



C.M.A.No.1915 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	18 / 12 / 2024
Pronounced on	19 / 02 / 2025

WEB COPY

CORAM:

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

C.M.A.NO.1915 OF 2022

S.Balaraman

... Appellants / Petitioner

-vs-

1. S.R.M.Institute of Science and Technology,
 Rep. by its Chairman,
 SRM Nagar, Kattangulathur,
 Chengalpattu Taluk,
 Kancheepuram District-603 203.

2. The New India Assurance Company Limited,
 Claims Hub Chennai,
 Macmilan House, 2nd Floor,
 No.21, Pattullos Road 'B' Wing,
 Anna Salai, Chennai-600 002.

... Respondents / Respondents

Note: The 1st respondent was set ex-parte on 05.01.2018 before the Tribunal

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to enhance the compensation awarded vide



C.M.A.No.1915 of 2022

Award dated August 18, 2021 passed in M.A.C.T.O.P.No.6593 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub-Court No.2, Motor Accident Claims Petition) Small Causes Court, Chennai and consequently, award M.A.C.T.O.P.No.6593 of 2017 as prayed for.

For Petitioner : Mr.P.L.Narayanan

For R1 : Mr.R.Gokul for
Mrs.P.R.Umamaheswari

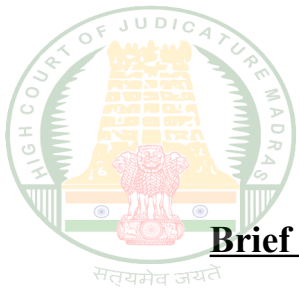
For R2 : Mr.R.Rajesh

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated August 18, 2021 passed in M.A.C.T.O.P.No.6593 of 2017 on the file of 'Motor Accident Claims Tribunal (Special Sub-Court No.2, Motor Accident Claims Petition) Small Causes Court, Chennai' (in short 'Tribunal'), the appellant / claimant therein has preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Original Petition.



C.M.A.No.1915 of 2022

Brief facts put forth by the Claimant

WEB COPY

3. The case of the claimant is that on August 30, 2016 at about 07.30 a.m., while the he was travelling in his motorcycle bearing Registration No.TN-10-K-4530 at K.K.Nagar, Nesappakkam, Thiruvalluvar Road Junction in east to west direction, the SRM College bus bearing Registration No. TN-19-AB-0823, driven in a rash and negligent manner in the same direction *i.e.*, from east to west, dashed against him, on account of which, he had sustained grievous injury. The accident had occurred due to the fault of the driver of the bus. The 1st respondent is the owner of the bus and the bus was insured with the 2nd respondent / Insurance Company. Stating that the respondents are vicariously liable to pay compensation to the claimant, a claim Petition was filed before the Tribunal, seeking compensation of Rs.40,00,000/- (Rupees Forty Lakhs only) restricted to Rs.35,00,000/- (Rupees Thirty Five Lakhs only) from the respondents.

Case of the Second Respondent

4. At the first blush, the involvement of the 1st respondent's bus in the alleged accident was denied and it is stated that on the date of



C.M.A.No.1915 of 2022

accident, the driver of the 1st respondent's bus had no valid and effective license to drive the bus. The claimant has to prove the injuries sustained by him, nature of injuries, nature of treatment, period of treatment, age, income and disability through proper documentary and oral evidence. Stating that the amount of compensation claimed is unsustainable, the 2nd respondent prayed to dismiss the claim petition.

Tribunal

5. Before the Tribunal, claimant was examined as P.W.1 and Ex-P.1 to Ex-P.11 were marked by him. On the side of the 2nd respondent, neither any witness was examined nor any exhibit was marked. The Disability Certificate issued by the Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai was marked as Ex-C.1.

6. The Tribunal, after considering the evidence available on record, held that the driver of the 1st respondent's vehicle is responsible for the accident. Accordingly, the Tribunal held that the 2nd respondent / Insurance Company, being insurer of the 1st respondent's bus, is liable to



pay the compensation to the petitioner/claimant.

