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CMA Nos.2814 & 2320 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 02 / 12 / 2024

JUDGMENT DELIVERED ON : 19 / 02 / 2025

CORAM:

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NOS.2814 & 2320 OF 2024
AND
CMP NO.22845 OF 2024 IN CMA NO.2814 OF 2024**

CMA.No.2814 of 2024

The United India Insurance Co. Ltd.,
No.132 D, Travellers Bungalow Opo,
Trichy Main Road, Thuraiyur,
Trichy District.

... Appellant /
Second Respondent

Vs.

1. Naveen

... First respondent /
Petitioner

2. Selvam

... Second Respondent /
First Respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated July 28, 2023 passed in M.C.O.P. No.272 of 2022 on the file of the Motor Accidents Claims Tribunal (Special Sub - Court No.II), Salem.



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CMA Nos.2814 & 2320 of 2024

For Appellant : Mr.N.Somasundar
For R1 : Mr.C.Paraneedharan
For R2 : No Appearance

CMA.No.2320 of 2024

Naveen ... Appellant /
Petitioner

Vs.

1. Selvam
2. The United India Insurance Co., Ltd.,
No.132D, Opp: Travelers Bungalow,
Trichy Main Road, Thuraiyur,
Trichy District. ... Respondents /
Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, seeking enhancement of the Compensation awarded vide Award dated July 28, 2023 made in M.C.O.P.No.272 of 2022 on the file of the Motor Accidents Claims Tribunal (Special Sub - Court No.II), Salem.

For Appellant : Mr.C.Paraneedharan
For R1 : No Appearance
For R2 : Mr.N.Somasundar



COMMON JUDGMENT

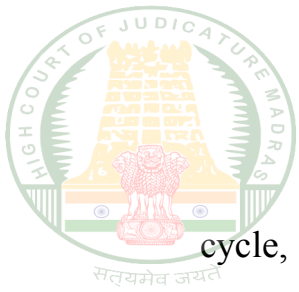
WEB COPY **R.SAKTHIVEL, J.**

Feeling aggrieved by the Award dated July 28, 2023 passed by the 'Motor Accident Claims Tribunal (Special Subordinate Court No – II), Salem' ['Tribunal' for short] in M.C.O.P. No.272 of 2022, the claimant therein has preferred CMA.No.2320 of 2024 seeking enhancement of compensation, while the second respondent therein / Insurance company has preferred CMA.No.2814 of 2024 questioning the liability imposed on it as well as the quantum of compensation awarded.

2. For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Accident Claim Original Petition.

PETITIONER'S CASE

3. The case of the petitioner is that on May 28, 2021 at about 10.30 pm, the petitioner was riding his motor cycle bearing Registration No.TN-48-AP-6827 at Thuraiyur road, near Devarapampatti APR Bakery, at that time, a foregoing autorickshaw bearing Registration No.TN-48-AR-6439, suddenly turned right without any signals, and dashed on the motor



cycle, due to which, the petitioner fell down and sustained head injuries.

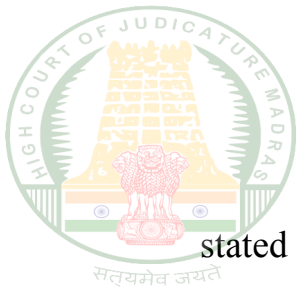
Then, he was rushed to Government Hospital, Thuraiyur for first aid, and then shifted to Trichy Neuro – One Hospital followed by various other hospitals for better treatment. At the time of accident, the petitioner was a 21 year old Diploma holder, earning a sum of Rs.25,000/- monthly. Due to the accident, the petitioner became completely disabled and he could not do his work / day to day chores as before. Hence the petitioner filed the original petition seeking compensation of Rs.1,00,00,000/ (Rupees One crore only) from the respondents.

