



Civil Miscellaneous Appeal No.729 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Civil Miscellaneous Appeal No.729 of 2024

Kathiresan

... Appellant

Vs.

1.Sivamani

[Since R1 remained exparte before the tribunal
his presence may be dispensed with]

2.The Divisional Manager,

The New India Assurance Company Limited,
Commercial complex, CSI Building,
No.1, Officer's Line Vellore

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 22.11.2022 made in M.A.C.T.O.P.No.589 of 2017 on the file of the Motor Accident Claims Tribunal, Thiruvannamalai (in the Court of Special Sub Court, Thiruvannamalai).

For Appellants : M/s.N.Lavanya

For Respondents : Mr.T.Jeyaraman for R2

JUDGMENT

The appellant not being satisfied with the quantum of



compensation fixed by the Tribunal in M.A.C.T.O.P.No.589 of 2017 on the file of the Motor Accident Claims Tribunal, Thiruvannamalai (in the Court of Special Sub Court, Thiruvannamalai), has filed the present appeal seeking for enhancement of compensation.

2. The case of the claimant is that on 09.06.2017, he was riding a two wheeler and was traveling from Thirukovilur to Manampoondi village and at about 5.30 a.m, when the vehicle was nearing Thenpennai River bridge, the offending vehicle was driven by the 1st respondent in a rash and negligent manner and as a result, the offending vehicle dashed on the two wheeler that was driven by the claimant and the claimant was thrown out of the vehicle and he sustained grievous injuries. The claimant sustained fracture both bone right leg malunited. The Disability was assessed by the medical board at 30%. It is under these circumstances, a claim petition came to be filed before the tribunal seeking for enhancement of compensation.

3. The Tribunal on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to



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a conclusion that the accident had taken place only due to the rash and negligence driving on the part of the 1st respondent. Having rendered such a finding, the Tribunal took into consideration the fact that the claimant was riding the vehicle without a valid driving license and therefore, 15% contributory negligence was attributed as against the claimant and balance 85% was attributed as against the offending vehicle, which was insured before the 2nd respondent.

4. The Tribunal assessed the compensation under various heads and the total compensation fixed was Rs.3,32,000/- in the following manner:-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability	1,50,000/-
2.	Pain and sufferings	50,000/-
3.	Extra nourishment	10,000/-
4.	Attendar Charges	10,000/-
5.	Transportation expenses	Rs.10,000/-
6.	Loss of Amenities	Rs.75,000/-
7.	Loss of income during the treatment period	Rs27,000



Civil Miscellaneous Appeal No.729 of 2024

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
	Total	3,32,000/-

Out of the above compensation, 15% contributory negligence was attributed against the claimant and therefore balance 85% of Rs.2,82,000/- was directed to be paid by the insurance company with interest at the rate of 7.5% per annum.

5. Aggrieved by the same, the present appeal has been filed before this Court seeking for enhancement of compensation.

6. Heard M/s.N.Lavanya, learned counsel for appellant and Mr.T.Jeyaraman, learned counsel for 2nd respondent.

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

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

9. When the mater came up for admission on 01.04.2024, this Court passed the following order :-



Mr.K.Elango, learned counsel takes notice on behalf of the 2nd respondent.

2.The learned counsel for the appellant primarily raised two grounds while seeking for enhancement of compensation for the petitioner. The first ground is that the Tribunal had given a categoric finding that the accident took place only due to the rash and negligent driving of the two wheeler by the 2nd respondent. After having given such a finding, the Court below has reduced/deducted 15% towards contributory negligence on the ground that the petitioner was driving the two wheeler without a valid driving license. The learned counsel submitted that driving without the license by itself cannot lead to an assumption that there was negligence on the part of the petitioner and that the petitioner had contributed to the negligence. To substantiate this submission, the learned counsel relied upon the judgement of the Apex Court in Dinesh Kumar.J. @ Dinesh J. vs. National Insurance Co. Ltd and others reported in 2018 1 SCC 750.

3.The next ground that was raised by the learned counsel for the appellant is that the appellant had suffered 30% disability which is substantiated by the Certificate given by the Medical Board marked as Ex.C1.



The learned counsel submitted that the appellant was a Mason by avocation and he had suffered a functional disability since there was fracture in both bones in the right leg malunited. The learned counsel submitted that the Tribunal by itself came to a conclusion that the Medical Board had given an opinion as if there is no functional disability and thereby, the Tribunal refused to apply the multiplier method and granted compensation only in terms of the percentage of disability by fixing a sum of Rs.5,000/- per percentage. It was contended that the Tribunal ought to have applied the multiplier method in this case.

Post this case under the caption 'For Orders' on 22.04.2024.

