



WEB COPY



C.M.A. No. 2449 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM:

**THE HONOURABLE MR. JUSTICE K. RAJASEKAR**

**C.M.A. No. 2449 of 2021**

Vishwanathan

... Appellant / Petitioner

Vs.

1. Premalatha

2. The United India Insurance Co. Ltd.,  
Branch Office III, Arjuna Tower, 248/164,  
Cherry road, Salem - 636 001.

3. Viswanathan  
(Name Removed- Amended as per  
order in I.A. No.1126/2019)

4. The Iffco-Tokio General Insurance Co. Ltd.,  
Sri Nivasam Arcade, First Floor, No.9/4,  
Advaitha Ashram Road,  
Salem - 636 004.

... Respondents / Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree dated 05.03.2021 passed in M.C.O.P. No. 854 of 2018 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.



C.M.A. No. 2449 of 2021

For Appellant : M/s. K. Vinod  
For RR 1 & 2 : Mr. L.K. Manjunath  
(M/s. Sri Manjunath Law Associates)  
For R3 : No Appearance

\*\*\*\*\*

JUDGMENT

This Civil Miscellaneous appeal has been filed by the claimant seeking enhancement of compensation awarded in M.C.O.P. No. 854 of 2018, dated 05.03.2021 on the file of the I Special Subordinate Judge, Motor Accident Claims Tribunal, Salem.

2. For the sake of convenience, the parties are referred herein according to their litigative status and rank before the Tribunal.

3. On 06.10.2017, at about 7:30PM, the claimant travelled as a pillion rider along with one Rajkumar in TVS Victor motor cycle bearing Registration No.TN-77-Y-9103 on Vazhapadi to Muthampatti Main road, after he reached near Muthampatti Railway Gate, in order to cross the road South to North, the claimant along with the rider was waiting on the extreme South corner of the road, at that time a bus bearing Registration No.TN-30-BF-7585 came in a rash and negligence manner from Vazhapadi to Salem,



dashed on the TVS Victor two wheeler caused grievous injuries to the claimant. A criminal case was registered against the driver of the bus in Cr.No.472/2017 U/s.279, 337 of IPC on the file of Vaazhapadi Police Station, Salem. For the injuries sustained, the claimant filed claim petition seeking compensation for a sum of Rs.15,00,000/- under section 166 of the Motor Vehicles Act.

4. The First and the third respondents, who are the owners of bus and two wheeler, respectively, has not contested the claim and remained ex-parte. The second respondent – insurance company, who is the insurer of the bus bearing Registration No.TN-30-BF-7585 filed a counter and disputed the age, income, occupation, nature of injuries sustained and disability of the claimant. Further contended that the accident was taken place only due to the rash and negligence on the part of the rider of the TVS Victor motor cycle, who has suddenly crossed the road without observing the on-coming vehicles and also not having a valid driving licence at the time of occurrence. The fourth respondent – insurance company, who is the insurer of the TVS Victor motor cycle is liable to pay compensation to the claimant, hence prays to dismiss the claim petition.



5. The fourth respondent – insurance company filed a counter and contended that the rash and negligence on the part of the driver of the first respondent's bus, who has driven the bus in a rash manner and hit on the TVS Victor two wheeler, thereby causing grievous injuries to the claimant, hence the first and second respondent – insurance company are jointly and severely liable to pay compensation to the claimant, hence prays to dismiss the claim petition.

6. Before the Tribunal, on the side of the claimant, P.W.1 was examined and Exs.P.1 to P.13 and Court Exs.X.1 – disability certificate and X.2 – x-rays of the claimant were marked. On the side of second respondent – insurance company, Ex.R.1 was marked and on the side of the fourth respondent – Ex.R.2 was marked.

7. Based on the evidence placed on record, the Tribunal in point no.1, has held that the rash and negligence on the part of the driver of the first respondent's bus bearing Registration No.TN-30-BF-7585 is responsible for the accident. In point nos.2 and 3, the Tribunal has quantified and granted compensation for a sum of Rs.8,39,179/- along with



interest @ 7.5% per annum from the date of filing of petition till the date of realization and fixed the liability on the second respondent – insurance company to indemnify the first respondent and to pay compensation to the claimant.

8. Aggrieved over the award, the claimant has filed this appeal seeking enhancement of compensation.

9. The learned counsel appearing for the claimant submitted that, Tribunal has not properly considered the nature of injuries sustained and the disability of the claimant and awarded compensation by adopting percentage method instead of granting compensation under loss of earning capacity. He also further submitted that the compensation awarded under various other heads are on the lower side, hence prays to enhance the compensation.

10. Per contra, the learned counsel appearing for the second respondent - insurance company submitted that based on the evidences placed on record, the Tribunal has awarded a just compensation, hence



prays to confirm the award.

WEB COPY

11. Heard the submissions made on both sides and perused the materials placed on record:

12. The major contention raised by the claimant is that he sustained grievous injuries and fractures, so he could not continue his earlier avocation, and prays to grant compensation under the head loss of earning capacity.

