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CMA.No.673 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.673 of 2024 and
CMP No.29597 of 2024

Jeeva

... Appellant

Vs.

The Managing Director,
Metropolitan Transport Corporation Villupuram Ltd.,
Pallavan Salai, Chennai 600 002.

... Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988 against the order in MCOP No.4484 of 2019, dated 05.07.2023 on the file of the IV Judge, Motor Accident Claims Tribunal, Small Casuses Court, Chennai

For appellant : Ms.Ramya V. Rao

For Respondent : Mr.Anton Dhanasekaran



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JUDGMENT

Aggrieved by the quantum of compensation awarded by the Tribunal, the claimant has come before this court by filing the present appeal.

2. It is not in dispute that the appellant/claimant met with an accident on 24.05.2019, as a result of which, he suffered injury in his right hand. Both the counsel for the appellant and the respondent have not advanced any arguments on the question of negligence and liability and therefore, the facts necessary for fixing negligence and liability have not been considered in the present appeal.

3. Before Tribunal, in order to prove the nature of disability suffered by him, the appellant examined himself as PW1 and on his side, 9 documents were marked as Ex.P1 to P9. The driver of the respondent got examined as RW1. The disability certificate issued by the Medical Board was marked as Ex.C1. Based on the evidence available on record, the Tribunal concluded that the accident had occurred due to the rash and negligent driving of the driver of the



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respondent. The Tribunal awarded a sum of Rs.7,85,920/- as compensation for the injury suffered by the appellant/claimant. Not satisfied with the quantum of compensation, the appellant has come forward with the present appeal.

4. The learned counsel for the appellant/claimant would submit that due to the injury suffered by the appellant, his right hand got crippled and the mobility of his right hand got restricted. The Medical Board had assessed the disability suffered by the appellant and issued Ex.C1, fixing disability at 55% and the same was reduced by the Tribunal to 40%, without any basis. The learned counsel further submits that the appellant marked Ex.P6, certificate issued by his employer to prove his salary and his termination from the employment, due to the injury, however, the same has not been considered by the Tribunal.

5. A perusal of Ex.C1, disability certificate issued by the Medical Board along with Ex.P5-photographs, would indicate that the appellant's right hand got crippled due to the injury suffered by him.



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The Medical Board has given its opinion that the appellant suffered 55% disability and the same is permanent one. A perusal of Ex.C1 further indicate that the movement of the appellant's right hand got restricted, due to the injury. Ex.P6 certificate issued by the employer of the appellant would indicate that the appellant was employed as a Binder in a company called Lunar Graphics and due to the injury suffered by him, he was terminated from service. The certificate further indicates that the appellant was paid a sum of Rs.500/- per day as wages.

6. Having regard to the nature of avocation of the appellant (Binder), this court comes to the definite conclusion that the locomotor disability suffered by the appellant in his right hand will certainly interfere with his Binding work. The certificate issued by the employer of the appellant would suggest that the appellant was terminated from service due to the injury suffered by him. In such circumstances, the Tribunal ought not have reduced the percentage of the disability assessed by the Medical Board. The Medical Board is an expert, who assessed disability at 55%. Unless there are compelling reasons, the



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Tribunal is not entitled to reduce the percentage of the disability assessed by the Medical Board. In the case on hand, as mentioned supra, the disability suffered by the appellant directly interferes with the avocation of the appellant and hence, this court feels that the disability suffered by the appellant can be fixed at 55%, as assessed by the Medical Board. In fact, the Apex Court in **Prakash Chand Sharma Vs. Rambabu Saini and others reported in MANU/SC/0171/2025** held that if the disability percentage assessed by the Medical Board is not acceptable, the Tribunal cannot reduce the percentage and it can only seek reassessment by the competent expert. In the case on hand, the respondent failed to seek any reassessment of disability suffered by the appellant. In such circumstances, this court feels that the disability suffered by the appellant shall be fixed at 55%, as per Ex.C1.

7. Having regard to the date of accident, this court feels that even if there is no documentary evidence to prove the income of the victim, notional income should be fixed at Rs.15 000/- per month. In the case



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on hand, the certificate issued by the employer of the appellant, which was marked as Ex.P6 would indicate that he was paid a sum of Rs.500/- per day, as his wages. In such circumstances, we can fix the monthly income of the appellant/claimant at Rs.15,000/- .

8. As per the law laid down by the Honourable Supreme Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017)*, the appellant is entitled to 10% enhancement towards future prospects. Therefore, the monthly income of the appellant is fixed at Rs.16,500/- (15,000 +1500), which includes 10% future prospects. At the time of accident, the appellant was aged 51 years, Hence, loss of earning capacity for the appellant is calculated by applying proper multiplier '11', which comes to Rs.11,97,900/-. (16,500x12x11x 55/100).

9. As far as the other compensation awarded by the Tribunal under the other heads viz., Pain and suffering and mental agony, Transportation expenses, nutrition expenses, damages to clothes,



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attender charges, loss of amenities are concerned, the same are just and reasonable and hence they are confirmed.

10. Accordingly, the revised compensation awarded by this Court is tabulated as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	6,67,920	11,97,900	enhanced
2.	Medical expenses	nil	nil	confirmed
3.	Pain and sufferings and mental agony	40,000	40,000	confirmed
4.	Transportation	10,000	10,000	confirmed
5.	Nutrition	15,000	15,000	confirmed
6.	Damages to clothes	2,000	2,000	confirmed
7.	Attender charges	16,000	16,000	confirmed
8.	Loss of amenities	35,000	35,000	confirmed
	Total	7,85,920	13,15,900	enhanced by 5,29,980

11. With the above modifications, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.7,85,920/- is hereby enhanced to **Rs.13,15,900/-** together with interest at 7.5% per annum (excluding the default period,



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if any) from the date of petition till the date of deposit. Connected miscellaneous petition is closed.

12. The respondent is directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **eight weeks** from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn by making formal application before the Tribunal. No costs.

12.02.2025

Index:Yes

Internet:Yes

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To

1. The IV Judge, Motor Accident Claims Tribunal,
Court of Small Causes, Chennai.
2. The Managing Director,
Metropolitan Transport Corporation Villupuram Ltd.,
Pallavan Salai, Chennai 600 002.



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S.SOUNTHAR, J.

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