



C.M.A.No.2228 of 2019

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2228 of 2019

D.Shankar @ Pradeep Shanker

...Appellant

Vs.

1.S.T.Rayappan

2.United India Insurance Co. Ltd.,

No.38, Anna Salai,

Chennai – 2.

Now Office at

United India Insurance Company Ltd.,

134, Greams Road,

Chenna – 6.

...Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree passed by the Motor Accidents Claims Tribunal/VI Small Causes Court, Chennai in



C.M.A.No.2228 of 2019

M.C.O.P.No.2729 of 2003 dated 21.07.2016 awarding RS.5,06,500/- in so far as awarding lesser compensation is concerned.

For Appellant : Mr.S.Suriya Prakash
For Respondents : R1 – No appearance
Mr.A.Dhiraviyanathan for R2

J U D G M E N T

This appeal is filed by the appellant challenging the award and decree passed by the Motor Accidents Claims Tribunal/VI Small Causes Court, Chennai in M.C.O.P.No.2729 of 2003 dated 21.07.2016

2.For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3.The petitioner is the claimant, the first respondent is the owner of the vehicle and the second respondent is the Insurance Company before the Tribunal.



C.M.A.No.2228 of 2019

WEB COPY

4.The brief facts of the case are as follows:

On 02.01.2003 at about 5.30 p.m. when the petitioner was riding his bicycle at the junction of T.V.K. Link Road and Manali Salai, near left side platform from East to West direction, the first respondent's lorry bearing Registration No.TCK-3537 which was driven in a rash and negligent manner in the same direction took a sudden turn and hit on the bicycle. As a result, the petitioner sustained grievous injuries. A case was registered against the lorry driver of the first respondent in Crime No.5/P3/2003 by G3 Kilpauk Police. The petitioner filed a claim petition before the Tribunal in M.C.O.P.No.2729 of 2003, and the Tribunal awarded a sum of Rs.5,60,500/- as compensation.

5.Learned counsel appearing for the appellant submitted that during the pendency of the appeal, this Court directed the appellant to appear before the Medical Board at Rajiv Gandhi Government General Hospital, Chennai. The Medical Board has assessed the disability of the appellant and opined that the appellant sustained 68% disability. He further submitted that the compensation awarded by the Tribunal is very meager and prayed this Court to enhance the compensation.



C.M.A.No.2228 of 2019

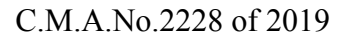
WEB COPY

6.Learned counsel appearing for the second respondent submitted that the accident occurred only due to the negligence of the appellant and the compensation awarded by the Tribunal is very excessive. Hence, he prayed for dismissal of the appeal.

7.Heard learned counsel appearing for the appellant as well as the learned counsel appearing for the second respondent and perused the materials available on record.

8.The accident and the manner in which the accident happened are not disputed. This appeal has been filed questioning the quantum of compensation as well as negligence.

9.Before the Tribunal, the petitioner was examined as PW1, Dr.M.Saravana Bavanantham who treated the petitioner was examined as PW2 and on the side of the petitioner, 16 documents were marked as Exs.P1 to P16. On the side of the respondents, no witness was examined and no document was marked.



11. The Tribunal after elaborately discussing the factual aspects awarded a sum of Rs.80,000/- for pain & suffering, Rs.40,000/- for transport & extra nourishment, Rs.24,000/- for loss of income, Rs.2,00,000/- for loss of amenities (loss of marriage prospect & discomfort), Rs.1,50,000/- for loss of earning capacity, Rs.30,000/- for attender charges, Rs.36,125/- for medical expenditure and arrived at a total compensation of Rs.5,60,500/- with interest at the rate of 7.5% p.a. from the date of petition till the date of realization.

5/11



C.M.A.No.2228 of 2019

WEB COPY

insurer would have placed materials in the form of eye witnesses to establish the negligence on the part of the appellant. In the absence of any material, the only conclusion that could be arrived at is that the driver of the lorry was negligent and, therefore, the insurer is liable to compensate the claimant/appellant for the injuries suffered.

