IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.M.A.No.2851 of 2021

P.Venkatachalam ... Appellant

vs.

1.L.Kurugeshkumar

2.IFFCO TOKIO General Insurance Company Ltd,
D.NO. 10/9, Pillayar Kovil Street, Thiruppur Town,
Tiruppur Taluk and District
Sub Office, D.NO. 138/2, 2nd Upstairs, LMR Shopping Argate,
MGM, Theater Opposite, Namakkal Town and District. ... Respondents

(*Appeal is dismissed as not pressed against R1 vide Court order dated 18.06.2024 made in C.M.A.No.2851/2021*)

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, praying to allow the present appeal and enhance the compensation award in judgment and decree dated 10.09.2020 in M.C.O.P.No.244 of 2017 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Namakkal as prayed for in this Civil Miscellaneous Appeal.

For Appellant	:	Ms.D.Jeevitha for M/s.R.Nalliyappan
For R2	:	Mr.B.Sivakollapan
For R1	:	Disd vide c/o dated 18.06.2024.

JUDGMENT

Aggrieved by the quantum of compensation fixed by the Motor Accident Claims Tribunal, Namakkal, the claimant has come by way of this Civil Miscellaneous Appeal.

2. It is the case of the appellant/claimant that on 06.12.2016, the appellant/claimant travelled in TVS Heavy Duty Two Wheeler bearing Registration No.TN 29 BB 6393 from Perumbalai to Metcheri Road near Thoppaiyar, at that time, a Maruthi Car bearing Registration No. TN 07 V 9832 belonging to the 1st respondent came from opposite direction in a rash and negligent manner and dashed against the petitioner's vehicle. The appellant/claimant suffered fracture and multiple injuries all over his body. The claimant/appellant was inpatient for 8 days. The petitioner is a Mason by profession. The injuries suffered by him affected his earning capacity. Therefore, the claimant/appellant laid motor accident claims petition seeking compensation of Rs.10,00,000/-.

3. The 1st respondent remained *exparte* before the Tribunal.

4. The 2nd respondent/Insurance Company filed counter affidavit denying all the averments found in the claim petition and disputed it's liability.

5. Before the Tribunal, the claimant/appellant was examined as PW.1 and Medical witness was examined as PW.2. The Insurance Company Official of the 2nd respondent was examined as RW.1.

6. Based on the evidence available on record, the Tribunal came to the conclusion that accident had taken place due to the rash and negligent driving of the 1st respondent's vehicle. The Tribunal also fixed contributory negligence on the claimant on the ground that he failed to wear helmet at the time of accident. The negligence on the part of the claimant was fixed at 15% and 85% of the negligence was fastened on the driver of the 1st respondent's vehicle.

7. The 2nd respondent has not filed any appeal questioning the negligence on the part of driver of the 1st respondent's vehicle. The learned counsel appearing for the appellant submits that the appellant/claimant has

not suffered any head injury and therefore, fixing of contributory negligence on the part of the appellant is not sustainable. The learned counsel further submits that accident had taken place in the year December-2016, therefore, the amount fixed on percentage basis shall be enhanced. The learned counsel also submits that having regard to the date of accident, the amount of Rs.9,000/- fixed by Tribunal as monthly income, shall also be enhanced and hence, amount under the head loss of income shall be enhanced. It is also submitted that no amount was granted by the Tribunal under the head of attendant charges and loss of earning, pain and suffering.

8. The learned counsel appearing for the 2nd respondent submits that under Section 129 of the Motor Vehicles Act, 1988, the driver of the motor vehicle is expected to wear helmet. Since the appellant/claimant was driving the vehicle without wearing helmet, the Tribunal was justified in fixing 15% of contributory negligence on the part of the claimant. The learned counsel further submits that the Tribunal awarded Rs.65,000/- under the head of pain and suffering and the same is on higher side having regard to the fact the appellant/claimant was inpatient only for 8 days.

9. A perusal of the typed-set of papers would suggest that the appellant/claimant suffered following injuries:-

(1) Left tibial plateau (Schatzker type VI) type I open fracture.

(2) Contaminated Lacerated wound with exposed cut muscle over left thigh.

(3) Contaminated Lacerated wound with skin avulsion flap over right thigh.

