



C.M.A.(MD) No.315 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.09.2024

CORAM

**THE HON'BLE MR.JUSTICE SUNDER MOHAN**

**C.M.A.(MD) No.315 of 2020**

Sundarraaj  
S/o.Ponnaiyan

... Appellant

Vs.

1.Kalsan  
W/o.Albirat

2.Sathiyanesan (Died)  
S/o.Thangaraj

3.The United India Insurance Company Ltd.,  
Rep. by its Manager,  
Asisi Building, Nagercoil Village,  
Agastheeswaram Taluk,  
Kanyakumari District.

4.Edison  
S/o.Albirat

5.Radha  
W/o.Late.Sathiyanesan

6.S.Vigil  
S/o.Late.Sathiyanesan

... Respondents

[R5 & R6 were brought on record as Lrs. of the deceased R2, *vide* the court order dated 25.01.2023 made in C.M.P.(MD) Nos.155 to 157 of 2023]



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[R1 *ex parte* before the Tribunal]

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Prayer:- Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the award amount in M.C.O.P.No.14 of 2015 on the file of the Motor Accident Claims Tribunal (Special Court), Nagercoil, dated 17.10.2016.

For Appellant : Mr.C.Sankar Prakash

For R3 : Mr.N.Dilipkumar

For R4 to R6 : No appearance

### **J U D G M E N T**

The instant appeal has been filed by the injured claimant, seeking enhancement of compensation awarded by the Motor Accident Claims Tribunal (Special Court), Nagercoil, *vide* its Judgment and Decree dated 17.10.2016 passed in M.C.O.P.No.14 of 2015.

2. The manner of the accident is not in dispute. The Tribunal has awarded a compensation of Rs.16,08,000/- and directed the third respondent, Insurance Company, to pay the compensation and recover the same from the owner of the vehicle.



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3. The learned counsel for the appellant submitted that though the appellant had suffered grievous injuries and his leg was amputated, the award under the conventional heads, namely, pain and suffering, loss of amenities, and attendant charges, is meagre; and that though the appellant had proved the fact that he was a partner in a company, which was engaged in doing the contract work for the Public Works Department (PWD), the Tribunal has fixed the notional income of the deceased at Rs. 8,000/- per month, which is meagre, and therefore prayed for enhancement of the compensation.

4. The learned counsel for the third respondent, Insurance Company, per contra, submitted that in the absence of any proof of avocation and the income of the deceased, the Tribunal has adopted the notional income at Rs.8,000/- per month, which is reasonable, and the compensation under the other heads is also just and reasonable.

5. The only point for consideration in the instant appeal is whether the compensation awarded by the Tribunal is just and reasonable.



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6. The claimant had examined himself as P.W.1 and marked Ex.P37 to establish that the company in which he was a partner was engaged in doing contract work for the Public Works Department (PWD). The Tribunal had disbelieved the Salary Certificate (Ex.P38) filed by the appellant/injured claimant since there are no other documents to corroborate the income stated in the Salary Certificate (Ex.P38), which cannot be faulted. However, in the light of the said evidence, this Court is of the view that the notional income fixed by the Tribunal is meagre. Considering the avocation of the appellant, the year of the accident, and the evidence let in on the side of the appellant, this Court is of the view that it would be just and reasonable to fix the notional income of the complainant at Rs.13,000/- per month.

7. The Tribunal had adopted the multiplier method, considering the fact that the claimant had established that he suffered functional disability and assessed the functional disability of the appellant at 60%, based on the medical reports and the evidence of the Doctor (P.W.2). The records reveal that the claimant has established that he suffered the following injuries, for which surgeries were performed and for which he received treatment for a period of 53 days.



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- i. The right leg below the knee was amputated.
- ii. Fracture of the right tibia.
- iii. Fracture of the distal end of the radius.

The nature of the injuries and the avocation of the deceased suggest that the appellant had suffered functional disability. Thus, there is no infirmity in the said finding of the Tribunal. Further, there is no challenge to the finding of the Tribunal as regards the functional disability or the adoption of the multiplier method. Therefore, the compensation under the head 'loss of income' has to be Rs.10,29,600/- [Rs.13,000/- x 12 x 11 x 60/100].

8. As regards the conventional heads, considering the nature of injury sustained by the appellant, this Court is of the view that the compensation under the head 'pain and suffering' can be enhanced to Rs. 1,00,000/-, the compensation under the head 'loss of amenities' can be enhanced to Rs.50,000/- and the compensation under the head 'attendant charges' can also be enhanced to Rs.1,00,000/- as the claimant was taking treatment as an inpatient for more than 53 days. Thus, the award of compensation is modified as follows:



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| <i>Sl. No</i> | <i>Heads</i>                              | <i>Amount awarded by the Tribunal</i>                      | <i>Amount awarded by this Court</i>                        | <i>Award confirmed, enhanced or granted</i> |
|---------------|-------------------------------------------|------------------------------------------------------------|------------------------------------------------------------|---------------------------------------------|
| 1             | Loss of Income                            | Rs.6,36,600.00                                             | Rs.10,29,600.00                                            | Enhanced                                    |
| 2             | Pain and sufferings                       | Rs. 50,000.00                                              | Rs. 1,00,000.00                                            | Enhanced                                    |
| 3             | Medical Expenses                          | Rs.7,26,412.98                                             | Rs. 7,26,412.98                                            | Confirmed                                   |
| 4             | Transport Charges                         | Rs. 18,000.00                                              | Rs. 18,000.00                                              | Confirmed                                   |
| 5             | Extra Nourishment                         | Rs. 10,000.00                                              | Rs. 10,000.00                                              | Confirmed                                   |
| 6             | Attendant Charges                         | Rs. 25,000.00                                              | Rs. 1,00,000.00                                            | Enhanced                                    |
| 7             | Expenses for Artificial Leg               | Rs.1,17,184.00                                             | Rs. 1,17,184.00                                            | Confirmed                                   |
| 8             | Loss of Amenities                         | Rs. 25,000.00                                              | Rs. 50,000.00                                              | Enhanced                                    |
| 9             | Damages to clothing, watch, and cellphone | Rs. 2,500.00                                               | Rs. 2,500.00                                               | Confirmed                                   |
| <b>Total</b>  |                                           | Rs.16,10,696.98<br>rounded off to<br><b>Rs.16,08,000/-</b> | Rs.21,53,696.98<br>rounded off to<br><b>Rs.21,53,700/-</b> | Enhanced by<br><b>Rs.5,45,700/-</b>         |

9. The third respondent, Insurance Company, is directed to deposit the enhanced award amount of Rs.21,53,700/- together with interest at 7.5% per annum from the date of the claim petition till the date of realization and costs, after deducting the amount already deposited, if any, within a period of four (4) weeks from the date of receipt of a copy of this Judgment.



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10. On such deposit, the appellant is permitted to withdraw the same along with the interest and costs, less the amount already withdrawn, if any, by filing an application before the Tribunal.

11. The appellant is directed to pay the necessary court fee, if any, for the enhanced amount of compensation.

12. In the result, this Civil Miscellaneous Appeal is partly allowed.

No costs.

03.09.2024

Index: Yes/ No  
Neutral Citation: Yes / No  
Speaking Order/Non-Speaking Order

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Copy To:

- 1.The Special Judge,  
Motor Accident Claims Tribunal,  
Nagercoil,  
Kanyakumari District.
- 2.The Section Officer,  
V.R.Section,  
Madurai Bench of Madras high Court,  
Madurai.



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**SUNDER MOHAN, J.**

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