



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1527 of 2024

E.Ananda Kumar

..Appellant

.VS.

1.R.Madhan Kumar

2.Shriram General Insurance Co., Ltd., (Rep. by authorized manager)

Plot No.5, Ramachandran Street,
Saravana Nagar, Seevaram, Perugudi,
Chennai – 600 096.

..Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Decree and Judgment in MCOP No.2188 of 2016 dated 14.12.2022 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Cuddalore.

For Appellant : Ms.Ramya V. Rao

For Respondent : Ms.R.Sreevidhya for R2

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.2188 of 2016, dated 14.12.2022 has filed this appeal seeking for enhancement of compensation.



WEB COPY

2.The case of the claimant is that on 02.06.2015 he was driving a lorry at Dindigul-Karur National Highway (NH-7). At about 12.10 a.m., the lorry driven by the deceased was following yet another lorry owned by the 1st respondent and all of a sudden that lorry dashed on a person who was walking in the road and came to a abrupt halt. In view of the same, the claimant was not able to immediately stop the vehicle and he rammed on the lorry in the front. As a result, the claimant suffered Shaft of Femur Fracture Mid 3rd Right side, Middle Third Tibia Fracture Right side, Grade IIIA open Fracture of I, II, III Metatarsal right side, Grade I open Fracture Tibia and Fibula Middle third left side and Wound Debridement of Right Foot. 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 claimant had also contributed to the negligence, since he was expected to maintain distance from the vehicle in front and that apart, the claimant also smelt alcohol. Therefore, the Tribunal proceeded to fix 80% liability on the respondents and 20% contributory negligence against the claimant. The Tribunal



having rendered the above finding, fixed the total compensation at Rs.11,83,448

(Rounded off Rs.11,83,450/-) under various heads as follows:

S.No	Compensation awarded under the head	Amount (in Rs.)
1	Loss of Income	12,85,200
2.	Pain and Sufferings	60,000
3.	Medical Expenses	64,111
4.	Extra Nourishment	10,000
5.	Damage to clothes	2,000
6.	Transportation Charges	10,000
7.	Attender Charges	48,000
	Total	14,79,311
	Contributory Negligence 20%	2,95,862
	Total	11,83,448.80
	Rounded Off	11,83,450

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

5.The claimant not being satisfied with the quantum of compensation awarded by the Tribunal and also attributing 20% contributory negligence against the claimant, has filed the present appeal before this Court.



6. Heard Ms. Ramya V. Roa, learned counsel appearing on behalf of the appellant and Ms. R. Sreevidhya, learned counsel appearing on behalf of the 2nd respondent.

7. This Court has carefully considered the submissions made on either side and also the materials available on record.

8. The first issue is with regard to the 20% contributory negligence that was attributed against the claimant. The Tribunal found that the claimant was closely following the lorry in front and therefore, the claimant was not able to stop the lorry driven by him. That apart, the Tribunal also found that the claimant smelt alcohol. Therefore, 20% contributory negligence was attributed against the claimant.

9. In the considered view of this Court, the accident had taken place during mid night and the lorry that was driven in front of the lorry driven by the claimant, dashed on some person who was walking in the road and had abruptly come to a halt. Considering the fact that it was a national highway and the vehicles tend to go a bit faster, there is every chance that the vehicle coming behind will ram the vehicle in front which has come to a grinding halt.



10. There is only a material to show that the deceased smelt with alcohol.

There is absolutely no evidence to show that the claimant was under complete influence of alcohol and therefore, he had caused the accident. This Court had an occasion to deal with a case where the person smelt with alcohol and this Court held that merely because somebody smelt alcohol, that by itself does not raise a presumption that the concerned person was under the influence of the alcohol. This Court also gave certain guidelines in the case of **Ramesh vs. Selvakumar and others** in CMA No.2494 of 2022 dated 16.04.2024.

11. In the light of the above discussion, 20% contributory negligence attributed against the claimant is liable to be interfered by this Court and accordingly, the same is hereby set aside.

12. Insofar as the quantum of compensation is concerned, this Court finds that a reasonable compensation has been fixed by the Tribunal. Considering the nature of injuries sustained by the claimant, this Court is inclined to fix a sum of Rs.50,000/- towards loss of amenities.

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



S.No	Compensation awarded under the head	Amount (in Rs.)
1	Loss of Income	12,85,200
2.	Pain and Sufferings	60,000
3.	Medical Expenses	64,111
4.	Extra Nourishment	10,000
5.	Damage to clothes	2,000
6.	Transportation Charges	10,000
7.	Attender Charges	48,000
8	Loss of Amenities	50000
	Total	15,29,311
	Rounded Off	15,29,500

14.The compensation awarded by the tribunal at Rs.11,83,450/- is enhanced to Rs.15,29,500-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.15,29,500/-, less the amount already deposited, together with interest at 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 of Rs.3,46,050/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 155 days as was ordered by this Court in C.M.P.No.26763 of 2023, dated 19.06.2024. Insofar as the enhanced compensation is concerned, the deficit court fee, if not paid, shall be paid by the



claimants. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.

15. In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

05.07.2024

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

To

The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Cuddalore.



WEB COPY



N. ANAND VENKATESH., J

SSR

CMA No.1527 of 2024

05.07.2024