10. Therefore, it is clear that the claimant has not suffered any head injury. If the injury suffered by the petitioner is a head injury, the Tribunal is entitled to fix contributory negligence on the part of the victim on the ground that he failed to wear the helmet. In the case on hand, the claimant suffered injuries only in the limbs of the body. Therefore, the Tribunal is not justified in fixing contributory negligence at the rate of 15% on the claimant, the said finding is liable to be set aside.

11. The accident had taken place in December-2016. By following the judgment of the Division Bench of this Court in ***Future General India Insurance Company Limited vs. Manivannan and others*** (C.M.A.No.3334 of 2021, dated 15.06.2022, this Court is inclined to fix Rs.5,000/- as a

compensation for per percentage of disability. The petitioner suffered disability at 15%. Therefore, he is entitled to compensation of Rs.75,000/- under the head of permanent disability. The compensation awarded by the Tribunal is enhanced to Rs.75,000/- from Rs.45,000/-.

12. Having regard to the age of the appellant and year of accident, the notional income of the claimant was fixed by Tribunal at Rs.9,000/- which is very much on the lower side. Therefore, the same is liable to the enhanced. The Tribunal awarded a sum of Rs.27,000/- only as compensation under the head of loss of income, though it held claimant entitled to loss of income for four months at the rate of Rs.9,000/-. Having regard to date of accident, this Court feels claimant entitled to notional income of Rs.15,000/- and hence, amount under the head loss of income is enhanced to Rs.60,000/- (4 months X 15,000).

13. Though the learned counsel appearing for the appellant advanced argument on the ground that no amount was granted under the head of attendant charges/loss of amenities, the Tribunal granted a sum of Rs.65,000/- under the head of pain and suffering. The appellant/claimant

was inpatient only for 8 days period. Having regard to the length of the period, the amount awarded under the head of pain and suffering is on higher side. Taking into consideration the said fact, this Court has not chosen to award any amount separately under the head of attendant charges and loss of amenities.

14. The award granted by the Tribunal on all other heads are confirmed. Therefore, the claimant is entitled to enhanced compensation under various heads as follows:-

Sl. No.	Description	Compensation awarded by the Tribunal	Compensation awarded by this Court	Remarks
1.	Pain and Sufferings	Rs.65,000/-	Rs.65,000/-	Confirmed
2.	Permanent Disability	Rs.45,000/-	Rs.75,000/-	Enhanced
3.	Medical Expenses	Rs.1,91,654/-	Rs.1,91,654/-	Confirmed
4.	Loss of Income	Rs.27,000/-	Rs.60,000/-	Enhanced
5.	Transportation Charges	Rs.15,000/-	Rs.15,000/-	Confirmed
6.	Extra Nourishment	Rs.10,000/-	Rs.10,000/-	Confirmed
	Total	**Rs.3,53,654/-**	**Rs.4,16,654/-**	Enhanced
	Less: 15% Contributory Negligence fixed by Tribunal	**Rs.53048/-**	**-**	Set aside
	Total Compensation	**Rs.3,00,600/- (rounded off from Rs.3,00,605/-)**	**Rs.4,16,654/-**	

15. Therefore, the amount of compensation payable to the appellant/claimant is enhanced from Rs.3,00,600/- to Rs.4,16,654/-. The said enhanced sum shall be deposited by the 2nd respondent/Insurance Company along with interest of 7.5% from the date of claim petition to the date of realisation. The 2nd respondent/Insurance Company is directed to deposit the enhanced sum of Rs.4,16,654/- before the Tribunal, within a period of six weeks from the date of receipt of copy of this order. On such deposit, the appellant/claimant is entitled to withdraw the said amount by making formal application.

16. With the above direction, the Civil Miscellaneous Appeal is partly allowed. No costs.

03.02.2025

Index :Yes
Speaking order :Yes
Neutral Citation :Yes
dm

To

1.The Motor Accidents Claims Tribunal (Chief Judicial Magistrate),
Namakkal.

2.IFFCO TOKIO General Insurance Company Ltd,
D.NO. 10/9, Pillayar Kovil Street, Thiruppur Town,
Tiruppur Taluk and District
Sub Office, D.NO. 138/2, 2nd Upstairs, LMR Shopping Argate,
MGM, Theater Opposite, Namakkal Town and District.

3.The Section Officer,
VR Section,
High Court, Madras.

S.SOUNTHAR, J.

dm

C.M.A.No.2851 of 2021

03.02.2025