



C.M.A(MD)No.257 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.03.2024

CORAM:

**THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HON'BLE MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.257 of 2022

A.Prabakar

... Appellant/Petitioner

vs.

1. K.Rajendran

**2. M/s.New India Assurance Company Limited,
Divisional Office,
No.3, Main Road,
Dindigul-624 001.**

... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the decree and judgment of the Motor Accidents Claims Tribunal cum Special Subordinate Judge, Dindigul, dated 29.10.2020 in MCOP.No.407/2018.

**For Appellant : Mr.R.Thangasamy
For R1 & R2 : No appearance**



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C.M.A(MD)No.257 of 2022

JUDGMENT

[Judgment of the Court was made by
MRS.V.BHAVANI SUBBAROYAN.J.]

Being aggrieved over the award passed by the Motor Accidents Claims Tribunal cum Special Subordinate Judge, Dindigul, in MCOP.No.407/2018, dated 29.10.2020, the claimant has filed this appeal seeking enhancement of compensation.

2. Facts of the Case:-

(i) According to the appellant/claimant, on 09.03.2018 about 04.30 a.m., while he was proceeding from Coimbatore to Cumbum in his two wheeler bearing registration No.TN 37 CT 3354, a Auto bearing registration No.TN 57 P 9002 insured with the 2nd respondent insurance company, came in the opposite direction in a rash and negligent manner and dashed against the appellant, in which, the appellant sustained multiple grievous injuries in his right knee, right hip and right hand. For the injuries sustained, he filed a claim petition claiming compensation of Rs.39,50,000/-



C.M.A(MD)No.257 of 2022

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(ii) The 2nd respondent filed the counter statement and denied all the averments made in the claim petition and contended that the accident did not occur due to the rash and negligent driving of the driver of the Auto. The appellant himself is the cause for the accident and prayed for dismissal of the claim petition.

3. Before the Tribunal, the appellant examined himself as P.W.1 and examined three other witnesses as PW2 to PW4 and 13 documents were marked as Ex.P1 to P13. No oral or documentary evidence was let in on the side of the 2nd respondent.

4. Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence and arguments of the counsel for the appellant and respondents, held that the accident occurred only due to the rash and negligent driving by the driver of the Auto and directed the 2nd respondent to pay a sum of Rs.3,56,019/- as compensation and the details as follows:



C.M.A(MD)No.257 of 2022

<i>S. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Pain and suffering	40,000/-
2	Medical Expenses	73,019/-
3	For Disability	1,71,000/-
4	For attendant charges	3,000/-
5	For loss of personal belongings and clothings	3,000/-
6	Transport Charges	3,000/-
7	For loss of income due to the accident for 4 months	48,000/-
8	Extra Nourishment	15,000/-
Total		3,56,019/-

Aggrieved over the same, the appellant filed this appeal seeking enhancement on the quantum of compensation awarded by the Tribunal.

5.Submission of the learned counsel for the appellant:

The learned counsel for the appellant submitted that the appellant sustained the following injuries.

1. RTA – Multiple injuries, Compound Grade-I Fracture.
2. Comminuted fracture Posterior column wall and medical wall and the roof of right acetabulum with posterior subluxation of the right hip joint.
3. Small chip fracture of Femoral Head right.



C.M.A(MD)No.257 of 2022

4. TCL avulsion fracture of the Tibial spine clup fracture of the lateral femoral condyle.

5. Avulsion fracture of the medial aspect of the Patella.

6. Though the appellant sustained those grievous injuries, the Tribunal observing that no evidence was produced to show that the appellant has sustained any functional disability and that disability is not due to any amputation of organs, awarded Rs.3,000- for each percentage of disability which is erroneous. He further submitted that at the time of accident, the appellant was aged 27 years and a B.E Mechanical Engineering Graduate and was working as a Quality Engineer but due to the hip fracture which resulted in dislocation of right hip, the appellant is unable to do his avocation and lost his earning capacity. Therefore, the learned counsel submitted that multiplier method ought to have been adopted by the Tribunal for computing disability compensation. Further, the award under the heads, pain and suffering, attendant charges, damage to clothes, transportation and extra nourishment are extremely inadequate and requires enhancement.



C.M.A(MD)No.257 of 2022

7. We have heard the learned counsel appearing for the appellant and also perused all the materials available on record. Despite service of notice and their names being printed in the cause list, the respondents have not chosen to appear either by themselves or through counsels. Therefore, this Court is inclined to pass orders on merits.