FIRST RESPONDENT'S CASE

4. The first respondent filed a counter affidavit, wherein, he admitted the factum of accident but disputed the manner of accident. He stated that the accident occurred due to the disobedience of traffic rules and norms by the petitioner and hence, the first respondent is not responsible for the accident. Therefore, he is not liable to pay any compensation to the petitioner.

SECOND RESPONDENT'S CASE

5. The second respondent, who is the insurer of the first respondent's autorickshaw filed a counter affidavit, wherein, it has been



stated that the petitioner was riding his motor vehicle without any valid driving licence and without wearing helmet. While the first respondent drove his vehicle in an average speed observing traffic rules and norms, it is the petitioner who failed to maintain adequate distance with the foregoing first respondent's vehicle. Due to his speed, the petitioner was not able to control his motorcycle, and dashed on the rear side of the first respondent's vehicle. The petitioner being the tort-feasor, is not entitled to any compensation. The age, occupation and the monthly income as averred by the petitioner are denied. Accordingly, it prayed to dismiss the petition.

TRIBUNAL

6. In order to prove the statements made in the claim petition, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.18 were marked. On the side of the respondents, one Jeeva was examined as R.W.1 and Ex-R.1 was marked. Ex-C.1 – Disability Certificate along with X-Ray was also marked.

7. The Tribunal based on Ex-P.1 – First Information Report (FIR) and the evidence of P.W.1, came to the conclusion that the accident



happened due to the rash and negligent driving of driver of the first respondent's vehicle. With regard to quantum of compensation, the Tribunal took Rs.10,000/- as notional income, added 40% future prospects, applied multiplier of 18 and awarded compensation of Rs.30,24,000/- under the head of loss of earning power and further awarded compensation under various heads, as tabulated hereunder:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount</i>
1.	Loss of earning power	Rs.30,24,000/-
2.	Medical Expenses	Rs.5,11,201/-
3.	Transportation, Nutrition & Attender Charges	Rs.20,000/-
4.	Pain and Sufferings	Rs.1,00,000/-
5.	Loss of amenities and Enjoyment of life	Rs.1,00,000/-
6.	Damages to clothing and articles	Rs.1,000/-
Total		Rs.37,56,201/-

8. Feeling aggrieved by the quantum of compensation awarded, the petitioner has filed the appeal in CMA.No.2320 of 2024 praying for enhancement of compensation; the second respondent / insurance company has filed the appeal in CMA.No.2814 of 2024, assailing the liability and the quantum awarded by the Tribunal.



ARGUMENTS

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9. The learned counsel appearing for the petitioner would argue that the petitioner is a Diploma Holder in Electrical and Electronics Engineering. At the time of the accident, he was 21 years old and working as an apprentice in L.G.Balakrishnan and Brothers Limited, thereby receiving a stipend of Rs.12,500/-. The Tribunal failed to consider the age and qualification of the petitioner. Had the petitioner completed his apprenticeship, he would have earned not less than Rs.25,000/-. Further, due to the accident, the petitioner cannot move without anyone's help. The petitioner is suffering from complete paraplegia and loss of bladder control. Hence, he suffers 100% functional disability. The petitioner needs an attender throughout his life. The Tribunal failed to consider the said aspects and awarded a meagre sum of Rs.37,56,201/- as compensation. Accordingly, he prayed to enhance the award amount.

10. Per contra, the learned Counsel appearing for the second respondent / insurance company would argue that the petitioner is not residing within the jurisdiction of the Tribunal and hence, the Tribunal has no jurisdiction to entertain the petitioner's application. Further, the accident happened only due to the negligence of the petitioner. The driver



of first respondent's vehicle did not violate any traffic rules. On the other hand, the petitioner without any valid driving license and without wearing helmet, rode the motorcycle in a rash and negligent manner and caused the accident. The accident happened only due to the rash and negligent riding and carelessness of the petitioner. The petitioner was the tort-feasor and hence, the insurance company is not liable to pay any compensation. Accordingly, he would pray to allow the appeal in CMA.No.2814 of 2024.

