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CMA NOS.855 OF 2022 & 1406 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 07 / 11 / 2024

JUDGMENT DELIVERED ON: 12 / 11 / 2024

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NOS.855 OF 2022 AND 1406 OF 2023
AND
CMP NO.6279 OF 2022 IN CMA NO.855 OF 2022**

CMA NO.855 OF 2022

M/s.National Insurance Co. Ltd.,
Motor Third Party HUB,
No.46, Moore Street, 3rd Floor,
Chennai – 600 001.

... Appellant /
2nd Respondent

Vs.

1.S.Gnanavel

... 1st Respondent /
Petitioner

2.Sun Blues

No.32/1, Musiri Village and Post,
Walajah Taluk,
Vellore District – 632 513.

... 2nd Respondent /
1st Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated October 31, 2019 made in M.C.O.P.No.7252 of 2016 on the file of the Motor Accidents Claims Tribunal, Special Sub Court No.2, Small Causes Court, Chennai.



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CMA NOS.855 OF 2022 & 1406 OF 2023

For Appellant : Mr.S.Arunkumar
For Respondent-1 : Mr.C.Richard Suresh Kumar
For Respondent-2 : No Appearance

CMA NO.1406 OF 2023

S.Gnanavel ... Appellant /
Petitioner

Vs.

1.Sun Blues
No.32/1, Musiri Village & Post,
Walajah Taluk, Vellore District.
Tamil Nadu – 632 513.
(Set *ex-parte* in Trial Court)

2.National Insurance Co. Ltd.,
Motor Third Party Hub,
No.46, Moore Street, 3rd Floor,
Chennai – 600 001.

... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated October 31, 2019 passed in M.C.O.P.No.7252 of 2016 by the Special Sub Judge – II, MCOP Tribunal, Court of Small Causes, Chennai – 104.

For Appellant : Mr.C.Richard Suresh Kumar
For Respondent-1 : No Appearance
For Respondent-2 : Mr.S.Arun Kumar



COMMON JUDGMENT

R.SAKTHIVEL, J.

These two Civil Miscellaneous Appeals are arising out of the 'Award dated October 31, 2019, passed in M.C.O.P.No.7252 of 2016' ['impugned Award' for short] by the 'Special Sub Judge – II, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai' ['Tribunal' for short]. The petitioner in the aforesaid Original Petition has filed C.M.A. No.1406 of 2023 seeking enhancement of compensation. The second respondent / Insurance Company has filed C.M.A. No.855 of 2022 praying to set aside the impugned Award. This Common Judgment will now dispose of both these Civil Miscellaneous Appeals.

2. For the sake of convenience, henceforth, the parties will be referred to as per their array in the Original Petition.

PETITIONER'S CASE

3. On October 18, 2016 at about 17.00 hours, the petitioner was driving the Lorry bearing Registration No.TN-52-D-3385 carrying Cement, from Andhra Pradesh towards Kumbakonam, at Nemilicherry to Vandalur Outer Ring Road opposite to GMR Office. While so, a Tipper Lorry bearing Registration No.TN-73-F-3969, driven by its Driver in a



rash and negligent manner in front of the petitioner's Lorry, suddenly applied brakes. Consequently, the petitioner's Lorry collided with the back of the said foregoing Tipper Lorry. In the said accident, the petitioner sustained grievous injuries. The first respondent is the owner of the Tipper Lorry bearing Registration No.TN-73-F-3969 and the second respondent is the insurer of the Tipper Lorry. The petitioner is a Lorry Driver and was earning a sum of Rs.30,000/- per month. Hence, the petitioner filed the Original Petition seeking a compensation of Rs.80,00,000/- (Rupees Eighty Lakhs only) from the respondents.

1ST RESPONDENT'S CASE

4. The first respondent is the owner of the Tipper Lorry bearing Registration No.TN-73-F-3969. He did not appear before the Tribunal and contest the Original Petition. Hence, he was set *ex-parte*.

2ND RESPONDENT'S CASE

5. The second respondent – Insurance Company filed a counter merely denying all the petition averments. The Counter is nothing more than a formal denial, whereby the second respondent sought for dismissal of the Claim Petition.



EVIDENCE

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6. Before the Tribunal, the petitioner was examined as P.W.1 and one Mr.Mani, Special Sub Inspector of Police, Vellavedu Police Station was examined as P.W.2 and Ex-P.1 to Ex-P.12 were marked on the side of the petitioner. Neither any witness was examined nor any document was marked on the side of the second respondent. Disability Certificate issued by Regional Medical Board, Government Stanley Medical Hospital, Chennai was marked as Ex-C.1.

