



WEB COPY



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.2564 of 2023

Murugavel

..Appellant

.VS.

1.Dinesh

2.HDFCERGO General Insurance Co., Ltd.,
D.No.356/1,Empire Arcade, New Bus Stand
Omalur Main Road
Salem District - 636 001.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Decree and Judgment in MCOP.No.799 of 2021, dated 23.8.2022, on the file of the Motor Accident Claims Tribunal/Special Subordinate Judge No.II, Salem.

For Appellants : Mr.C.Paraneedharan

For Respondents : Mr.T.K.Prem Kumar [R2]

for R1 (ex-parte)



WEB COPY

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in M.C.O.P.No.799 of 2021, dated 06.04.2023, has filed the present appeal seeking for enhancement of compensation.

2.The case of the claimant is that on 10.2.2020, he was walking at Tharamangalam- Sangagiri Main Road and at about 9.30 p.m., the offending vehicle which was a two wheeler was driven in a rash and negligent manner and it dashed on the claimant. The claimant sustained Grade III B compound fracture in both right leg. He underwent treatment as an inpatient from 10.2.2020 to 5.3.2020 for 23 days. He also underwent a surgery and external fixator was also done and it was later removed. The Medical Board assessed the disability at 20%. 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 the accident had taken place only due to the rash and negligent driving on the part of the two wheeler. Having rendered such a finding, the Tribunal proceeded to determine the total compensation at Rs.2,23,617/- in the following manner:



WEB COPY

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	20% disability 20% x 5000	1,00,000/-
2.	Pain and Suffering (23 Days Inpatient)	20,000/-
3.	Loss of Amenities	20,000/-
4.	Medical Bills	8,617/-
5.	Loss of Income 3 x 8000/-	24,000/-
6.	Transport Expenses	15,000/-
7.	Extra Nourishments	15,000/-
8.	Attender Charges	20,000/-
9.	Cloth Damages	1,000/-
	Total	2,23,617/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% per annum. Since the rider of the two wheeler did not possess a valid driving license, the Tribunal applied the pay and recovery method in this case.

5.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal, has filed the present appeal seeking for enhancement of compensation.

6.Heard Mr.C.Paraeedharan, learned counsel for the appellant and Mr.T.K.Prem Kumar, learned counsel for R2 - Insurance Company.

7.This Court has carefully considered the submissions made on either side and the



WEB COPY

materials available on record. This Court also carefully went through the award that was passed by the Tribunal and the reasons assigned therein.

8.The main ground that was raised on the side of the appellant was that the accident had taken place in the year 2020 and whereas the Tribunal had only fixed Rs.5000/- per percentage. Relying upon Division Bench in CMA No.3334 of 2021, dated 15.6.2022, this Court is inclined to increase the sum to Rs.7000/- per percentage. Thus, the compensation under the head of 'disability' is fixed at Rs.1,40,000/- [20% * Rs.7000/-].

9.The claimant had taken treatment as an inpatient for nearly 23 days and he also underwent an operation. That apart, external fixation was also made and later removed. Therefore, this Court is inclined to enhance the compensation under the head of 'pain and suffering' to Rs.50,000/-, 'attender charges' to Rs.25,000/- and extra nourishment charges to Rs.25,000/-. This Court is also inclined to enhance the compensation granted under the head of 'loss of amenities' to Rs.25,000/-.

10.While calculating the 'loss of income', the Tribunal has fixed the income at Rs.8000/- p.m. considering the fact that the accident had taken place in the year 2020 and the claimant came up with a stand that he was doing power loom work and was earning a sum of Rs.16,000/- p.m, this Court is inclined to fix a monthly income at Rs.15,000/-. Thus, the compensation under the head 'loss of income' is fixed at Rs.45,000/- [3 months x Rs.15,000/-].



WEB COPY

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

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

S.No	Compensation awarded under the head	Amount awarded by the Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	20% disability 20% x 5000	1,00,000/-	20% x 7000 = 1,40,000/-
2.	Pain and Suffering (23 Days Inpatient)	20,000/-	50,000/-
3.	Loss of Amenities	20,000/-	25,000/-
4.	Medical Bills	8,617/-	8,617/-
5.	Loss of Income 3 x 8000/-	24,000/-	3 x 15,000= 45,000/-
6.	Transport Expenses	15,000/-	15,000/-
7.	Extra Nourishments	15,000/-	25,000/-
8.	Attender Charges	20,000/-	25,000/-
9.	Cloth Damages	1,000/-	1,000/-
10.	Future Medical expenses	Nil	Nil
	Total	2,23,617/-	3,34,617/-

13.The compensation awarded by the Tribunal at Rs.2,23,617- is enhanced to Rs.3,34,617/- The 2nd respondent - Insurance Company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest @ 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. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the appellant/claimant. It is made clear that the pay and recovery ordered by the Tribunal is confirmed and the compensation that is paid by the 2nd respondent – Insurance Company can be recovered from the 1st respondent. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

14. In the result, the Civil Miscellaneous Appeal is partly allowed in the above terms.

No costs.

06.06.2024

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



To

WEB COPY

- 1.HDFCERGO General Insurance Co., Ltd.,
D.No.356/1,Empire Arcade, New Bus Stand
Omalur Main Road
Salem District - 636 001.
- 2.Motor Accident Claims Tribunal/
Special Subordinate Judge No.II, Salem.

N. ANAND VENKATESH., J

kp



WEB COPY



CMA No.2564 of 2023

14.06.2024