



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2024

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CMA No.1005 of 2024

J.Selvaraj

..Appellant

.vs.

The Managing Director
Tamil Nadu State Express Transport Corporation Ltd.,
Vazhuda reddy, Villupuram.

..Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decretal award passed by the learned Subordinate Judge, Tittagudi (Motor Accident Claims Tribunal) dated 19.07.2022 in MCOP No.58 of 2020.

For Appellant : Mr.S.Udhayakumar

For Respondent : Mr.S.Shanthakumar

JUDGMENT

The claimant not being satisfied with the quantum of compensation awarded by the Tribunal in MCOP No.58 of 2020, dated 19.07.2022 has filed this appeal seeking for enhancement of compensation.



WEB COPY

2.The case of the claimant is that he was riding a bicycle on 24.10.2020 from Avinankudi to Sembaeri and when the cycle was approaching near railway flyover bridge at Pennadam, the offending vehicle which is the bus belonging to the respondent Corporation was driven in a rash and negligent manner and as a result, it dashed on the cycle and the claimant was thrown away and he sustained grievous injuries. Initially, the claimant was treated at the Government Hospital at Thittagudi and from there he was referred to the Government Hospital at Perambalur. Thereafter, he was referred to Kauvery Hospital at Tiruchirappalli and a surgery was undertaken, where the right foot was amputated. The claimant was assessed by the Medical Board and it found that the claimant suffered 34% disability. 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 driver belonging to the respondent



WEB COPY

Corporation. Having rendered such a finding, the Tribunal proceeded to fix the compensation under various heads and the total compensation was fixed at Rs.7,98,208/- in the following manner:

S.No	Compensation awarded under the head	Amount (in Rs.)
1.	Permanent Disability	1,70,000
2.	Pain and Sufferings	2,00,000
3.	Loss of Income	60,000
4.	Transport	20,000
5.	Nutritious Food	10,000
6.	Medical Expenses	2,34,208
7.	Attender Charges	54,000
8.	Comfort and Amenities	50,000
	Total	7,98,208

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 has filed the present appeal before this Court seeking for enhancement of compensation.



WEB COPY

6.The main ground that was urged by the learned counsel for the appellant was that the compensation fixed under various heads is on the lower side and it requires enhancement.

7.Per contra, the learned counsel for the respondent Corporation submitted that the claimant had also contributed to the negligence and at least 50% contributory negligence has to be attributed against the claimant. To substantiate the same, the learned counsel relied upon the averments made in the claim petition. The learned counsel further submitted that the compensation that has been fixed by the Tribunal under various heads are very reasonable and it does not require the interference of this Court and accordingly, the learned counsel sought for the dismissal of this appeal.

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



WEB COPY

9. In the instant case, the claimant has undergone four surgeries at Kauvery Hospital and considering the nature of injuries sustained by the claimant, his right foot was amputated. The Medical Board had assessed the permanent disability of the claimant at 34%. The Tribunal has adopted per percentage method and has fixed a sum of Rs.5000/- per percentage. In the instant case, the accident had taken place in the year 2020 and therefore, a sum of Rs.7000/- per percentage has to be fixed as per the judgment of the Division Bench in CMA No.3334 of 2021 dated 15.06.2022 and accordingly, the compensation under the head of 'Permanent disability' works out to Rs.2,38,000/- (Rs.7000 x 34%)

10. Insofar as loss of income is concerned, the Tribunal has fixed the notional monthly income at Rs.10,000/- and had granted a total sum of Rs.60,000/- for loss of income. Considering the fact that the accident had taken place during the year 2020 and the claimant was an agriculturalist, this Court is inclined to fix the notional monthly income at Rs.15,000/- Thus, the total compensation under the head of 'Loss of Income' works out



WEB COPY

to a sum of Rs.90,000/- (15000 x 6m). Insofar as the compensation fixed under the head of 'Nutritious Food', considering the fact that the claimant underwent treatment in three hospitals and had undergone four surgeries and was treated as an inpatient for nearly 18 days, this Court is inclined to enhance the compensation to a sum of Rs.25,000/-.

11.The learned counsel for the respondent Corporation submitted that the contributory negligence must be attributed as against the claimant.

12.In the considered view of this Court, the Tribunal has come to a categoric conclusion that the negligence is attributable only as against the driver of the bus and in an appeal filed by the claimant, it is not possible for this Court to go into the issue of negligence and attribute 50% against the claimant. This ground that was raised by the learned counsel for the respondent Corporation is totally unsustainable.

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.	Permanent Disability	2,38,000
2.	Pain and Sufferings	2,00,000
3.	Loss of Income	90,000
4.	Transport	20,000
5.	Nutritious Food	25,000
6.	Medical Expenses	2,34,208
7.	Attender Charges	54,000
8.	Comfort and Amenities	50,000
	Total	9,11,208

14.The compensation awarded by the tribunal at Rs.7,98,208/- is enhanced to Rs.9,11,208/-. The second respondent insurance company is directed to deposit the enhanced compensation of Rs.9,11,208/-, 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 six weeks from the date of receipt of this judgment. Insofar as the enhanced compensation of Rs.1,13,000/- is concerned, the appellant/claimant will not be entitled for interest for the period of delay period of 309 days as was ordered by this Court in C.M.P.No.1899 of 2024, dated 12.04.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



WEB COPY



N. ANAND VENKATESH., J

SSR

15.This Civil Miscellaneous Appeal stands allowed in the above terms.

No costs.

25.04.2024

Index : Yes/No

Speaking Order/Non-Speaking Order

Neutral citation : Yes/No

ssr

To

The Subordinate Judge, Tittagudi (Motor Accident Claims Tribunal).

CMA No.1005 of 2024