



CMA.Nos.2341 and 2443 of 2021

,IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 03.04.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA.Nos.2341 and 2443 of 2021

CMA.No.2341 of 2021:

K.Susentharan

... Appellant

Vs.

1.K.Karthik

2.The National Insurance Company Limited,
Motor Third Party Cell,
No.751, Anna Salai,
Chennai – 600 002.

3.Sureshkumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the compensation awarded in judgment and decree dated 02.03.2021 made in MCOP.No.4456 of 2014, on the file of the Motor Accident Claims Tribunal/Special Subordinate Court No.2, for Motor Vehicle Claim Cases/Small Causes Court, Chennai.



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CMA.Nos.2341 and 2443 of 2021

For Appellant : Mr.N.Manoharan

For Respondents :Mr.D.Baskaran for R2
Dismissed as not pressed
for R1 and R3

CMA.No.2443 of 2021:

The National Insurance Company Limited,
Motor Third Party Cell,
No.751, Anna Salai,
Chennai – 600 002.

... Appellant

Vs.

1.K.Susentharan
2.K.Karthik
3.Sureshkumar

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 23.02.2021 made in MCOP.No.4456 of 2014 on the file of the Motor Accident Claims Tribunal (Special Subordinate Court No.2/Court of Small Causes), Chennai.

For Appellant : Mr.D.Baskaran

For Respondents :Mr.N.Manoharan
for R1
R2-died
R3-Not Ready Notice



CMA.Nos.2341 and 2443 of 2021

COMMON JUDGMENT

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For the sake of convenience, the parties are referred as per their ranks in the claim petition.

2. These two appeals are filed by the claimants as well as Insurance Company in respect of the same accident. Since issues involved in two appeals are connected with each other, both the appeals are taken together for hearing.

3. CMA.No.2341 of 2021 is filed by the claimant seeking enhancement of compensation.

4. CMA.No.2443 of 2021 is filed by the Insurance Company, challenging the quantum of compensation.

5. It is the case of the claimant that he suffered injury in a road accident that had taken place on 10.04.2014. According to him, when he attempted to cross R.K.Mutt Road, the Motor cycle belongs to the first



CMA.Nos.2341 and 2443 of 2021

respondent, registered in the name of the 3rd respondent and insured with the second respondent came in a rash and negligent manner and dashed against the claimant. As a result of the said accident, the claimant sustained head injury and fracture in clavicle bone. Therefore, the claim petition was filed seeking compensation of Rs.18,00,000/-.

6. The respondents 1 and 3 remained ex-parte before the Tribunal and the claim was resisted only by the insurer namely the second respondent that the accident had occurred only due to the negligence on the part of the claimant. The allegation in the claim petition as if, the accident had occurred due to the negligence on the part of the driver of the motorcycle was specifically denied.

7. The Tribunal based on the evidence available on record came to the conclusion that the accident had occurred only due to the rash and negligent riding of two wheeler by its rider and consequently fixed the liability on the second respondent Insurance Company. The compensation payable to the claimant was quantified at Rs.10,70,400/-. Not satisfied with the quantum of compensation, both the claimant as well as the Insurance Company have filed the above appeals.



8. Both the learned counsel appearing for the claimant as well

as Insurance company have not advanced any arguments on the questions of negligence and liability. Therefore, necessary facts for considering those questions are not discussed in this judgment.

9. The learned counsel appearing for the Insurance Company would submit that the claimant has not suffered any functional disability and therefore, the Tribunal committed an error in applying multiplier method while computing loss under the head disability.

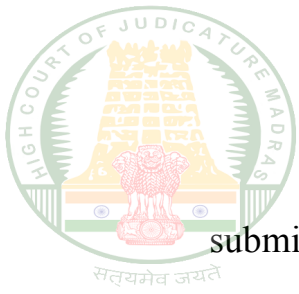
10. The learned counsel appearing for the claimant would submit that the Medical Board fixed the liability at 37% and the Tribunal based on the evidence available on record came to the conclusion that the claimant suffered functional disability. The learned counsel by taking this Court to Section 2(r) of Rights of Persons with Disabilities Act, 2016 submitted that the claimant suffered Bench Marked disability and therefore, the Tribunal rightly applied multiplier method.



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11. In order to prove the disability, the claimant subjected himself for examination before medical board. The disability certificate issued by the medical board has been marked as Ex.C1. A perusal of disability certificate would indicate that the medical board assessed 10% permanent disability towards surgery undergone by the claimant for clavicle bone fracture. The medical board assessed 30% temporary disability for the fracture and head injury suffered by the claimant. The doctor who was a member of medical board was examined as PW.2. He clearly deposed that after assessing temporary disability suffered by the claimant separately for clavicle bone fracture and head injury, the disability certificate was issued fixing the total disability at 37% . In his evidence, the Doctor has not deposed anything regarding the impairment of intellectual capacity by the claimant.

12. The learned counsel appearing for the claimant by taking this Court to discussions of the Tribunal vehemently contended that the claimant was a very bright student in his school as evidenced by his 10th and 12th mark sheets marked as Ex.P11. However, after injury, the claimant appeared for chartered accountant examination and failed. It is the



CMA.Nos.2341 and 2443 of 2021

WEB COM

submission of the learned counsel that due to the injury suffered by the claimant there was an impairment of intellectual capacity.