FINDINGS OF THE TRIBUNAL

7. The Tribunal, upon hearing either side, relied on Ex-P.1 – First Information Report (FIR), Ex-P.11 - Charge Sheet, Ex-P.12 – Case Diary and the evidence of P.W.1 and P.W.2 to conclude that the accident occurred due to the rash and negligent driving of the Driver of the Tipper Lorry bearing Registration No.TN-73-F-3969. Since the first respondent's Tipper Lorry was insured with the second respondent – Insurance Company and the insurance policy was in force on the date of accident, the Tribunal held that the second respondent is liable to pay compensation to the petitioner and accordingly, awarded compensation of Rs.22,90,100/-



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(Rupees Twenty-Two Lakhs Ninety Thousand One Hundred only). The split up figure is as follows:

<i>S.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1)	Loss of Earning Capacity	2184000.00
2)	Pain and Sufferings	50000.00
3)	Transportation Expenses	10000.00
4)	Extra Nourishment	30000.00
5)	Medical Expenses	16058.00
Total		2290058.00
Rounded off		2290100.00

8. Challenging the quantum of compensation arrived at by the Tribunal, the second respondent – Insurance Company has filed C.M.A No.855 of 2022 praying to set aside the Award and reduce the compensation.

9. Meanwhile, not satisfied with the compensation awarded by the Tribunal, the petitioner has filed C.M.A No.1406 of 2023 praying to enhance the compensation.

ARGUMENTS:

10. Mr.C.Richard Suresh Kumar, learned Counsel for the petitioner argued that the petitioner, being a Lorry Driver aged 43 years at



the time of accident, was unable to perform his job as well as his day to day work because of the accident. The petitioner was admitted in the Hospitals multiple times as in-patient, totally for more than three months. The petitioner underwent multiple surgeries. The petitioner's Left Foot was amputated and he also sustained bone fracture in his right leg, fracture of four toes in right leg, fracture of right hip, severe injuries on chest and left hand as well as multiple injuries all over his body. The petitioner is still undergoing treatment periodically.

10.1. Further argued that the Regional Medical Board, Government Stanley Hospital, Chennai assessed the disability of the petitioner at 80% and issued Report dated March 25, 2019 to that effect. The fact that the accident occurred in 2016 and that the petitioner is still experiencing 80% disability in 2024 unequivocally highlights the grievous nature of the injuries sustained and the permanent nature of the disability.

10.2. Further, he argued that the Tribunal has failed to consider the Pain and Sufferings as well as the Mental Trauma underwent by the petitioner at the age of 43 and their continuing nature. The petitioner continues to suffer from pain owing to the grievous nature of the injuries. Accordingly, the learned Counsel prayed to allow his appeal and



enhance the Award amount taking into consideration all the relevant factors.

11. Per contra, Mr.S.Arun Kumar, learned Counsel for the second respondent / Insurance Company has submitted that the compensation awarded by the Tribunal is excessive and irrational. There is no negligence on the part of the first respondent's driver and it is the petitioner who crashed into the first respondent's Lorry owing to his negligent driving. The initial burden is upon the petitioner to prove the alleged negligence on the part of the first respondent and the petitioner has failed to discharge the said burden. The petitioner has not examined any independent ocular witness to the accident. In the absence of proof, the Tribunal is not right in fastening the liability on the first respondent and also in taking the notional income as Rs.13,000/- per month and adding 25% future prospects. Accordingly, he prayed to allow its appeal and dismiss the Original Petition.

DISCUSSION:

12. This Court has heard the submissions made on either side and perused the materials available on record.



Negligence

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13. This Court has perused the evidence of P.W.1 and P.W.2 as well as Ex-P.1- FIR, Ex-P.8 – Driving Licence of the petitioner, Ex-P.11 – Charge Sheet, Ex-P.12 – Case Diary. The petitioner examined himself as P.W.1 and deposed that on October 18, 2016 at about 17.00 hours, the petitioner was driving the Lorry bearing Registration No.TN-52-D-3385 at Nemilicherry to Vandalur Outer Ring Road. While so, a foregoing Tipper Lorry bearing Registration No.TN-73-F-3969, driven in a rash and negligent manner, suddenly applied brakes without any indication, leading to the Lorry driven by the petitioner colliding with the back of the said foregoing Tipper Lorry. In the said accident, the petitioner sustained grievous injuries. He further deposed that FIR and Charge Sheet were filed against the driver of the first respondent's Lorry.