10. In the instant case, the Tribunal had deducted 15% towards contributory negligence only on the ground that the appellant was driving the two wheeler without a valid driving license. Such a finding rendered by the Tribunal is not sustainable, since there is absolutely no material to show that the appellant in any way had contributed negligence just by virtue of not possessing a valid driving license. The issue is no longer *res integra* and it is covered by the judgement of the



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Apex Court in *Dinesh Kumar case* referred supra wherein it is held that driver without a license by itself will not lead to an assumption there was negligence on the part of the claimant. Therefore, 15% contributory negligence that was attributed against the appellant requires the interference of this Court and accordingly, the same is hereby set aside.

11. The next issue is with regard to the quantum of compensation that has been fixed. The Tribunal has rendered a finding as if the medical board has given an opinion that there was no functional disability to the appellant in connection with the avocation that was carried on by him. On carefully going through Ex.C1, which is the disability certificate, it is seen that no such observation has been made by the Medical board. Infact, the medical board has merely stated that there is a disability percentage of 30% and injury sustained by the appellant is grievous. There is no indication in the certificate as to the difficulties that are faced by the appellant by virtue of this accident. Without any such observations been made in the disability certificate, this Court cannot assume that the appellant is facing functional disability by virtue of the injuries sustained. The evidence of PW1, who is the claimant in this case



shows that he has spoken about the difficulties faced by him after the accident. This is merely the *ipsi dixit* of the claimant without any further proof. In view of the same, this Court is not inclined to adopt the multiplier method as was urged by the learned counsel for the appellant.

12. The Tribunal has fixed the notional monthly income at Rs.5,000/- per percentage. This fixation is low considering the fact that the accident has taken place in the year 2017. Therefore, considering the judgement of the Division bench of this Court in CMA No.3334 of 2021 dated 15.06.2022, this Court is inclined to fix Rs.7,000/- per percentage. This works out to a sum of $\text{Rs.7000} \times 30 = \text{Rs.2,10,000/-}$.

13. It is also seen from records that the appellant was taking treatment as an in patient for nearly 16 days from 09.06.2017 to 24.06.2017 at Government medical College and hospital at Villupuram. In view of the same, the compensation under the Head of Extra Nourishment can be enhanced to Rs.25,000/-. The compensation under the head of attender charges can be enhanced to Rs.15,000/-.



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14. Insofar as loss of income is concerned, the Tribunal has taken the notional monthly income of Rs.9,000/- and the Tribunal has come to a conclusion that the appellant would have been out of job for three months and accordingly, the total compensation was fixed at Rs.27,000/-. As already stated supra, the appellant had sustained fracture both bone right leg malunited and this Court also takes into consideration the evidence of PW1 in this regard. Considering the avocation of the appellant viz., Manson, the appellant would have been out of work for atleast six months in this case. That apart, considering the avocation and the fact that the accident had taken place in the year 2017, this Court is also inclined to fix the notional monthly income at Rs.10,000/- per month. In view of the same, the compensation under the head of loss of income shall work out to Rs.60,000 (Rs.10000/- x 6).

15. In the light of the above discussion, this Court modifies the compensation as follows :-

<i>Sl. No.</i>	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
1.	Disability [7000 x 30]	2,10,000/-
2.	Pain and sufferings	50,000/-



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Civil Miscellaneous Appeal No.729 of 2024

Sl. No.	<i>Compensation awarded under the head</i>	<i>Amount (in Rs.)</i>
3.	Extra nourishment	25,000/-
4.	Attendar Charges	15,000/-
5.	Transportation expenses	Rs.10,000/-
6.	Loss of Amenities	Rs.75,000/-
7.	Loss of income during the treatment period	Rs.60,000
	Total	Rs.4,45,000/-

10. The compensation awarded by the Tribunal at Rs. 3,32,000/- is enhanced to Rs.4,45,000/-. The second respondent insurance company is directed to deposit the enhanced compensation, 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.1,13,000/- is concerned, the appellants/claimants will not be entitled for interest for the period of delay of 215 days as was ordered by this Court in C.M.P.No.27109 of 2023, dated 08.03.2024. The other directions issued by the Tribunal with regard to the mode of payment of compensation remains unaltered.



Civil Miscellaneous Appeal No.729 of 2024

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In the result, the Civil Miscellaneous Appeal is allowed in the above terms. No costs.

22.04.2024

Speaking Judgment/Non-speaking Judgment

Index : Yes/No

Neutral citation: Yes/No

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To

Motor Accident Claims Tribunal, Thiruvannamalai (in the Court of Special Sub Court, Thiruvannamalai)



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Civil Miscellaneous Appeal No.729 of 2024

N.ANAND VENKATESH, J.

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Civil Miscellaneous Appeal No.729 of 2024

22.04.2024