



WEB COPY



CMA.No.449 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

THE HONOURABLE MRS.JUSTICE R. HEMALATHA

C.M.A.No.449 of 2023

N.Sivaprakasam

... Appellant

..Vs..

1.L.Seranjeevi

2.C.Bakkiyaraj

3.M/s.Iffco Tokio General Insurance Company Limited,

LMR Shopping Arcade,

Opp. MGM Theatre,

Namakkal - 637 001.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Award dated 06.01.2021 in M.C.O.P.674 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court Namakkal.



WEB COPY



CMA.No.449 of 2023

For Appellant : Mr.Ma.Pa.Thangavel
RR1 and 2 : No appearance
For R3 : Mr.S.Arunkumar

JUDGMENT

The appellant is the claimant in M.C.O.P.674 of 2017 on the file of the Motor Accident Claims Tribunal, Namakkal. He filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.20,00,000/- for the injuries sustained by him in a road accident that occurred on 19.08.2016.

2. The brief case of the appellant / claimant is as follows :

On 19.08.2016, Sivaprakasam, the claimant was riding his TVS Star City two wheeler bearing Registration Number TN-30-S-0309 on Namakkal - Senthamangalam main road. When he was nearing Muthukapatty Village, another two wheeler bearing Registration Number TN-28-AE-4977, hit the two wheeler driven by the claimant, as a result of which, Sivaprakasam fell down and sustained injuries all over his body. He was immediately rushed to Government Hospital, Namakkal. After



CMA.No.449 of 2023

getting first aid in the hospital, he got himself admitted in C.M. Hospital, Namakkal for further treatment.

2.1. According to the claimant, the rash and negligent driving of the rider of the two wheeler bearing Registration Number TN-28-AE-4977, was the cause of the accident and that since the said vehicle was insured with the third respondent, the Iffco Tokio General Insurance Company Limited, the owner of the vehicle and the insurer are jointly and severally liable to pay compensation to him.

3. In the Tribunal, the respondents 1 and 2 remained absent and were set *ex parte*. The third respondent resisted the claim petition on all the grounds available to the insurer under Section 170 of the Motor Vehicles Act.

4. The Tribunal, vide its orders dated 06.01.2021, fastened negligence on the part of the rider of the two wheeler bearing Registration Number TN-28-AE-4977 and since the owner of the two wheeler (first respondent) did not intimate the insurer about the factum of transfer of his



CMA.No.449 of 2023

vehicle to a third party, the Tribunal directed the third respondent, Iffco Tokio General Insurance Company Limited to pay compensation of Rs.14,30,800/- to the claimant 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 owner of the vehicle on 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 Section 173 of Motor Vehicles Act, 1988.

6. Heard Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellant and Mr.S.Arunkumar, learned counsel appearing for the third respondent Insurance Company.

7. Mr.Ma.Pa.Thangavel, learned counsel appearing for the appellant contended that though the Medical Board has assessed the partial permanent disability of the claimant as 80%, the Tribunal had reduced it to 50% without any basis. He therefore, prayed for



CMA.No.449 of 2023

enhancement of compensation.
WEB COPY

8. Per contra Mr.S.Arunkumar, learned counsel appearing for the third respondent contended that the Award passed by the Tribunal is based on the well laid principles of law which were in vogue at the time of passing of the order and therefore, the same need not be disturbed at this stage.

9. It is seen from the records that the claimant had sustained the following injuries :

- i. De-gloving of skin of index finger right hand
- ii. Abrasion of size 4 x 3 cm on posterior aspect of right elbow
- iii. Abrasion of size 6 x 2 cm over anterior aspect of right leg
- iv. Sutured wound of size 3 x 1 cm anterior aspect of middle 3rd right leg
- v. Sutured wound of size 15 cm present over dorsum of right foot
- vi. In the right leg swelling, tenderness, crepitus, deformity present abnormal mobility present
- vii. Dital pulse not present Active flexion and extension toes not present



WEB COPY

viii. In the right shoulder swelling tenderness, crepitus present. Range of movements painful and restricted.

10. A perusal of the medical records shows that the right leg of the claimant was amputated below knee level. The Medical Board attached to Government Hospital, Namakkal, assessed the partial permanent disability of the claimant as 80%. The appellant/claimant was working in a provision store and suffered disability to the extent of 80%. In the circumstances, the percentage of disability assessed by the Medical Board is accepted in *toto*. Since there is a functional disability multiplier method is warranted as per the decision in ***Rajkumar Vs. Ajay Kumar and another reported in 2011(1)SCC 343.***

10.1. According to the claimant, he was working in a provision store earning a sum of Rs.12,000/- per month. In the absence of satisfactory income proof, the Tribunal fixed the notional monthly income of the claimant as Rs.8,000/-. Considering the age of the claimant and the year of the accident, this Court is of the opinion that fixing notional monthly income of the claimant at Rs.10,000/- would meet the ends of



WEB COPY

justice. 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*, 10% is added towards future prospects of the claimant. The proper multiplier in the instant case is 11 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 shown under.

Calculation for loss of earning capacity

Notional income fixed - Rs.10,000/-

10% Future prospects - Rs.11,000/-

Proper multiplier - 11

Disability suffered by appellant - 80%

Loss of earning capacity - $11,000 \times 12 \times 11 \times 80/100$

= Rs.11,61,600/-

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



CMA.No.449 of 2023

WEB COPY

S.No	Heads	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)
1.	Loss of earning capacity	5,80,800/-	11,61,600/-
2.	Medical Expenses	8,00,000/-	8,00,000/-
3.	Pain and sufferings	25,000/-	50,000/-
4.	Transportation charges	10,000/-	10,000/-
5.	Extra nourishment	15,000/-	25,000/-
TOTAL		Rs.14,30,800/-	Rs.20,46,600/-

11. Thus, the compensation awarded by the Tribunal is enhanced to Rs.20,46,600/- that would carry interest at the rate of 7.5% per annum.

12. In the result,

- The Civil Miscellaneous Appeal is partly allowed. No costs.
- The compensation awarded by the Tribunal is enhanced to Rs.20,46,600/-.



CMA.No.449 of 2023

WEB COPY

- 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 third respondent, the Iffco Tokio General Insurance Company Limited, Namakkal, is directed to deposit the enhanced compensation amount of Rs.20,46,600/- (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 to the credit of M.C.O.P.674 of 2017 on the file of the Motor Accident Claims Tribunal, Additional District Court Namakkal, within a period of four weeks from the date of receipt of a copy of this order/uploading of this order, in the first instance and then recover the same from the first respondent on 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.



CMA.No.449 of 2023

WEB COPY

vi. The appellant / claimant is not entitled to claim interest for the period of delay of 197 days in filing this appeal.

15.10.2024

Index : Yes/No

Internet : Yes/No

mtl

To

1. The Motor Accident Claims Tribunal,
Additional District Court Namakkal,

2.M/s.Iffco Tokio General Insurance Company Limited,
LMR Shopping Arcade,
Opp. MGM Theatre,
Namakkal - 637 001.

3. The Section Officer, VR Section, High Court, Madras.



WEB COPY



CMA.No.449 of 2023

R. HEMALATHA, J.

mtl

C.M.A.No.449 of 2023

15.10.2024