



WEB COPY



C.M.A.No.2430 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2024

CORAM

THE HON'BLE **MR.JUSTICE K.RAJASEKAR**

C.M.A.No.2430 of 2022

P.Nadarajan

... Appellant/petitioner

Vs.

1.V.Elumalai

..1st Respondent/
1st Respondent

2.The New India Assurance Co., Ltd.,
(Motor Third Party Cell),
Bombay Mutual Buildings, 6th Floor,
No.232, N.S.C.Bose Road,
Chennai 600 001.

.. 2nd Respondent/
2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to enhance the amount awarded dated 09.06.2022 made in M.C.O.P.No.3024 of 2017 on the file of the Motor Accident Claims Tribunal (Special Sub Court No.1), Chennai.

For Appellant : Mr.U.Chithambaram
for M/s.Varadhakamaraj

For R1 : No Appearance
For R2 : Mr.K.Thirunavukkarasu



C.M.A.No.2430 of 2022

J U D G M E N T

WEB COPY

This civil miscellaneous appeal has been filed by the appellant-claimant for enhancement of compensation awarded to the appellant / claimant in M.C.O.P.No.3024 of 2017 dated 09.06.2022 by the Motor Accident Claims Tribunal, (Special Sub Court No.1), Small Causes Court, Chennai.

2. By the impugned Judgment and Decree, the Tribunal has arrived at a sum of Rs.2,40,000/- as compensation together with interest at 7.5% from the date of the claim petition till the date of deposit, to the appellant/claimant.

3. According to the appellant/claimant, on 08.04.2017, at about 15.00 hours, while appellant/claimant was travelling as a pillion rider in the motorcycle bearing Registration No.PY-01-Q-3945, at that time, a car bearing Registration No.TN-19-Z-7899 belonging to the first respondent, driven by its driver in a rash and negligent manner and hit the petitioner, due to which, the claimant had sustained grievous injuries. Therefore, he filed a claim petition in M.C.O.P.No.3024 of 2017 before the Motor



C.M.A.No.2430 of 2022

Accidents Claims Tribunal, (Special Subordinate Judge No.I), Small Causes Court, Chennai, claiming compensation for the injuries sustained in the accident.

4. At the time of accident, the petitioner was aged about 34 years and he was working as Centering work and thereby, earning a sum of Rs.18,000/- per month.

5. The Tribunal after considering the evidence placed on record, has held that the rash and negligent driving of the driver of the car bearing Registration No.TN-19-Z-7899 is responsible for the accident and the second respondent /Insurance Company is liable to pay the compensation. Further, the Tribunal has quantified and granted a compensation for a sum of Rs.2,40,000/- along with interest @ 7.5 per annum from the date of filing of claim petition till the date of realization.

6. Aggrieved by the said compensation, the appellant/claimant has filed this Civil Miscellaneous Appeal to enhance the amount of compensation.



C.M.A.No.2430 of 2022

WEB COPY

7.The learned counsel for the appellant submits that the Tribunal after disbelieving the evidence of PW.2, Dr.K.J.Mathizahgan who was assessed the disability on its own without properly appreciating the medical records. He further submits that during the pendency of the appeal, this Court directed the appellant to appear before the Medical Board, Chennai and the Board has also given an opinion that the petitioner has sustained 25% disability. He further submits that nature of injuries sustained by the claimant resulted in causing the loss of earning capacity.

8. It is submitted that since the appellant was working as Centering worker (construction work) he was unable to produce any evidence to substantiate his monthly income of Rs.18,000/- per month. It is submitted that the Tribunal has however considered the income of the appellant as Rs.10,500/- per month to arrive at the aforesaid compensation.



C.M.A.No.2430 of 2022

WEB COPY

9. Per contra, the learned counsel for the second respondent Insurance company submits that the Tribunal has properly appreciated the evidence more particularly the medical records and fixed the compensation, there is no reason to interfere with the impugned judgement and decree, therefore prays for dismissal of this Civil Miscellaneous Appeal.

10. I have considered the arguments advanced by the learned counsel for the appellant and the respondent.

11. From the materials available on record, it is seen that the Tribunal has held that the accident has occurred only due to rash and negligent act of driver of the first respondent. The appellant had sustained with Comminuted Trochantric Fracture left femur comminuted fracture both bone right leg. He has taken treatment as in patient for 38 days from 05.05.2017 to 25.05.2017 in Star Bone Joint Centre Hospital, Chennai and subsequently he was also taken treatment from 20.06.2018 to 07.07.2018 in Karpaga Vinayaga Institute of Medical Science and



C.M.A.No.2430 of 2022

Research Centre at Chennai and thereafter he underwent two surgeries in the above said hospital on 08.05.2017 and 23.06.2018. But the Tribunal has not referred to the Medical Board to the petitioner with regard to disability due to the accident. This Court by an order dated 16.04.2024, had directed the claimant to appear before the Medical Board, Chengalpattu Hospital, Chengalpattu and the said Medical Board has examined the claimant, assessed the disability at 25% and issued the disability certificate. The disability certificate also shows that he suffered with Comminuted Trochantric Fracture left femur comminuted fracture both bone right leg.

