



C.M.A(MD)No.747 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : **04.07.2024**

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

**C.M.A(MD)No.747 of 2024
and
C.M.P(MD)No.8269 of 2024**

The Manager,
Kotak General Insurance Company Ltd.,
A.Wing Samson Towers 6th Floor,
No.402, Panthiyan Road,
Chennai – 600 008.

... Appellant/Respondent No.2

Vs.

1.Ajeth Kumar ... 1st Respondent/Petitioner
2.Sankarapandian Ganapathy ... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment, dated 15.02.2023 passed in M.C.O.P.No.16 of 2020 on the file of the Motor Accident Claims Tribunal/Subordinate Judge, Mudukulathur by allowing this appeal.

For Appellant : Mr.V.Sakthivel
For R1 : Mr.D.Senthil



C.M.A(MD)No.747 of 2024

JUDGMENT

(Judgment of the Court was delivered by P.VADAMALAI, J.)

This Civil Miscellaneous Appeal is preferred against the award, dated 15.02.2023 passed in M.C.O.P.No.16 of 2020 by the Motor Accidents Claims Tribunal/Subordinate Judge, Mudukulathur.

2. The appellant herein is the 2nd respondent in M.C.O.P.No.16 of 2020.

3. The 1st respondent herein is the petitioner/claimant, who filed the claim petition in M.C.O.P.No.16 of 2020.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 16 of 2020 are adopted hereunder.

5. The brief facts of the case:

On 04.08.2020 at about 04.15 p.m. the petitioner was riding as a pillion rider in a two wheeler bearing registration number TN 65 AX 7105,



C.M.A(MD)No.747 of 2024

WEB COPY

which was ridden by the rider Parisath Raja @ Parisath Raja Balu from Alanganoor to Thiruvarangam, while they were going near South Palangulam from south to north, the 1st respondent's car bearing registration number TN 85 E 6105 came from opposite direction driven by its driver in a rash and negligent manner and dashed against the two wheeler. Due to impact, both the rider and pillion rider sustained injuries all over the body. The petitioner sustained fracture at his right thigh to foot, fracture at his left hand and also sustained grievous injuries at the head and all over the body. The petitioner took treatment at Paramakudi Government Hospital, then at Government Rajaji Hospital, Madurai and Preethi Hospital, Madurai. The petitioner is a B.Sc graduate and was working as a Supervisor in Udaya Market, Paramakudi and was earning Rs.15,000/- at the time of accident. Because of accident, he could not do his avocation as earlier. F.I.R. was registered against the 1st respondent's car in Crime No.191 of 2020 under Sections 279, 337 of IPC @ 279, 337 and 338 of IPC by Keelathooval police station. Hence, the petitioner filed the claim petition seeking compensation of Rs.40,00,000/-.



C.M.A(MD)No.747 of 2024

6. The 1st respondent stated that his car was insured with the 2nd respondent at the time of accident.

7. The 2nd respondent objected the claim petition by contending that the 1st respondent's driver was driving the car at moderate speed by observing traffic rules. Whiles, the petitioner's rider was riding the two wheeler in a rash and negligent manner with high speed and invited the accident. So, the 1st respondent's car is not responsible for the accident. Hence, the 2nd respondent is not liable to pay any compensation.

8. The rider filed a claim petition in M.C.O.P.No.15 of 2020 and the pillion rider/claimant/1st respondent herein filed M.C.O.P.16 of 2020. Both the petitions were tried jointly by the Tribunal.

9. Before the Tribunal petitioners/claimants side adduced oral and documentary evidence. On the petitioner's side, three witnesses were examined and Ex.P.1 to Ex.P.27 were marked. On the respondent's side, no witness was examined and no exhibit was marked. On the witness side,



C.M.A(MD)No.747 of 2024

Ex.X.1 to Ex.X.6 were marked. Two Court documents were also marked as Ex.C1 and Ex.C2.

10. After hearing both and after considering the evidences, the Tribunal has held that the accident took place on the negligence of the driver of the 1st respondent's car. The Tribunal has considered the medical treatment taken by the petitioner and arrived compensation by applying multiplier method and awarded a total award of Rs.26,20,670/- on various heads. Aggrieved by the said award, the 2nd respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.

11. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

12. The learned counsel appearing for the appellant/2nd respondent/Insurance Company has mainly argued that the disability of the petitioner is assessed at 60%. There are no medical records or evidence to show that due to disability the petitioner lost earning capacity. The



C.M.A(MD)No.747 of 2024

WEB COPY

petitioner's age is 24 and so there is chance of reduction of disability in future. The disability certificate is shown as 60%, but there is no mentioning whether it is permanent or partial permanent disability. The petitioner has not adduced any medical evidence to show that the disability is permanent disability. The Tribunal ought to have awarded Rs.5,000/- per percentage of disability instead of multiplier method. The petitioner has not produced any material to show that he is having permanent income. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

13. Per contra, the learned counsel for the respondent/petitioner/claimant has contended that the petitioner was aged 22 at the time of accident and he is a graduate and was working as a Supervisor in a supermarket. The petitioner was earning Rs.15,000/- p.m. The petitioner sustained fractures at his leg and hand, the petitioner lost his earning capacity as earned earlier. The Tribunal has made elaborate discussion over the evidences adduced by parties. After considering all aspects, the Tribunal has awarded the just compensation. Therefore, the



C.M.A(MD)No.747 of 2024

compensation awarded by the Tribunal need not be interfered. Hence, the Civil Miscellaneous Appeal may be dismissed.