WEB COPY

7. With regard to quantum of compensation, the claimant stated that he worked as Field Executive in Innovsource Pvt. Ltd., Guindy and earned a sum of Rs.12,871/- per month at the time of accident and in proof thereof, he produced the appointment order (Ex-P.1), ID card (Ex-P.2) and the salary slip (Ex-P.3) for the month May, 2016. Hence, the Tribunal, upon considering the percentage of disability of the claimant at 45% and also taking note of the fact that the accident had occurred in the year 2016, fixed Rs.5,000/- per percentage and computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Disability	Rs.2,25,000/-
2.	Pain and Sufferings	Rs.40,000/-
3.	Transportation	Rs.4,000/-
4.	Extra Nourishment	Rs.15,000/-
5.	Attender Charges	Rs.36,000/-
6.	Loss of Earnings	Rs.63,905/-
	Total	Rs.3,83,905/-
	Rounded off to	Rs.3,84,000/-

8. Feeling aggrieved by the meagre quantum of compensation awarded, the claimant has filed the Civil Miscellaneous appeal praying for

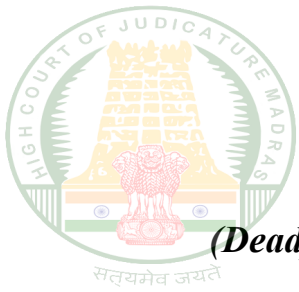


C.M.A.No.1915 of 2022

enhancement of compensation amount.

WEB COPY Arguments

9. Mr.P.L.Narayanan, learned Counsel for the appellant / claimant would submit that though as per Ex-C.1 - Disability Certificate issued by the Regional Medical Board, the claimant sustained 45% permanent disability, since his job requires driving of two wheelers and four wheelers and since his left leg has been deformed with a bent, he cannot continue his job till his lifetime and therefore, he suffered 100% functional disability. He would further submit that the Tribunal ought to have applied multiplier method in arriving at a just and fair compensation and the Tribunal failed to consider the loss of future earning capacity. The next level of promotion to the claimant was Field Supervisor and in that case, his salary would have definitely been increased and the Tribunal has not taken into consideration the future prospects of earning while awarding the compensation. In support of his submission, he has referred to the Judgments of the Hon'ble Supreme Court in the cases of ***Sidram -vs- Divisional Manager, United Indian Insurance Company Limited***, reported in (2023) **3 SCC 439** and ***Rahul Ganpatrao Sable -vs- Laxman Maruti Jadhav***



C.M.A.No.1915 of 2022

(Dead) through Lrs., reported in **2023 SCC Online SC 780**. Stating that the

income fixed by the Tribunal is on the lower side, learned counsel for the appellant / claimant prayed for enhancement of the compensation.

10. Per contra, learned Counsel appearing for the 2nd respondent / Insurance Company would argue that though the claimant / petitioner averred that he was working as a Field Executive, no concrete evidence was produced to substantiate that he sustained 100% functional disability. In such a view, the Tribunal was right in adopting calculation based on percentage method. There is no illegality or infirmity with the said findings of the Tribunal. Accordingly, the learned Counsel prayed to dismiss the Civil Miscellaneous appeal.

Discussion

11. Heard the learned counsels on either side and perused the evidence and materials available on record.

12. There is no dispute with regard to factum of the accident



C.M.A.No.1915 of 2022

WEB CO

and the involvement of the motorcycle bearing Registration No.TN-10-K-

4530 and the bus bearing Registration No.TN-19-AB-0823. The core contention of the 2nd respondent was that the claimant, who drove the motorcycle in a rash and negligent manner, was solely responsible for the accident. On perusal of Ex-P.10 - First Information Report (FIR) and the oral evidence of P.W.1, it is seen that the driver of the 1st respondent's vehicle was alleged to be the main cause for the accident, and the same had not been controverted by the 2nd respondent. Though the 2nd respondent had taken a stand that the driver of the bus did not have a valid license, the valid driving licence of the bus driver was marked as Ex-P.7 and the claimant also had a valid driving licence that has been marked as Ex-P.6. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the rash and negligent driving of the 1st respondent's bus and it being insured with 2nd respondent, the 2nd respondent is liable to pay compensation. It is also to be noted that the 2nd respondent did not prefer any appeal against the findings of the Tribunal, hence, the findings of the Tribunal in respect of negligence attained finality.