12 As far as the compensation for the injuries suffered by the appellant/claimant is concerned, the Tribunal awarded compensation by percentage method, treating the injuries as permanent partial disablement. The Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar**, (2011) 1 SCC 343 has laid down guidelines for awarding compensation for disability and held that if the disability is not a functional disability and not resulted in reducing the earning capacity of the injured, then adopting multiplier method is not permissible. In this case, the claimant has



C.M.A.No.2430 of 2022

suffered two fractures which is termed as locomotive disability but it is not a functional disability.

13. Though the claimant claims that he was working in construction fields doing centring work, there is no evidence produced before the Tribunal. On a perusal of the disability certificate and also treatment records, the claimant has not suffered any functional disability. The claimant has suffered partial permanent disability and same had not reduced the earning capacity of the claimant.

14. In view of the same, I am inclined to award the compensation under the percentage method as per the decision of this Court reported in the case of **Future Generali India Insurance Co., Ltd. vs. Manivannan and two others, 202491) TN MAC 598(DB)**, Judgment dated 09.01.2020 made in CMA.No.4870 of 2020 in the case of **Iffco Tokio General Insurance Co., Ltd. vs. Venkatesh and another**. In the present case, the accident is of the year 2017, hence Rs.7,000/- is awarded per percentage of disability. (i.e. Rs.7,000 /- x 25% = Rs.1,75,000/-)



C.M.A.No.2430 of 2022

15. As far as loss of income is concerned, the Tribunal has fixed the notional income of Rs.10,500/-p.m, awarded 3 months income i.e. Rs.31,500/- (Rs.10,500 x 3 months) . I am inclined to refix the notional income of the claimant as Rs.13,000/- and the claimant is awarded loss of income during the treatment period at Rs.39,000/-(Rs.13,000/- x 3). The compensation awarded under the other heads appear to be reasonable. Therefore, they are not disturbed.

16. In view of the above, the compensation awarded by the Tribunal of Rs.2,40,000/- is re-quantified as follows:-

<i>Heads</i>	<i>Compensation awarded by the Tribunal (Rs.)</i>	<i>Amount of compensation re-quantified by this Court(Rs.)</i>	<i>Status (Enhanced or reduced or granted or deleted or confirmed)</i>
Disability	25,000	1,75,000	Enhanced
Pain and Sufferings	50,000	50,000	Confirmed
Transportation	4,000	4,000	Confirmed
Medical Expenses	1,08,014	1,08,014	Confirmed
Extra Nourishment	10,000	10,000	Confirmed
Attender Charges	11,400	11,400	Confirmed
Loss of Earnings	31,500	39,000	Enhanced
Total	Rs.2,40,000/-	Rs.3,97,414/- rounded off to Rs.3,97,500/-	Enhanced by another sum of Rs.1,57,500/-



C.M.A.No.2430 of 2022

WEB COPY

17. The appellants are directed to pay the deficit court fee before this Court if any, on the enhanced amount of compensation within a period of four weeks from the date of receipt of a copy of this Judgment and file the proof of payment of deficit court fee before the Tribunal for withdrawing compensation.

18. Therefore, the 2nd respondent is directed to deposit the enhanced amount of compensation of **Rs.1,57,500/-** (**Rs.3,97,500/ - Rs.2,40,000/-**) together with interest at 7.5% per annum from the date of claim petition till the date of deposit, (except for default period if any) within a period of six weeks from the date of receipt of a copy of this Judgment.

19. If the 2nd respondent has not deposited the amount of compensation awarded by the Tribunal, it is also directed to deposit the same together with interest and proportionate costs, less any amount already deposited, within the aforesaid period. On such deposit, the



C.M.A.No.2430 of 2022

claimant is permitted to withdraw the award amount along with proportionate interest and costs, less the amount if any, already withdrawn.

20. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

No costs.

06.12.2024

Index : yes/No
Internet : Yes/No
Neutral Citation : Yes/No
Speaking : Non-speaking Order
kkd

To:

The Motor Accident Claims Tribunal
(Special Sub Court No.1), Chennai.



WEB COPY



C.M.A.No.2430 of 2022

K.RAJASEKAR, J.

kkd

C.M.A.No.2430 of 2022

06.12.2024