



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1343 of 2024

Sankar

..Appellant

.VS.

1.Vasudevan

2.The Reliance General Insurance Co., Ltd.,
Palaiyampalli House, Nedumprom Post,
Thiurvalla, Pathanmthitta, Kerala – 689 645.

3.The Reliance General Insurance Co., Ltd.,
3rd Floor, 408, Perundurai Road, Erode.

4.Velavan

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree in MCOP No.345 of 2018, dated 10.09.2020 on the file of the Motor Accident Claims Tribunal / Special District Judge Court, Erode.

For Appellants : Mr.T.S.Arthanareeswaran

For Respondents : Mr.P.Suresh for R2 & R3



JUDGMENT

WEB COPY The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.345 of 2018, dated 10.09.2020 has filed this appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 24.09.2017, he was travelling in a two wheeler as a pillion rider at Venkatasamuthram-Vaniyaru road and the two wheeler was driven by the 4th respondent. At about 5.30 p.m., when the two wheeler reached the place of occurrence, the offending vehicle which was a car was driven in a rash and negligent manner and it hit the two wheeler. As a result of which, the claimant was thrown out of the two wheeler and he sustained crush injury over the right leg below the knee joint. The claimant underwent treatment and a procedure was done thereby, the right above knee amputation was done. The disability was assessed by the Doctor at 80%. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

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 there was negligence both on the part of the offending vehicle as well as the two wheeler that was driven by the 4th respondent. Accordingly, the Tribunal fixed 90%



negligence on the offending vehicle and 10% on the two wheeler rider. After having reached such a conclusion, the Tribunal proceeded to fix the total compensation at Rs.25,44,397/- and after deducting 10%, the Tribunal directed the Insurance Company to pay a sum of Rs.22,89,957/- with 7.5% interest.

4.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal before this Court seeking for enhancement of compensation.

5.Heard Mr.T.S.Arthanareeswaran, learned counsel appearing on behalf of the appellant and Mr.P.Suresh Srinivasan, learned counsel appearing on behalf of the 2nd & 3rd respondents.

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

7.The claimant in this case was a Mason. It is clear from the Discharge Summary which was marked as Ex.P5 and Disability Certificate which was marked as Ex.P10 that the severe crush injury on the right leg has resulted in right above knee amputation. Therefore, the Doctor has opined that the claimant cannot walk without help and there is total deformity on the right leg. It is therefore clear that the



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claimant will not be able to carry on with his avocation as a Mason. Hence, on the facts of the present case, the functional disability must be taken to be 100%.

8.The Tribunal has fixed the functional disability at 80% based on the Disability Certificate. However, this Court is inclined to fix the functional disability at 100%.

9.The Tribunal has fixed the notional monthly income at Rs.10,000/-. The accident had taken place in the year 2017 and considering the fact that the claimant was a Mason, this Court is inclined to fix a sum of Rs.13,000/- as notional monthly income.

10.The Tribunal has added 40% towards future prospects. In the instant case, the claimant was born on 10.06.1977 and the accident had taken place on 24.09.2017 and at the time of accident the claimant had completed 40 years. Therefore, applying the judgement of the Apex Court in ***Pranay Sethi*** case, 25% should be added towards future prospects. Thus, the notional monthly income can be fixed at Rs.16,250/- (Rs.13,000/- + 25%). The compensation towards disability works out to a sum of Rs.29,25,000/- (Rs.16250/- x 12 x 15).



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11. In the light of the compensation granted for 100% functional disability, no compensation can be granted separately under the head of 'Temporary loss of income'. Accordingly, a sum of Rs.50,000/- granted by the Tribunal shall stand deleted.

12. The compensation that has been fixed under the other heads are reasonable and does not require the interference of this Court.

13. Insofar as the contributory negligence is concerned, the Tribunal has fixed 10% contributory negligence on the 4th respondent based on the evidence of PW1. This Court does not find any ground to interfere with the finding of the Tribunal in this regard. However, the appellant was only the pillion rider and he cannot be deprived of the balance 10% compensation. Hence, the appellant will be entitled to recover the balance 10% from the 4th respondent who was rider of the two wheeler.

14. In the light of the above discussion, the compensation fixed by the Tribunal is modified as follows:



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S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Nutritious Food	50,000
2.	Pain and Sufferings	1,00,000
3.	Disability (Rs.16250/- x 12 x 15)	29,25,000
4.	Attender Charges	50,000
5.	Medial Expenses	1,28,397
6.	Transportation Charges	1,00,000
7.	Loss of Amenities	50,000
	Total	34,03,397
	90% of the awarded amount	30,63,057

15.The compensation awarded by the tribunal at Rs.22,89,957/- is enhanced to Rs.34,03,397/-. The second respondent insurance company is directed to deposit 90% of the enhanced compensation of Rs.30,63,057/-, 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. The appellant is entitled to recover the balance 10% compensation from the 4th respondent who is the rider of the vehicle. Insofar as the enhanced compensation of Rs.7,73,100/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 335 days as was ordered by this Court in C.M.P.No.11785 of 2023, dated 04.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the



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

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

19.06.2024

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
ssr

To

The Motor Accident Claims Tribunal / Special District Judge Court, Erode.



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N. ANAND VENKATESH., J

SSR

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