13. Ex.P.2 – Wound certificate and Ex.P.3 – discharge summary shows that the claimant has sustained following injuries: “Right Foot Crush/ Degloving Injury with Dead Dorsum / Lateral Foot Tissues, Devitalised / Necrosed Free Flap and Post Debridement Raw Area Right foot”. Ex.X.1 – disability certificate of the claimant issued by the Omalur Medical Board shows that the claimant has sustained 30% permanent disability and recorded that the claimant has difficulty in squatting, pain in ankle paresthesia over dorsum and lateral foot with non healing wound over dorsum with sinus discharge, disuse atrophy of ankle, osteoporosis of



ankle. The Tribunal after appreciating the disability report of the Medical Board has held that the claimant has sustained non functional disability and awarded compensation Rs.1,50,000/- by adopting percentage method by granting Rs.5,000/- per percentage of disability. Considering the age of the claimant, year of accident, nature of injuries and the Medical Board report, this Court is of the view that the Tribunal has properly awarded compensation under the head disability, hence this Court is inclined to confirm the same.

14. With regard to loss of income during the treatment period, before the Tribunal, the claimant has submitted that he was working as a Power loom helper in Suganeshwara Spinning Mill and earning Rs.13,000/- per month and also adduced the Ex.P.13 - Identity card issued by the Spinning Mill, but to prove the same, the claimant has not adduced any oral or documentary evidence, hence the Tribunal by considering the age of the claimant has fixed Rs.7,500/- as the monthly income of the deceased. The Tribunal based on Exs.P.2 and P.3 - medical records and the nature of injuries sustained by the claimant has held that, the claimant would have lost his income for a period of six months, hence awarded Rs.45,000/-



(Rs.7,500/- x 6) as loss of income during his treatment period. Considering the nature of injuries, the award of six months loss of income during the treatment period by the Tribunal is reasonable and proper, however, considering the age of the claimant and date of accident, this Court is of the view that the monthly income fixed by the Tribunal is on the lower side, hence this Court is inclined to modify the monthly income of the claimant as Rs.12,000/- and accordingly, the compensation under loss of income during the treatment period is modified as Rs.72,000/- (Rs.12,000/- X 6).

15. The Tribunal has awarded Rs.30,000/- under the head loss of amenities and Rs.15,000/- under the head extra nourishment, this Court is of the view that the compensation awarded under loss of amenities and extra nourishment requires modification and accordingly, Rs.50,000 is awarded towards loss of amenities and Rs.30,000/- towards extra nourishment.

16. Before this Court, the claimant has produced his recent photograph, showing the disfigurement due to the crush injury sustained, hence this Court is inclined to grant Rs.30,000/- as compensation under the head disfigurement. Whereas the other heads are concerned, the Tribunal



has awarded a just compensation and the same are hereby confirmed.

WEB COPY

17. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

| S. No | Description                                | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or reduced |
|-------|--------------------------------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.    | Pain and Sufferings                        | 50,000/-                        | 50,000/-                          | Confirmed                              |
| 2.    | Loss of income during the treatment period | 45,000/-                        | 72,000/-                          | Enhanced                               |
| 3.    | Medical expenses                           | 5,18,179/-                      | 5,18,179/-                        | Confirmed                              |
| 4.    | Transportation Charges                     | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 5.    | Extra Nourishment                          | 15,000/-                        | 30,000/-                          | Enhanced                               |
| 6.    | Attender Charges                           | 15,000/-                        | 15,000/-                          | Confirmed                              |
| 7.    | Damage to articles                         | 1,000/-                         | 1,000/-                           | Confirmed                              |
| 8.    | Loss of amenities                          | 30,000/-                        | 50,000/-                          | Confirmed                              |
| 9.    | Permanent Disability                       | 1,50,000/-                      | 1,50,000/-                        | Confirmed                              |
| 10.   | Disfigurement                              | ---                             | 30,000/-                          | Granted                                |
|       | <b>Total Compensation</b>                  | <b>8,39,179/-</b>               | <b>9,31,179/-</b>                 | <b>Enhanced</b>                        |

18. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.8,39,179/- is hereby enhanced to **Rs.9,31,179/- [Rupees Nine Lakh Thirty One Thousand One Hundred and Seventy Nine only]** together along with interest at the rate of **7.5% per annum** from the date of filing of Claim Petition till the date of



C.M.A. No. 2449 of 2021

realization, excluding the default period, if any. The second Respondent -

Insurance Company is directed to deposit the amount awarded by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.854 of 2018 on the file of the I Special Subordinate Judge, Motor Accidents Claims Tribunal, Salem. On such deposit, the claimant/ appellant herein is permitted to withdraw the award amount now determined by this Court along with interest and costs, less the amount if any, already withdrawn. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. Since this Court has enhanced the compensation, the appellant/claimant is directed to pay the necessary Court fee, if any, on the enhanced compensation. There shall be no order as to costs in the present appeal.

**03.01.2024**

stn

Index:Yes/No

Speaking Order:Yes/No

Neutral Citation Case: Yes/No

To:



C.M.A. No. 2449 of 2021

1. The I Special Subordinate Judge,  
Motor Accident Claims Tribunal,  
Salem.

2. The Section Officer,  
V.R.Section,  
High Court, Chennai.

**K. RAJASEKAR, J.**



WEB COPY



C.M.A. No. 2449 of 2021

stn

C.M.A. No. 2449 of 2021

03.01.2024