



CMA.No.480 of 2025

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :20.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.480 of 2025

Thayalan

... Appellant

Vs.

1. Rengarajan
2. Senthilkumar
3. The Branch Manager
The New India Assurance Co., Limited
D.No.43A/2, Juman Centre
Promenade Road, Cantonment, Trichy District
4. Selvi
5. The Branch Manager
The National Insurance Co., limited
New D.No.457/2, Rasipuram Main Road,
Sendamangalam Business Centre
New Lakshmi Theatre, Sendamangalam.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, to allow the above CMA and enhance the award in the order dated 25.09.2023 made in MCOP No.226 of 2019, on the file of the Motor Accident Claims Tribunal/Subordinate Judge Court, Paramathy.

For Appellants : Mr.T.S.Arthanareeswaran

For respondents : Mr.R.Rajesh for R3

Mr.J.Chandran for R5

R1, 2, & 4-notice dispensed with



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JUDGMENT

Not satisfied with the quantum of compensation granted by the Motor Accident Claims Tribunal, the injured claimant has come before this court by way of this appeal.

2. It is not in dispute that the appellant/ claimant suffered serious injuries in a road accident that had taken place on 29.03.2019. It is the case of the claimant that while he was driving his Bolero van belonging to 4th respondent in West to East direction, the lorry, driven by the 1st respondent, belonged to the 2nd respondent and insured with the 3rd respondent, came in the opposite direction from East to West and dashed against his vehicle. As a result of which, the claimant suffered fracture in the right femur and right hip. He also suffered injuries in the right ankle. Based on the medical disability certificate issued by the medical board, the Tribunal fixed permanent disability at 84% and awarded a sum of Rs. 33,05,028.38/- as compensation. Not satisfied with the quantum, the injured claimant has come before this court.

3. Both the learned counsel for the Appellant as well as learned counsel for the respondents 3 and 5 have not advanced any arguments on the questions of negligence as well as liability. Hence, the facts



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4. The learned counsel for the appellant submitted that, as per Exhibit C1, Disability Certificate and evidence of Doctor, CW1, it was established that the claimant suffered injury in both of his eyes and peripheral vision got affected. It is further stated by the learned counsel that as per the evidence of CW1, the claimant has got tunnel vision, therefore, he may not be in a position to continue his avocation as driver and wood cutter. Therefore, the learned counsel submitted that the disability should have been taken as 100%. He further submitted that the amount of Rs.15,000/- fixed by the Tribunal as notional income is very much on the lower side.

5. The learned counsel for the contesting 3rd respondent/ Insurance Company submitted that the claimant has not produced any evidence to prove the avocation or income. Therefore, the Tribunal was justified in fixing a notional income at Rs.15,000/- per month. He further submitted that the competent medical board assessed disability at 84% and hence, absolutely, there is no reason to enhance the disability percentage.



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6. The disability certificate issued to the claimant has been marked as Exhibit C1. One of the members of the medical board was examined as CW1. She clearly deposed about the loss of peripheral vision of the claimant to the extent of 10%. She also deposed that he is having tunnel vision. Though it was claimed by the claimant that he was employed as a driver, he failed to produce his driving license before the Tribunal. The official of RTO office was examined by the respondents and he clearly deposed that no driving license was issued to the claimant in their office. When the claimant is not able to prove that he possessed a valid driving license, the claim made by him as if he was employed as a driver cannot be accepted. It is the case of the respondents that the claimant was engaged as a woodcutter. In the absence of any acceptable evidence on the part of the claimant to prove his avocation, the Tribunal is justified in accepting 84% disability assessed by the medical board. If the claimant is able to produce some evidence to show that he was employed as a driver at the relevant point of time, certainly based on the nature of the injury suffered by him, this Court can take the 84% disability assessed by the medical board as



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100% disability. In the absence of any evidence regarding avocation, this court is constrained to take the disability percentage as assessed by the medical board at 84%.

7. The accident had occurred in the year 2019. The Tribunal fixed the notional income at Rs.15,000/- per month. Taking into consideration the date of accident and the cost of living, this court feels that it would be appropriate to fix Rs.16,000/- per month as notional income for the claimant. If the notional income is fixed at Rs.16,000/- per month, the claimant is entitled to Rs.28,22,400/- towards permanent disability.

$$\text{Rs. } 16,000 \times 1.25 \times 12 \times 14 \times 84 / 100 = \text{Rs. } 28,22,400/-$$

8. The amount of Rs.25,000/- awarded by the Tribunal under the head damage to clothes is set aside. The amount awarded by the Tribunal under various other heads are reasonable. Hence, they are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.33,05,028.38/- to Rs.34,56,428.38/-. The break-up is as follows :-

Sl. No	Description	Amount awarded	Amount awarded	Award confirmed
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		by Tribunal (Rs)	by this Court (Rs)	or enhanced or granted
1.	Pain and Suffering	40,000/-	40,000/-	Confirmed
2.	Attender Charges	30,000/-	30,000/-	Confirmed
3.	Extra Nourishments	40,000/-	40,000/-	Confirmed
4.	Transportation Expenses	30,000/-	30,000/-	Confirmed
5.	Permanent disability	26,46,000/-	28,22,400/ -	Enhanced
6.	Medical Expenses	4,64,028.38 /-	4,64,028.3 8/-/-	Confirmed
7.	Loss of Amenities	30,000/-	30,000/-	Confirmed
8.	Damage to clothes	25,000/-	Nil	Set aside
	Total	33,05,028.3 8/-	34,56,428. 38/-	Enhanced by Rs.1,51,400 ./-

14. With the above modifications, the Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.33,05,028.38/- is hereby enhanced to Rs.34,56,428.38/-. In view of the order passed in CMP.No.29318 of 2024, the appellant/claimant is not entitled to claim any interest for the delay period of 155 days. The appellant is entitled to interest at the rate of 7.5% per annum excluding the delay period (155days) from the date of filing of the claim petition



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till the date of realization. The 3rd respondent/Insurance Company is directed to deposit the enhanced sum along with interest and costs, less the amount already deposited, if any, within a period of four weeks from the date of receipt of copy of this judgment. On deposit of the enhanced sum, the appellant/claimant is entitled to withdraw the same along with interest and costs, less the amount if any, already withdrawn by filing a formal application before the Tribunal. No costs.

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Index:Yes/No
Internet:Yes/No
nr

To

1. Motor Accident Claims Tribunal,
Subordinate Judge, Paramathy.
2. The Section Officer,
VR Section,
High Court, Madras.



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S.SOUNTHAR, J.

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