DISCUSSION

11. This Court has considered the submissions of the counsels on both sides and perused the evidence available on record.

12. As regards Jurisdiction, the Tribunal framed a specific point for consideration viz., Point No.1 in this regard and by relying on Ex-P.15 – Aadhar Card of the petitioner, concluded that the petitioner is residing within the Jurisdiction of the Tribunal and hence, in view of Section 166 (2) of the Motor Vehicles Act, 1988, the Tribunal has jurisdiction to entertain the claim petition. This Court concurs with the view of the Tribunal. Accordingly, preliminary objections raised by the insurance company are rejected.



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13. As far as negligence is concerned, FIR has been registered against the first respondent and the police, after conclusion of the investigation, filed charge sheet against the first respondent. P.W.1 deposed that the accident occurred due to rash and negligent driving of the first respondent. Hence, after considering the evidence, the Tribunal concluded that the accident happened due to rash and negligent act of the first respondent. The evidence adduced on the side of the petitioner remains uncontroverted by the respondents. Further, at the time of the accident, the first respondent's vehicle was insured with the second respondent, and hence the second respondent is liable to pay the compensation to the petitioner. This Court finds no reason to interfere with the said findings of the Tribunal in this regard.

14. With regard to quantum of compensation, the petitioner was a Diploma holder in Electrical and Electronics Engineering, and M/s.L.G. Balakrishnan and Brothers limited had issued Order of Appointment for apprenticeship to the petitioner. The transfer certificate of the petitioner is marked as Ex-P.17 and his Appointment Order is marked as Ex-P.18. Ex-P.18 - Appointment Order would show that the petitioner was earning a sum of Rs.12,500/- as stipend as an apprentice.



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Obviously, after completing the apprenticeship, he would have earned more. Considering his age and qualifications, this Court is of the view that his job prospects would have improved after apprenticeship and he would have earned at least a sum of Rs.15,000/- per month after apprenticeship. Tribunal had taken a sum of Rs.10,000/- as monthly salary which appears to be on the lower side. Hence, the same is liable to be interfered with. Applying 40% increase for future prospects and the multiplier of 18 as per the Judgments of the Hon'ble Supreme Court in ***National Insurance Company Limited -vs- Pranay Sethi***, reported in (2017) 16 SCC 680 and ***Sarla Verma -vs- Delhi Transport Corporation***, reported in (2009) 6 SCC 121, this Court arrives at a sum of Rs.45,36,000/- as compensation under the head 'loss of earning power'.

15. From Ex-P.4 to Ex-P.7 – Medical Records it is clear that the petitioner sustained spine injuries causing traumatic paraplegia, and consequently the petitioner suffers from mobility issues and loss of control over his bladder. Considering the medical expenses and also health condition of the petitioner viz., traumatic paraplegia and loss of bladder control, this Court is of the view that the petitioner suffers 100% functional disability. Hence, the petitioner without an attender's help,



cannot survive. The Hon'ble Supreme Court of India in ***Divya -vs-***

National Insurance Co. Ltd, reported in **2023 (1) TN MAC 30 (SC)**, held

that attender charges have to be calculated by adopting multiplier method.

Considering attender charges at the fair and reasonable rate of Rs.4,500/-

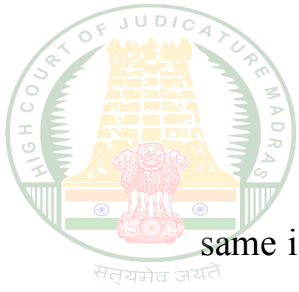
per month, it would come to Rs.9,72,000/- (Rs.4,500 x 12 x 18) when

appropriate multiplier of 18 is applied. The same is awarded under the

head of attender charges.