8. Discussion on quantum

(i) Admittedly, the appellant was a B.E Mechanical Engineering Graduate and at the time of accident, he was aged 27 years and working as a Quality Engineer at M/s.Mak Controls and Sytem Pvt. Ltd., Coimbatore, and earned Rs.23,800/- per month. According to the appellant, due to comminuted fracture of right hip, hip bones are dislocated and on 13.03.2018, he underwent the first surgery on right hip with internal fixation of fracture acetabulum and second surgery on right knee on 09.04.2018. Due to the hip fracture, his earning capacity is completely lost, but without considering the said aspect and also Ex.P6-medical certificate and Ex.P7-disability certificate, the Tribunal has awarded Rs.3,000/- for 57% disability.



C.M.A(MD)No.257 of 2022

(ii) Ex.P7-disability certificate shows that the appellant has sustained locomotor disability which means disability of the bones, joints or muscles leading to substantial restriction of the movement of the limbs or any form of cerebral palsy. Thus, it is evident that the appellant has completely lost his earning capacity. Being a Mechanical Engineer, locomotor disability will highly affect his avocation and therefore, we are of the view that multiplier method should be adopted for computing the disability compensation. The age of the appellant was 27 years at the time of accident. As per the judgment in **Sarla Verma v. Delhi Transport Corporation, reported in 2009 (2) TN MAC 1 (SC)**, the appropriate multiplier is 17. Though the appellant marked Ex.P11-pay slip and Ex.P12-salary certificate to substantiate his monthly income at Rs.23,800/-, in the absence of examination of its authors, the Tribunal relying upon the judgment in **Nithya and others vs. The Tamil Nadu Coop Milk Producers Federation Ltd., Chennai and others** reported in **CDJ 2018 MHC 1565**, fixed the monthly income of the deceased at Rs. 12,000/-. We also confirm the said fixation of monthly income. Applying multiplier method, the disability compensation is computed as follows:-

$$\text{Rs.12,000} \times 12 \times 17 \times 57/100 = \text{Rs.13,95,360/-}$$



C.M.A(MD)No.257 of 2022

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Thus, the award of Rs.1,71,000/- for 57% disability is enhanced to Rs.13,95,360/-.

(iii)The appellant has undergone two surgeries for fracure of right hip and knee and due to the nature of injuries, he would have experienced severe pain and sufferings and therefore, the award of Rs.40,000/- towards pain and suffering by the Tribunal is enhanced to Rs.1,50,000/-. The appellant was hospitalised twice for the two surgeries from 09.03.2018 to 18.03.2018 and from 08.04.2018 to 13.04.2018. Due to the hip fracure, certainly, the appellant would have required the assistance of somebody, but the Tribunal has awarded a meagre sum of Rs.3,000/- towards attendant charges and therefore, it is enhanced to Rs.20,000/-. Considering the period of treatment and nature of injuries, the award of Rs.3,000/- towards transportation is enhanced to Rs.5,000/-. The award under other heads being reasonable, same are confirmed.



C.M.A(MD)No.257 of 2022

WEB COPY **9. Conclusion**

In the light of the above said discussion, appellant/claimant would be entitled to claim the following amounts as compensation under the various heads enumerated hereunder:

<i>S. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Pain and suffering	1,50,000/-
2	Medical Expenses	73,019/-
3	For Disability	13,95,360/-
4	For attendant charges	20,000/-
5	For loss of personal belongings and clothing	3,000/-
6	Transport Charges	5,000/-
7	For loss of income due to the accident for 4 months	48,000/-
8	Extra Nourishment	15,000/-
Total		17,09,379/-

10. Accordingly, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the extent indicated above. The 2nd respondent is directed to deposit the award amount of Rs.17,09,379/- with 7.5% interest from the date of claim petition till the



C.M.A(MD)No.257 of 2022

date of realisation along with costs, and can deduct the amount if already deposited, within a period of six weeks from the date of receipt of a copy of this order. On such deposit, the appellant/claimant is permitted to withdraw the same along with interest and costs. No costs.

(V.B.S.J.) (K.K.R.K.J.)
22.03.2024

Index :Yes / No
Neutral Citation :Yes / No
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To

1. The Motor Accident Claims Tribunal,
cum Special Subordinate Judge,
Dindigul.

2.V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A(MD)No.257 of 2022

V.BHAVANI SUBBAROYAN, J.

and

K.K. RAMAKRISHNAN, J.

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