14. On hearing both and on perusal of records, there is no dispute that the accident took place upon the negligence of the driver of the 1st respondent's car TN 85 E 6105. There is no dispute upon the monthly income fixed by the Tribunal. In the absence of concrete evidence, the Tribunal fixed notional income at Rs.9,000/- and also awarded 40% future prospects. Admittedly, the petitioner is a graduate and he was working as a supervisor in a supermarket. The Hon'ble Supreme Court has fixed the notional income at Rs.6,500/- p.m. in **Sarla Varma** case even in the year 2007 - 2008. The Division Bench of this Court has also observed in a reported case **2019 (1) TN MAC 54 (DB)** that while fixing the notional income, the cost of inflation index for the upcoming years has to be taken into account. So, this Court fixes the notional income of the petitioner, who is aged 22 years and being a graduate, at Rs.10,000/-. By adding 40% future prospects as per **Pranay Sethi's** case, the income of the petitioner is fixed at Rs.14,000/- p.m. There is nothing wrong in taking multiplier '18'.



C.M.A(MD)No.747 of 2024

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Perfect compensation is hardly possible. Moreover, the Hon'ble Supreme Court pointed out in various accidental claim cases that '**money cannot renew a physical frame that has been battered.**' and appreciated the fixation of compensation applying multiplier on notional income.

15. The only dispute raised by the appellant/2nd respondent/Insurance Company is that the Tribunal awarded multiplier method and also taking of 60% disability. On perusal of medical records, Ex.X.2 shows 60% disability. The petitioner has not adduced any medical evidence to show that the said 60% disability is permanent or partially permanent. Ex.P.24 shows that there is a permanent pit in his leg and also the petitioner sustained injuries all over the body. However, there is no concrete medical evidence that because of injuries sustained by the petitioner, he lost earning capacity. Considering the available medical records and also considering the age of the petitioner as 22 years, this Court is of the opinion that the disability is reduced to 45% from 60%. Thus, this Court modifies the loss of income as $\text{Rs.14,000/-} \times 12 \times 18 \times 45/100 = \text{Rs.13,60,800/-}$.



C.M.A(MD)No.747 of 2024

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16. The petitioner underwent surgery and took treatment at three hospitals. Therefore, this Court awards a sum of Rs.25,000/- towards attendant and nourishment. For loss of income Rs.40,000/- is awarded. The petitioner produced medical bills to the tune of Rs.7,79,210/-. The appellant/Insurance Company has not objected any of the bills consisted in Ex.P.19 medical bills. So, this Court accepts the Ex.P.19 medical bills and the same amount is awarded.

17. Therefore, this Court modifies the compensation awarded by the Tribunal and refixes the compensation as follows:

Sl. No.	Description	Amount awarded by this Court
1.	Towards Loss of Income upon permanent disability 45% Rs.14,000/- x 12 x 18 x 45/100	Rs.13,60,800/-
2.	Towards Medical Bills Ex.P.19	Rs. 7,79,210/-
3.	Towards Nourishment and Attendant Charge	Rs. 25,000/-
4.	Towards Loss of Income during treatment	Rs. 40,000/-
	Total	Rs. 22,05,010/-



C.M.A(MD)No.747 of 2024

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In the above facts and circumstances, the award passed by the Tribunal is modified and thus this Civil Miscellaneous Appeal is partly succeeds.

18. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed. No costs.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.26,20,670/- to Rs.22,05,010/- (Rupees Twenty two lakhs five thousand and ten only).

(iii) The petitioner/ first respondent herein is entitled to receive a sum of Rs.22,05,010/- with proportionate interests and costs.

(iii)The Appellant/Insurance Company is directed to deposit the entire compensation amount of Rs.22,05,010/-, if already not deposited, 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.No.16 of 2020 on the file of the Motor Accidents Claims Tribunal/Subordinate Judge, Mudukulathur, within a period of four weeks from the date of receipt of a copy of this order. The excess amount, if any, already deposited by the Appellant /Insurance Company, shall be refunded



C.M.A(MD)No.747 of 2024

to the appellant.

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(iv) On such deposit being made by the appellant/Insurance Company, the petitioner/1st respondent herein is permitted to withdraw the entire amount with interest and cost by filing appropriate application before the Tribunal, less the amount already withdrawn if any. Consequently connected Miscellaneous Petition is closed.

(N.S.S.,J.)

(P.V.M.,J.)

04.07.2024

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

VSD

To

- 1.The Motor Accident Claims Tribunal/
Subordinate Judge,
Mudukulathur
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.747 of 2024

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