14. Despite cross-examination, the second respondent / Insurance Company was not able to shake his evidence. Further, the petitioner summoned the Inspector of Police, Vellavedu Police Station to produce the Case Diary File in Crime No. 908 of 2016 on the file of Vellavedu Police, Thiruvallur District and to give evidence. Accordingly, Mr.Mani, Special Sub Inspector of Police, Vellavedu Police Station



appeared and was examined as P.W.2 through whom Ex-P.10 – Summons, Ex-P.11 – Charge Sheet and Ex-P.12 – Docket Endorsements were marked.

15. The FIR has been filed on October 19, 2016 at 11.00 hours by one Radhakrishnan residing in Pattanur, Vanur Taluk, Villupuram District. He is the owner of the Lorry driven by the petitioner. The accident occurred in the evening on the fateful day and the FIR has been filed the next day morning. In the FIR, said Radhakrishnan has stated that upon learning about the accident, he rushed to the Hospital to check on the Driver and then to the accident spot to inspect the Lorry, and thereafter preferred Complaint before the Police. There seems to be no unreasonable delay in lodging the FIR.

16. Police after investigation filed Ex-P.11 – Charge Sheet. Perusal of Ex-P.11 along with Ex-P.12 – Case Diary would reveal the fact that a case under Section 279 and 338 of the Indian Penal Code, 1860 was registered against the first respondent. Ex-P.11 was taken on file as S.T.C.No.16 of 2017 on the file of Judicial magistrate No.II, Poonamalle. The accused / first respondent's driver appeared before the Court and admitted the offences levelled against him. Further, Ex-P.8 reveals that on the fateful day, the petitioner had a valid driving licence.



17. In view of the above, this Court is of the opinion that the petitioner *prima facie* proved that the negligence is on the first respondent's driver. Now the onus is upon the second respondent to prove that the first respondent's driver is not responsible for the accident. However, second respondent has not examined any witness or marked any documents to prove his case. It has failed to discharge its onus. Hence, this Court concludes that the accident happened only due to the rash and negligent driving of the first respondent's Lorry's driver. The Tribunal rightly found the first respondent's lorry's driver to be negligent and there is no infirmity with the same.

18. The petitioner in Column Nos.14 and 16 of his petition has stated the first respondent's Lorry's registration number and its insurance policy number respectively. Both, the first respondent's lorry and the lorry driven by the petitioner were subjected to Motor Vehicle Inspection in the Criminal Case. The second respondent did not raise any question nor specifically denied the currency of the insurance policy at the time of accident. Hence, this Court is of the view that the Tribunal rightly fastened the liability against the second respondent.



Quantum of Compensation

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19. This Court has perused Ex-P.8 which is the driving licence of the petitioner. As per Ex-P.8, the date of birth of the petitioner is May 25, 1973. Ex-P.8 was issued on December 19, 1991 which means that as on the date of accident he had almost 25 years of experience. The petitioner had a valid licence to drive Light Motor Vehicles (non-transport) till May 24, 2023; and to drive Transport Vehicles till January 22, 2018 with a badge vide Badge No.59197. Driving is a skilled job. A Driver in the year 2016, that too with the aforementioned qualifications and years of experience, could have easily earned not less than Rs. 15,000/- per month.

20. Hon'ble Supreme Court while dealing with similar factual matrix in the case of *Manusha Sreekumar -vs- The United India Insurance Company Limited*, reported in (2022) 17 SCC 321, by placing reliance on *Kerala Motor Transport Workers' Payment of Fair Wages Act, 1971 [Kerala Act 23 of 1971]* fixed the notional income of a Kerala driver for the year 2015 as Rs.15,600/-. Relevant extract of the Judgment is as follows:



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“22.Schedule B Category III to the Kerala Fair Wages Act classifies a driver as a “skilled worker”. Reading this in conjunction with the Notification that came into effect from 1-1-2015 which amended Schedule A to the Kerala Fair Wages Act, prescribing a minimum pay scale of the workers listed in Schedule B, it is apparent that a “driver” in Kerala earned a minimum of Rs 15,600 in 2015. It appears to us that the aforesaid Act and the notification issued thereunder were not brought to the notice of the Tribunal or the High Court. As a result thereto, the High Court could not be cognizant of the statutory mandate prescribing minimum wages for a skilled worker like “driver”, and thus, erred in fixing the income of the deceased at Rs 10,000. We are therefore inclined to fix the income of the deceased notionally at Rs 15,600 per month.”

