to Rs.5,81,476/- from Rs.5,41,476/- as detailed hereunder:



WEB COPY



C.M.A. No.2550 of 2021

<i>Heads</i>	<i>Amount Awarded by the Tribunal in Rs.</i>	<i>Amount Awarded by this Court in Rs.</i>
Compensation towards Disability	1,20,000	1,60,000
Compensation towards pain and sufferings	30,000	30,000
Compensation towards medical bills	3,23,476	3,23,476
Compensation towards Future Medical expenses	30,000	30,000
Compensation towards extra nourishment	10,000	10,000
Compensation towards transportation	10,000	10,000
Loss of income during treatment	18,000	26,000
Total	5,41,476/-	5,89,476

12. In the result, this Civil Miscellaneous Appeal is partly allowed by enhancing the compensation from Rs.5,41,476/- to Rs.5,89,476/-. No Costs.

13. The 2nd respondent / Insurance Company is directed to deposit the amount awarded by this Court, after deducting the amount already deposited if any, together with interest from the date of claim till the date of deposit and cost, to the credit of M.C.O.P.No.363 of 2013, within a



C.M.A. No.2550 of 2021

period of four weeks from the date of receipt of a copy of this Judgment.

On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the appellant /claimant through RTGS, within a period of two weeks thereafter. Necessary Court fee, if any has to be paid by the appellant / claimant before receiving the copy of this Judgment.

10.04.2024

Index: Yes/No

Internet: Yes/No

Speaking Order/Non-Speaking Order
vsi2

To

1. The IV Additional District Judge,
Motor Accidents Claims Tribunal,
Erode District at Bhavani.

2. The Section Officer,
V.R. Section, High Court of Madras,
Chennai – 104.

ABDUL QUDDHOSE, J.



WEB COPY



C.M.A. No.2550 of 2021

vsi2

C.M.A. No.2550 of 2021

10.04.2024