13. Merely, because the claimant met with a failure in his chartered accountant examination, we cannot jump to the conclusion that the claimant suffered impairment of intellectual capacity due to the injury sustained by him and the same resulted in functional disability. The Doctor who examined the claimant as a member of the medical board, in his evidence has not stated anything regarding the impairment of intellectual capacity due to the accident. In the chief examination of the doctor, who was produced as a witness by the claimant, he had not stated anything regarding alleged impairment of intellectual capacity.

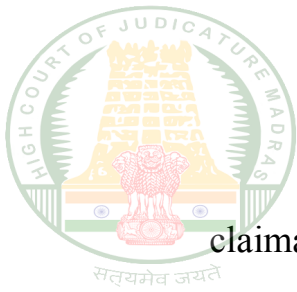
14. It is seen from Exs.P3 and P4-discharge summaries, the claimant was in hospital from 10.04.2014 to 22.04.2014 and from 10.01.2016 to 13.01.2016. A perusal of the first discharge summary marked as Exs.P3 would indicate that the claimant underwent frontal and temporo parietal craniotomy for head injury and at the time of discharge, he was advised to take tablet Eptoin, which is used to treat convulsions. A



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perusal of the second discharge summary marked as Ex.P4 would indicate

that he was admitted in hospital for removal of implant that was placed to treat his left clavicle fracture. He was in hospital for four days and at the time of discharge, he was advised to take antibiotics pain killer and no neurological medicine like Tab Eptoin has been prescribed for the neurological deficiency, if any, of the claimant. Therefore, in the light of the evidence of PW.2 and Ex.P4-discharge summary, this Court comes to the conclusion, the claimant has not suffered any functional disability due to the head injury. The submission made by the learned counsel for the claimant that there is an impairment of intellectual capacity is without any evidence. Therefore, this Court comes to a definite conclusion that the Tribunal had committed an error in applying multiplier method. The submission made by the learned counsel for the appellant that the claimant suffered benchmark disability as per the Rights of Persons with disabilities Act (Central Act 49 of 2016), will not help claimant to seek compensation by applying multiplier method. If claimant really suffered benchmark disability as defined under Act 49 of 2016, it will enable him to claim rights conferred under the said Act. It will not help him to claim compensation under Motor Vehicles Act by applying multiplier method. However, the



CMA.Nos.2341 and 2443 of 2021

claimant is entitled to compensation under the head disability on percentage basis. As per Ex.C1, the claimant suffered disability of 37%.

15. The accident had occurred in the year 2014, therefore, this Court is inclined to grant Rs.4,000/- per percentage of disability. Hence,, the claimant is entitled to Rs.1,48,000/- under the head disability. Taking into consideration the nature of injury suffered by the claimant and the period of treatment, the amount awarded under the head pain and suffering is enhanced to Rs.50,000/- and the amount awarded under the head loss of amenities is enhanced to Rs.60,000/-. The amount awarded by the Tribunal under the head mental agony for the family members is set aside in view of the compensation awarded under the head pain and suffering. Likewise, the amount of Rs.10,000/- awarded by the Tribunal under the head loss of expectation in life is also set aside. The other amount awarded under various other heads are reasonable and hence they are confirmed.

16. In view of the discussions made earlier, the award passed by the Tribunal is modified as follows:

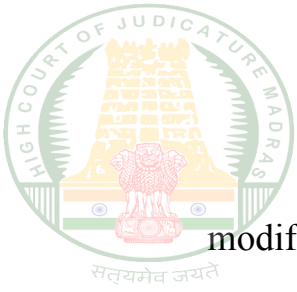
S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court
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			(Rs)
1.	Disability	8,95,104/-	1,48,000/-
2.	Loss of pain and suffering	37,000/-	50,000/-
3.	Transport expenses	15,000/-	15,000/-
4.	Extra nourishment	20,000/-	20,000/-
5.	Damages to clothes	2,000/-	2,000/-
6.	Loss of amenities	37,000/-	60,000/-
7.	Attender charges	10,000/-	10,000/-
8.	Mental agony	10,000/-	-
9.	Loss of expectancy of life	10,000/-	-
10.	Medical expenses	24,296/-	24,296/-
11.	Future medical expenses	10,000	10,000/-
	Total	Rs.10,70,400/-	Rs.3,39,296/-

17. In view of the discussions made earlier, the CMA.No.2341 of 2021 filed by the claimant is dismissed.

18. CMA.No.2443 of 2021 filed by the Insurance Company is partly allowed and the award amount is reduced to Rs.3,39,296/-. The award will carry interest at the rate of 7.5% from the date of claim petition to the date of realization. It is stated that the Insurance Company has already deposited 50% of the award amount. Therefore, the second respondent is permitted to withdraw any amount which is in excess of the



CMA.Nos.2341 and 2443 of 2021

modified award amount passed by this Court. The claimant is permitted to

withdraw the modified award amount, less any amount already withdrawn,

by making formal application before Tribunal. No costs.

03.04.2025

Index : Yes/No

Speaking order: Yes/No

Neutral Citation: Yes/No

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To

1. The Motor Accident Claims Tribunal,
Special Subordinate Court No.2,
Motor Vehicle Claim Cases/Small Causes Court, Chennai.

2. The Section Officer

VR Section, High Court, Madras.



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CMA.Nos.2341 and 2443 of 2021

S.SOUNTHAR, J.

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CMA.Nos.2341 and 2443 of 2021

03.04.2025