21. Though the notifications of Tamil Nadu Government under the Minimum Wages Act, 1948 prescribe minimum wages for drivers working in various industries, there appears to be no specific provision in the state of Tamil Nadu prescribing fair wages for transport drivers carrying goods for hire or reward as in the aforementioned Kerala Act. The nature of work for transport / good carriage drivers across states such as Tamil Nadu and Kerala is fundamentally the same, and the skills required do not change much from one state to another. While there may be a few special cases, like driving in extremely hilly terrains or handling difficult road conditions, these are rare. Drivers, especially transport /



goods carriage drivers, drive across state borders as part of their daily duties. More often than not, the skills required for driving across different states are essentially the same. Given these considerations, relying on ***Manusha Sreekumar's Case (supra)***, bearing in mind the fact that Section 166 of the Motor Vehicles Act, 1988 comes under the purview of social beneficial legislation, this Court is of the view that it would be reasonable to factor in the fair wage standards set by Kerala for transport drivers, while determining the notional income of the petitioner. Accordingly, this Court takes the notional income of the petitioner at Rs.15,600/- per month.

22. Immediately after the accident, the petitioner was rushed by the general public to Rajhiv Gandhi Government Hospital, Chennai, where, as per Ex-P.2 – Hospital Case Record, he was admitted as in-patient from 18 October, 2016 to 29 November, 2016. Ex-P.2 further reveals that in the said period, totally three surgeries were performed on the petitioner as tabulated below:

<i>S.No.</i>	<i>Date</i>	<i>Surgeries</i>
1)	28.10.2016	1) Tarsometatarsal amputation left foot 2) Wound debridement right foot
2)	18.11.2016	Hybrid external fixator See Split skin grafting far raw area right leg
3)	24.11.2016	Revised amputation left foot



23. Thereafter, as evident from Ex-P.3 – Hospital Case Records, the petitioner was shifted to the department of plastic surgery in the same Hospital on November 29, 2016, where he received post operative care till January 18, 2017. Ex-P.3 further reveals that during the said period, the petitioner has spent around Rs.33,869/- which includes the cost of an artificial limb. P.W.1 has deposed that though he has been discharged from hospital, continuous treatment is required. Hospital Case Records marked as Ex-P.2 and Ex-P.3 corroborate the evidence of P.W.1 in this regard. The Hospital Case Records reveal that the petitioner had been in Hospital totally for about 90 days as an in-patient. The Regional Medical Board, Government Stanley Medical Hospital, Chennai assessed the locomotive disability of the petitioner on March 25, 2019 at 80% and the said report has been marked as Ex-C.1. Relevant extract of Ex-C.1 is as hereunder:

“Disability is a locomotor both lower limb due to RTA injury left chopart's amputation, right side post traumatic sequelae, Right knee and leg and his percentage is 80% (Eighty only).”



24. Ex-C.1 coupled with Ex-P.5 – Photographs reveal that the petitioner's left leg has been amputated and that his right leg has suffered crushing injury and deformation, and consequently, the petitioner will not be able to lead his normal life nor engage in his driving job anymore. The Tribunal relying on Ex-C.1 fixed functional disability of the petitioner at 80% and by following *Aandal's Case* [*Aandal and another -vs- Abhinav Kannan and Others*, reported in 2019 1 TNMAC 54] fixed the notional income of the petitioner at Rs.13,000/-. By applying 25% Future Prospects and adopting a multiplier of 14, the Tribunal arrived at the disability compensation of Rs.21,84,000/-. It further awarded compensation under various heads as stated *supra*. Totally a compensation of Rs.22,90,100/- was granted by the Tribunal. This Court is of the view that the petitioner's job is driving. Due to the accident, his left leg has been amputated and his right leg has also suffered severe damages. As stated *supra*, he cannot engage in driving at all. The fact that the accident occurred in 2016 and the petitioner is still suffering from a 80% disability in 2024 clearly indicates the severity of the injuries sustained and the permanent nature of the disability. Hence, though the Medical Board assessed his locomotive disability at 80%, this Court is of the view that the petitioner suffers 100% functional disability.



