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C.M.A.No.2831 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.2831 of 2024

Rajendran

... Appellant

..Vs..

1. Sagadevan

2. The Manager,
National Insurance Company Limited,
No.46, Moore Street, 3rd Floor,
Chennai 600 001.

...Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 21.08.2023 in M.C.O.P. No.4834 of 2016, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai.

For Appellant	: Mr.K. Balaji
R1	: No appearance
For R2	: Mr. S. Senthilkumar

JUDGMENT



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The appellant is the claimant in M.C.O.P. No.4834 of 2016, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, and he filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 and Rule 3 of the M.A.C.T. Rules, seeking compensation of Rs.55,00,000/- for the injuries sustained by him in a road accident that occurred on 10.03.2016.

2. The case of the appellant/claimant is that on 10.03.2016, he was travelling as a pillion rider in a two wheeler bearing Registration Number TN-19-J-9585 on Perunthandalam road and at about 19.30 hours a speeding two wheeler bearing Registration No.TN-19-R-8661 came in the opposite direction and hit the two wheeler in which he was travelling as a result of which he fell down and sustained injuries all over his body. He was immediately rushed to a nearby hospital.

2.1. According to the claimant, the rash and negligent driving of the rider of the offending two wheeler bearing Registration No.TN-19-R-8661, belonging to the first respondent, was the cause of the accident and that since the said two wheeler was insured with the second respondent,



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the National Insurance Company Limited, Chennai, the owner and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the first respondent remained absent and was set *ex parte*. The second respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, after analysing the evidence on record, fastened negligence on the part of the rider of the two wheeler bearing Registration No.TN-19-R-8661. Since the rider of the two wheeler did not have a valid driving licence on the date of accident, the Tribunal directed the second respondent Insurance Company to pay compensation of Rs.28,78,700/- to the claimants together with interest at the rate of 7.5% per annum from the date of petition till the date of realisation, in the first instance, and then recover the same from the first respondent, the owner of the offending two wheeler, under the same cause of action (Pay and Recover).

5. Aggrieved over the quantum of compensation awarded by the Tribunal, the appellant/claimant has filed the present appeal under



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Section 173 of Motor Vehicles Act, 1988.

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6. Heard Mr.K. Balaji, learned counsel appearing for the appellant and Mr.S. Senthilkumar, learned counsel appearing for the second respondent Insurance Company.

7. Mr. K. Balaji, learned counsel for the appellant contended that the compensation awarded by the Tribunal is not commensurate with the injuries sustained by the claimant and prayed for enhancement of the same.

8. Per contra, Mr.S. Senthilkumar, learned counsel appearing for the second respondent/Insurance Company contended that the Tribunal after analysing the evidence on record awarded just compensation and therefore the same need not be disturbed in the present appeal.

9. It is seen from the records that the claimant was aged 28 years on the date of accident and his right leg was amputated below knee level. The Medical Board assessed the disability of the claimant as 80%. According to the claimant he was working in a private concern in the



packing department, which includes loading and unloading of the goods.

Therefore, multiplier method has to be applied as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343***. In the absence of satisfactory income proof, the Tribunal fixed the monthly income of the claimant as Rs.8,000/-. Considering the year of accident and the age of the claimant, a sum of Rs.14,000/- is fixed as the monthly income of the claimant. As per the decision of the Supreme Court of India in ***National Insurance Co. vs Pranay sethi and others*** reported in ***2017 (2) TNMAC 601***, 40% is added towards future prospects of the claimant. The proper multiplier in the instant case is 17 as per the decision rendered in ***Sarla Verma and others vs. Delhi Transport Corporation and another*** reported in ***(2009) 6 SCC 121***. Accordingly the 'loss of earning capacity' is calculated as follows.

Calculation for loss of earning capacity

Notional income fixed	- Rs.14,000/-
40% Future prospects	- Rs.19,600/-
Proper multiplier	- 17
Disability suffered by appellant	- 80%
Loss of earning capacity	- 19,600 x 12 x 17 x 80/100



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= **Rs.31,98,720/-**.

The following tabular column would show the amount awarded by the Tribunal and the amount awarded by this Court under various heads.

<i>S.No</i>	<i>Heads</i>	<i>Amount awarded by Tribunal (Rs)</i>	<i>Amount awarded by this Court (Rs)</i>
1.	Disability	18,27,840/-	31,98,720/-
2.	Pain and sufferings	1,00,000/-	1,00,000/-
3.	Loss of earning	24,000/-	-
4.	Medical Expenses	7,26,776/-	7,26,776/-
5.	Loss of amenities and marital prospects	1,00,000/-	2,00,000/-
6.	Attender's charges	50,000/-	50,000/-
7.	Transportation charges	25,000/-	25,000/-
8.	Extra nourishment	25,000/-	50,000/-
	Total	28,78,616/- Rounded off to 28,78,700/-	43,50,496/-

9.1. Thus, the compensation awarded by the Tribunal is enhanced to **Rs.43,50,496/-**. This amount shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

10. In the result,



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- i. The Civil Miscellaneous Appeal is partly allowed. No costs.
- ii. The compensation awarded by the Tribunal is enhanced to **Rs.43,50,496/-**.
- iii. The appellant / claimant is directed to pay the court fee for the enhanced compensation amount, if any, and the Registry is directed to draft the decree only after the receipt of Court fee.
- iv. The second respondent, the National Insurance Company Limited, Chennai, is directed to deposit the enhanced compensation amount of **Rs.43,50,496/-** (less the amount already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, in the first instance, to the credit of M.C.O.P. No.4834 of 2016, on the file of the Motor Accident Claims Tribunal, II Court of Small Causes, Chennai, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, and then recover the same from the first respondent under the same cause of action (Pay and Recover).
- v. On such deposit being made, the appellant / claimant is at liberty to withdraw the same after following due process of law.
- vi. The claimant is not entitled to claim interest for the period of delay 67 days in filing the appeal, as per the orders of this Court dated



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03.10.2024 in C.M.P. No.21296 of 2024.

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Index : Yes/No
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To

1. Motor Accident Claims Tribunal, II Court of Small Causes, Chennai
2. The Manager,
National Insurance Company Limited,
No.46, Moore Street, 3rd Floor,
Chennai 600 001.
3. The Section Officer, VR Section, High Court, Madras.



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R. HEMALATHA, J.

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