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Civil Miscellaneous Appeal Nos.2563 & 2696 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2024

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal Nos.2563 and 2696 of 2023

and

C.M.P.No.24954 of 2023

CMA No.2563 of 2023 :

Nithyanandhan

... Appellant

Vs.

1.Thukkaram

2.The Manager,

Reliance General Insurance Company Limited,

Reliance House, No.6 Haddows Road,

Nungambakkam,

Chennai – 600 034

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree passed by Motor Accident Claims Tribunal in the II Small Causes Court, Chennai in M.C.O.P.No.3051 of 2019 dated 27.01.2023.

For Appellant : Mr.G.C.Nelson Britto
for Mr.V.Tamilamudhu

For R1 : Mr.C.Vasudevan

For R2 : Ex Parte



Civil Miscellaneous Appeal Nos.2563 & 2696 of 2023

CMA No.2696 of 2023 :

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The Manager,
Reliance General Insurance Company Limited,
Reliance House,
No.6, Haddows Road, Nungambakkam,
Chennai – 600 034

... Appellant

Vs.

1.Nithyanandhan

2.Thukkaram

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the order of Award dated 27.01.2023 passed in M.C.O.P.No.3051 of 2019 on the file of the Motor Accident Claims Tribunal in the II Court of Small Causes, Chennai.

For Appellant : Mr.C.Vasudevan

For R1 : Mr.G.C.Nelson Britto
for Mr.V.Tamilamudhu

For R2 : Not Ready in Notice

COMMON JUDGMENT

These appeals have been filed both by the claimant as well as the Insurance Company against the award passed by the Motor Accident Claims Tribunal in the II Court of Small Causes, Chennai in



M.C.O.P.No.3051 of 2019 dated 27.01.2023.

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2. The case of the claimant is that on 13.04.2019, he was riding a two-wheeler from Guduvanchery to Kayrambedu road, and at about 19.30 hours, the offending vehicle, which was a Lorry, was driven in a rash and negligent manner, and it was coming in the opposite direction, and it dashed on the two-wheeler. The claimant was thrown out of the vehicle and he sustained Post Traumatic Sequelae (Poly trauma), RTA Right proximal Humerus fracture, Right Galeazzi Fracture, left forearm both bone fracture Right 3rd metacardal fracture, right proximal tibia fracture.

3. The claimant underwent treatment as an inpatient for nearly one month and twenty days in four spells. The disability was assessed by the Medical Board at 52 %. It is under these circumstances, the claim petition came to be filed before the Tribunal seeking for payment of compensation.

4. The Tribunal on considering the facts and circumstances of the



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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 of the offending vehicle.

5. Having rendered such a finding, the Tribunal proceeded to fix the total compensation at Rs.17,09,181/- under various heads as follows :

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount (in Rs.)</i>
1.	Towards Disability	Rs.13,10,400/-
2.	Towards Pain & Sufferings	Rs.80,000/-
3.	Towards Loss of earning during Treatment	Rs.30,000/-
3.	Towards Medical Expenses	Rs.1,48,781/-
4.	Towards Loss of Amenities	Rs.80,000/-
5.	Towards Attender Charges	Rs.20,000/-
6.	Towards Transportation Charges	Rs.20,000/-
7.	Towards Extra Nourishment	Rs.20,000/-
	Total	Rs.17,09,181/-

6. The above compensation was directed to be paid with interest at



the rate of 7.5 % per annum.

7. The claimant not being satisfied with the quantum of compensation and the Insurance Company aggrieved by the quantum of compensation fixed by the Tribunal have filed these appeals before this Court.

8. Heard Mr.G.C.Nelson Britto, learned counsel for claimant and Mr.C.Vasudevan, learned counsel for Insurance Company.

9. This Court carefully considered the submissions made on either side and the materials available on record.

10. This Court also carefully went through the award passed by the Tribunal.

11. The main ground that was urged by the learned counsel appearing on behalf of the Insurance Company is that there was no



material to show that the claimant has suffered from any functional disability and therefore, it was contended that the Tribunal ought not to have adopted multiplier method. In the alternative, it was contended that 52 % disability assessed by the Medical Board was a partial permanent disability and it was not a whole body disability. Therefore, the Tribunal cannot assume the entire 52 % disability for the whole body.

