



CMA No.1109 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1109 of 2024

Pooventhiran

.. Appellant

.Vs.

1.Gowri Sankar

2.M/s. National Insurance Co.Ltd.,
Divisional Office – 1 (HUB)
L.R.N.Complex
Salem-7.

.. Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation amount awarded by the Tribunal in M.C.O.P.No.112 of 2020, dated 4.7.2022, on the file of the Motor Accident Claims Tribunal/ and Special Sub Court No.I, Salem.

For Appellant : Mr.S.P.Yuvaraj

For Respondents : Mr.S.Senthil Kumar [R2]

Dispense with [R1]



CMA No.1109 of 2024

WEB COPY

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal has filed the present appeal against the award passed by the Motor Accident Claims Tribunal, Special Sub Court No.I, Salem in M.C.O.P.No.112 of 2020, dated 4.7.2022.

2.The case of the claimant is that on 16.8.2019, he was riding a two wheeler at SBP Colony Road and at about 2.30 p.m, when the two wheeler approached Ayakkattur pallam, the offending vehicle which is the mini Lorry was driven in a rash and negligent manner and it dashed on the two wheeler resulting in the claimant sustaining Type 3 open tibia fracture with segmental fibula and closed segmental proximal third shaft of femur with subtrochanteric extension. The Medical Board assessed the disability at 35%. The claimant underwent treatment as an inpatient for nearly 36 days and nearly four surgeries were performed. 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



CMA No.1109 of 2024

accident had taken place only due to the rash and negligent driving on the part of the offending vehicle. After having rendered such a finding, the Tribunal proceeded to fix the compensation under various heads as follows:

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Disability (35 % * Rs.5000/-)	1,75,000/-
2.	Pain and Suffering	40,000/-
3.	Transportation expenses	10,000/-
4.	Extra Nourishment	20,000/-
5.	Attender charges	10,000/-
6.	Damages to clothes	1,000/-
7.	Medical Expenses	4,67,025/-
8.	Loss of Income	50,000/-
9.	Mental disturbance	5,000/-
	Total	7,78,025/-

4.The above compensation was directed to be paid with interest at the rate of 7.5% p.a.

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



CMA No.1109 of 2024

compensation.

WEB COPY

6.Heard Mr.S.P.Yuvaraj, learned counsel for the appellant and Mr.S.Senthil Kumar, learned counsel for the 2nd respondent – Insurance Company.

7.This Court has carefully considered the submissions made on either side and the materials available on record. This Court also carefully gone through the award passed by the Tribunal.

8.The learned counsel for the appellant submitted that considering the nature of injuries sustained by the claimant and the permanent disability that has been assessed by the Medical Board at 35%, the Tribunal ought to have applied the multiplier method since the claimant has suffered from functional disability.

9.This Court has carefully considered the injuries sustained by the claimant and also the avocation in which the claimant is involved. on applying the test suggested by the Apex Court in Raj Kumar v. Ajay Kumar, this Court is not able to find that the claimant suffers from any functional disability. The per percentage method followed by the Tribunal is in order.



CMA No.1109 of 2024

10.The accident had taken place in the year 2019 and whereas the Tribunal has fixed only a sum of Rs.5000/- per percentage. This is on the lower

side. Taking into account the judgment of the 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.2,45,000/- [35% * x Rs.7000/-].

11.The Tribunal had granted a sum of Rs.40,000/- under the head of 'pain and suffering'. Considering the injuries suffered by the claimant and four surgeries that were performed on the claimant, this Court is inclined to enhance the compensation under the head 'pain and suffering' to Rs.50,000/-.

12.The claimant was an inpatient for nearly 36 days and therefore this Court is inclined to enhance the compensation under the head of 'transportation' charges to Rs.15,000/-, attender charges to Rs.25,000/- and extra nourishment charges to Rs.35,000/-. The compensation that has been granted under the other heads are reasonable and it does not require the interference of this Court.

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



WEB COPY



CMA No.1109 of 2024

Sl.No.	Compensation awarded under the head	Amount (in Rs.)
1.	Disability [35% * Rs.7000/-]	2,45,000/-
2.	Pain and Suffering	50,000/-
3.	Transportation expenses	15,000/-
4.	Extra Nourishment	35,000/-
5.	Attender charges	25,000/-
6.	Damages to clothes	1,000/-
7.	Medical Expenses	4,67,025/-
8.	Loss of Income (5 x Rs.20,000/-)	1,00,000/-
9.	Mental disturbance	5,000/-
	Total	9,43,025/-

15. The compensation awarded by the Tribunal at Rs.7,78,025/- is enhanced to Rs.9,43,025/-. 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. The other directions issued by the



CMA No.1109 of 2024

Tribunal with regard to the mode of payment of compensation remains unaltered.

16.In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

11.06.2024

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

To

1.M/s. National Insurance Co.Ltd.,
Divisional Office – 1 (HUB)
L.R.N.Complex
Salem-7.

2.Motor Accident Claims Tribunal/
Special Sub Court No.I
Salem.



WEB COPY



CMA No.1109 of 2024

N. ANAND VENKATESH., J

KP

CMA No.1109 of 2024



WEB COPY



CMA No.1109 of 2024

11.06.2024