25. Further, the Tribunal failed to award attender charges for the petitioner's 90 days admission in the Hospital. To be noted, the petitioner is residing at Vanur Taluk, Villupuram District which is nearly 150 kilometres far away from the Hospital, making it less convenient and more expensive for attender(s). Being this far away from the Hospital, it is quite natural that the attender would have had to buy food from outside during their stay at hospital adding to the expenses. In such a scenario, the petitioner would have incurred at least a sum of Rs.500/- per day as attender charges. Accordingly, this Court awards Rs.45,000/- towards attender charges for the said 90 days during which the petitioner was admitted in Hospital.

26. Furthermore, the Tribunal awarded Rs.50,000/- under the heading 'pain and sufferings'. The petitioner has lost his left leg and would no more be in a position to earn for his family. He would no longer be able to drive. Hence, the accident would have left an everlasting mental impact on him. Considering the period of treatment and the grievous nature of the injuries, this Court is of the view that Rs.50,000/- under this head is on the lower side and hence, this Court is inclined to award a sum of Rs.1,00,000/- under the head of 'Pain, Sufferings and Mental Trauma'.



27. Furthermore, compensation of Rs.10,000/- under the head of transportation charges seems to be on the lower side, considering the fact that the petitioner resides 150 km away from the hospital as well as his future medical treatment requirements. Hence the same shall be enhanced to Rs.25,000/-. The Tribunal has awarded compensation of Rs.30,000/- under the head of extra nourishment and this Court finds the same just and reasonable. The medical evidence coupled with the evidence of P.W.1, and the grievous nature of injuries, would show that future medical treatment is necessary. In such a scenario, the Tribunal ought to have awarded compensation for future medical expenses, but it failed to do so. Hence, this Court is inclined to award a sum of Rs.50,000/- which would be a just and reasonable compensation towards future medical expenses.

28. The following table sums up the compensation awarded by this Court:



S.No.	Head	Amount
1	Functional Disability [FP = Rs.15,600/- (NI) + 25% FP] X 100% (PD) X12 (m) X 14 (M)	Rs.32,76,000.00
2	Pain, Sufferings and Mental Trauma	Rs.1,00,000.00
3	Attender Charges	Rs.45,000.00
3	Transportation	Rs.25,000.00
4	Extra Nourishment	Rs.30,000.00
5	Medical expenses	Rs.16,058.00
	Future Medical Expenses	Rs.50,000.00
	Total	Rs.35,42,058.00
Note: (1) NI = Notional Income (2) FP = Future Prospects (3) M = Multiplier (4) m= months (5) PD = Permanent Disability		

29. Thus, the petitioner is entitled to a sum of **Rs.35,42,058/- (Rupees Thirty Five Lakhs Fourty Two Thousand and Fifty Eight only)** as compensation from the second respondent / Insurance Company. Petitioner is entitled to interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. Further, the petitioner is entitled proportionate costs and Advocate fees as per Rules.

30. The second respondent / Insurance company is directed to deposit the **enhanced award amount of Rs.35,42,058/- (Rupees Thirty Five Lakhs Fourty Two Thousand and Fifty Eight only)** along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P. No.7252 of 2016 on the file



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of Special Sub Court – II, Motor Accidents Claims Tribunal, Court of Small Causes, Chennai, less the amount if any already deposited, within a period of two months from the date of receipt of copy of this judgment. On such deposit being made, the petitioner is entitled to withdraw the same by filing proper application.

CONCLUSION:

31. Resultantly,

- (i) The Civil Miscellaneous Appeal filed by the second respondent/Insurance Company in CMA No.855 of 2022 is dismissed. No costs;
- (ii) The Civil Miscellaneous Appeal filed by the petitioner / claimant in CMA No.1406 of 2023 is allowed in part with proportionate costs and modified Award is passed as detailed above;
- (iii) Consequently, connected Civil Miscellaneous Petition in CMP No.6279 of 2022 in CMA No.855 of 2022 is closed.

[J.N.B., J.]

[R.S.V., J.]

12 / 11 / 2024

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
TK



CMA NOS.855 OF 2022 & 1406 OF 2023

To
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The Motor Accidents Claims Tribunal
Special Sub Court No.2
Small Causes Court
Chennai.



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CMA NOS.855 OF 2022 & 1406 OF 2023

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

TK

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.855 OF 2022 AND 1406 OF 2023

12 / 11 / 2024