16. As far as pain and sufferings is concerned, in view of the grievous nature of the injuries sustained by the petitioner and his current health condition, the petitioner is entitled to Rs.2,00,000/-. For the discomforts and the hardships he face due to the grievous injuries sustained, he is entitled to Rs.2,00,000/- under the head of loss of amenities. Further, admittedly, the petitioner is unmarried. As his marriage prospects are severely hit due to the accident, this Court deems fit to award Rs.2,00,000/- under the head of loss of marriage prospects.

17. Relying on Ex-R.1 – Medical Bill Verification Memo, the Tribunal awarded a sum of Rs.5,11,201/- for medical expenses and the



same is justifiable. However, in view of the grievous injuries sustained by the petitioner and the continuing nature of medical attention required, the Tribunal ought to have awarded compensation for future medical expenses as well. This Court deems fit to award Rs.2,00,000/- for future medical expenses of the petitioner. That apart, the Tribunal was right in awarding Rs.1,000/- for damages to clothes and articles. The Tribunal awarded a sum of Rs.20,000/- under the head of 'transportation, nutrition and attender charges'. This Court is of the view that the said amount is on the lower side and the same has to be modified. Considering the facts and circumstances and the nature of injuries sustained and also considering the present status of the petitioner (Paraplegia), this Court is of the view that awarding a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) under the head of 'loss of amenities' would be justifiable.

18. Accordingly, the petitioner is entitled to get an enhanced compensation of Rs.69,20,201/- (Rupees Sixty Nine Lakhs Twenty Thousand Two Hundred and One only) from the second respondent / insurance company as details below:-



S.No.	Head	Amount Rs.
1.	Loss of earning power [15,000+6,000 (40%) = 21,000; 21,000 x 12 x 18 = Rs.45,36,000/-]	Rs.45,36,000/-
2.	Pain and Suffering	Rs.2,00,000/-
3.	Attender charges (4500x12x18)	Rs.9,72,000/-
4.	Medical expenses	Rs.5,11,201/-
5.	Future Medical Expenses	Rs.2,00,000/-
6.	Transportation	Rs.50,000/-
7.	Extra Nutrition	Rs.50,000/-
8.	Loss of amenities	Rs.2,00,000/-
9.	Loss of marriage prospects	Rs.2,00,000/-
10.	Damages to clothes and articles	Rs.1,000/-
Total		Rs.69,20,201/-

19. The second respondent / Insurance Company is directed to deposit the enhanced compensation of Rs.69,20,201/-, along with interest at the rate of 7.5% per annum on Rs.67,20,201/- from the date of petition till the date of deposit, less the amount if any already deposited, to the credit of M.C.O.P. No.272 of 2022 on the file of Motor Accident Claims Tribunal (Special Subordinate Court No.II), Salem, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. It is made clear that Rs.2,00,000/- awarded for future medical expenses will not carry any interest. The deficit court fee, if any, shall be paid by the petitioner within a period of four weeks from the date of receipt of a copy of this Judgment.



CMA Nos.2814 & 2320 of 2024

RESULT:

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20. Resultantly, CMA.No.2814 of 2024 filed by the second respondent / insurance company praying to set aside the Award is dismissed. CMA.No.2320 of 2024 filed by the petitioner seeking enhancement of compensation is partly allowed and the compensation awarded by the Tribunal viz., Rs.37,56,201/- is hereby enhanced to Rs.69,20,201/- (Rupees Sixty Nine Lakhs Twenty Thousand Two Hundred and One only) and a modified award is passed as detailed above. In view of the facts and circumstances of this case, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.]

[R.S.V., J.]

19 / 02 / 2025

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes
av /tk

To

The Motor Accidents Claims Tribunal,
Special Sub - Court No.II, Salem.



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CMA Nos. 2814 & 2320 of 2024



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CMA Nos.2814 & 2320 of 2024

J.NISHA BANU, J.
AND
R.SAKTHIVEL, J.

av/tk

PRE-DELIVERY COMMON JUDGMENT MADE IN
CMA NOS.2814 & 2320 OF 2024

19 / 02 / 2025