13.Coming to the issue of compensation awarded under various heads, even at a cursory glance, it could safely be concluded that the amount of Rs.30,000/- and Rs.36,125/- awarded under the head attender charges and medical expenditure is just and reasonable and no modification is required of the same. However, insofar as the compensation of Rs.80,000/-, Rs.40,000/- awarded under the head pain and suffering, transport and extra nourishment are on the higher side and the same is reduced to Rs.50,000/- under the head pain & suffering, Rs.10,000/- towards transportation and Rs.20,000/- towards extra nourishment.



C.M.A.No.2228 of 2019

WEB COPY

14.Insofar as the compensation of Rs.2,00,000/- awarded under the head loss of amenities is concerned, considering the fact that the appellant had sustained 68% disability, loss of income has to be awarded by adopting multiplier method along with considering the future prospects and no amount under loss of amenities should have been awarded. Therefore, this Court sets aside the compensation of Rs.2,00,000/- awarded under the head loss of amenities and instead is inclined to award compensation under the head loss of income and future prospects.

15.The appellant was aged 21 years at the time of accident, which had happened in the year 2003. The appellant has suffered 68% disability, as spoken to by PW2 and the said disability, being functional in nature, the functional disability is fixed at 100%. In the absence of any material showing the avocation of the appellant, this Court, following the decision in Syed Sadiq case is inclined to fix the notional income of the appellant at Rs.4,000/- and adding 40% towards future prospects and adopting the multiplier of 18, is inclined to fix the



C.M.A.No.2228 of 2019

compensation under loss of income at Rs.1,09,600/- (Rs.4,000 +
Rs.1,600 x 12 x 18 = Rs.12,09,600/-)

16. Accordingly, the compensation awarded by the Tribunal is
modified and enhanced as follows:

S.No.	Description	Amount awarded by Tribunal (in Rs.)	Amount awarded by this Court (in Rs.)
1.	Pain & suffering	80,000/-	50,000/-
2.	Transport	40,000/-	10,000/-
3.	Loss of income – 1 year (4,000 x 18 x 12)	24,000/-	12,09,600/-
4.	Loss of amenities (Loss of marriage prospect & discomfort)	2,00,000/-	-
5.	Attender charges for 6 months (6 x Rs.5,000)	30,000/-	30,000/-
6.	Medical expenditure	36,125/-	36,125/-
7.	Extra nourishment	-	20,000/-
	Total	Rs.5,60,125/-	Rs.13,55,725/-
	Rounded off to	Rs.5,60,500/-	



C.M.A.No.2228 of 2019

WEB COPY

17.The judgment and decree passed by the Motor Accident Claims Tribunal/VI Court of Small Causes, Chennai in M.C.O.P.No.2729 of 2003 dated 21.07.2016, is enhanced to Rs.13,55,725 along with interest @ 7.5% per annum from the date of claim petition till the date of deposit. The second respondent Insurance Company is directed to deposit the enhanced award amount to the credit of M.C.O.P.No.2729 of 2003 within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount along with accrued interest and proportionate costs, to the bank account of the appellant through RTGS within a period of two weeks thereafter. The appellant/claimant shall not be entitled to any interest for the period of delay, if any, in filing the appeal.

18.The Civil Miscellaneous Appeal is partly allowed. No costs.
Consequently, connected miscellaneous petition is closed.

10.12.2024

Index: Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

pam



WEB COPY



C.M.A.No.2228 of 2019

To

- 1.The Motor Accidents Claims Tribunal,
VI Small Causes Court, Chennai.
- 2.The Section Officer,
VR Section,
High Court of Madras, Chennai – 600 104.



WEB COPY



C.M.A.No.2228 of 2019

M.DHANDAPANI, J.

pam

C.M.A.No.2228 of 2019

10.12.2024