12. The learned counsel for the claimant submitted that sufficient reasons have been given by the Tribunal while adopting the multiplier method. It was further contended that the Tribunal had fixed only a sum of Rs.10,000/- towards notional monthly income which is on the lower side.

13. The injuries that were sustained by the claimant have been mentioned *supra*. The multiple fractures sustained by the claimant has resulted in Poly trauma. The claimant has also been diagnosed with Stricture Urethra.

14. The claimant, in this case, was a driver by occupation. The



injuries sustained by the claimant are very serious and certainly, the claimant will not be able to carry on with his avocation in the manner in which he used to do it earlier. The Tribunal, on appreciation of the entire evidence, has come to the conclusion that the claimant suffers from 52 % whole body disability. This finding of the Tribunal does not suffer from any illegality. As a consequence, the multiplier method that was adopted by the Tribunal also cannot be faulted.

15. The Tribunal has fixed the notional monthly income at Rs.10,000/-. The accident, in this case, has taken place in the year 2019, and the claimant was a driver. Therefore, the sum of Rs.10,000/- fixed as notional monthly income is on the lower side. Therefore, this Court is inclined to increase the notional monthly income to a sum of Rs.14,000/-. In view of the same, the compensation under the head of disability is calculated as follows :

Notional Income – Rs.14,000/-

40 % (Future Prospects) – Rs.5,600/- (40/100 * 14,000)

Rs.19,600/-



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52/100

Loss of Income = Rs.19,600/- * 12* 15*

Loss of Income/disability = Rs.18,34,560/-

16. The Tribunal has granted a sum of Rs.80,000/- under the head of pain and sufferings. Considering the seriousness of the injuries sustained by the claimant and its consequences, this Court is inclined to enhance the said sum to Rs.1,00,000/-.

17. Since the compensation has been granted under the head of disability by applying the multiplier method and adding the future prospects, separate compensation cannot be given under the head of loss of earning during treatment. Hence, the compensation of Rs.30,000/- given under this head is hereby set aside.

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



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<i>Sl. No.</i>	<i>Heads</i>	<i>Amount (in Rs.)</i>
1.	Towards Disability	Rs.18,34,560/-
2.	Towards Pain & Sufferings	Rs.1,00,000/-
3.	Towards Medical Expenses	Rs.1,48,781/-
4.	Towards Loss of Amenities	Rs.80,000/-
5.	Towards Attender Charges	Rs.20,000/-
6.	Towards Transportation Charges	Rs.20,000/-
7.	Towards Extra Nourishment	Rs.20,000/-
	Total	Rs.22,23,341/-

19. The compensation awarded by the Tribunal at 17,09,181/- is hereby enhanced to Rs.22,23,341/-. The Insurance company is directed to deposit the enhanced compensation, less the amount already deposited, together with interest at the rate of 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 Tribunal with regard to the mode of payment of compensation remains unaltered.

20. In the result, the Civil Miscellaneous Appeal in C.M.A.No.2563



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of 2023 is partly allowed in the above terms and C.M.A.No.2696 of 2023 stands dismissed. No costs. Consequently, the connected Civil Miscellaneous Petition is closed.

09.07.2024

Speaking Judgment/Non-speaking Judgment

Index :Yes/No

Neutral citation: Yes/No

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To

The Motor Accident Claims Tribunal in the II Court of Small Causes,
Chennai



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Civil Miscellaneous Appeal Nos.2563 & 2696 of 2023

N.ANAND VENKATESH, J.

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Civil Miscellaneous Appeal Nos.2563 and 2696 of 2023
and
C.M.P.No.24954 of 2023

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