C.M.A.No.1915 of 2022

13. As regards quantum, the claimant averred that he was appointed as a Field Executive in Innovsource Private Limited on October 13, 2015 and was earning a sum of Rs.12,871/- per month/-. He has not produced any medical evidence to substantiate that due to the injuries sustained by him, he cannot go for any other employment. However, the 2nd respondent has not denied the nature of job undertaken by the claimant before the accident. As per the directions of this Court, the claimant appeared in person and this Court had an opportunity to observe the current condition of the claimant. In Ex-P.9 – Disability Certificate dated July 11, 2018 issued by Regional Medical Board, Royapettah Government Hospital, Chennai, which assess the disability of the claimant as 45% permanent disability, it has been noted as follows:

“Patient H/o RTA & Sustained Grade III B compound injury fracture both bone Distal 1/3 leg. Illizarov fixator with Corticotomy with Bone transport with Flap cover done Ankle Arthrodesis done. Shortening 2 cm”

13.1. In Ex-C.1 – Disability Certificate dated December 17, 2020 issued by Regional Medical Board, Government Kilpauk Medical



C.M.A.No.1915 of 2022

College Hospital, Chennai, which also assess the claimant's disability as 45% permanent disability, it has been noted as follows:

“RTA – post traumatic sequela left lower limb, fracture of distal tibia, navicular talus”

13.2. From Ex-P.9 and Ex-C.1 as well as from the direct observation of the leg injury sustained by the claimant, this Court is of the view that due to the injuries sustained in the accident and the consequent reduced length of leg, he suffers from mobility issues and joint stiffness. He would not be able to walk / sit easily, climb stairs, drive/ride vehicles as before *etc.* The injuries would have a direct impact on his earning capacity. Considering the same, this Court is of the view that it is a fit case to adopt multiplier method. The Tribunal has failed to do so, which is not justifiable. Functional disability has to be considered keeping in mind the nature of job of the injured, his age and other facts and attending circumstances of the case. In view of Ex-P.9 and Ex-C.1, also bearing in mind that the claimant was employed as a Field Supervisor, this Court is of the considered opinion that the claimant suffers from 45% functional disability.

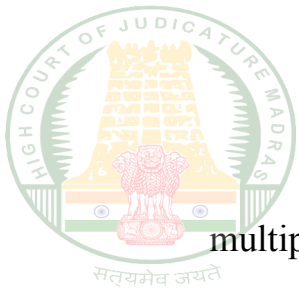


C.M.A.No.1915 of 2022

14. The next line of argument put forth by the learned counsel

for the appellant/claimant by relying on the cases cited *supra* is that the Tribunal ought to have awarded future prospects. The same cannot be brushed aside easily. Considering the fact that at the time of accident the claimant was 47 years old, applying 25% increase for future prospects and applying multiplier of 13 along with 45% of functional disability, as per the Judgments of the Hon'ble Supreme Court in ***Sarla Verma -vs- Delhi Transport Corporation and another***, reported in (2009) 6 SCC 121, and ***National Insurance Company Limited -vs- Pranay Sethi*** reported in (2017) 16 SCC 680, this Court arrives at a sum of Rs.11,29,430/- as compensation under the head 'loss of earning capacity'.

15. The Tribunal awarded Rs.40,000/- towards pain and sufferings to the claimant, which is on the lower side and hence, the same is enhanced to Rs.3,00,000/- Considering that the mobility of the claimant has been seriously impaired, the compensation awarded for transportation charges is increased from Rs.4,000/- to Rs.50,000/-. Likewise, the compensation awarded for extra nourishment is enhanced to Rs.50,000/- and that awarded for attender charges is enhanced to Rs.60,000/-. Since



C.M.A.No.1915 of 2022

multiplier method has been adopted to arrive at a compensation, there is no need to award separately under the head 'disability'. Further, in view of the nature of the injuries sustained by the claimant and considering the resulting discomforts and hardships, this Court deems fit to award Rs.2,00,000/- towards loss of amenities.

16. Accordingly, the claimant is entitled to get enhanced compensation of **Rs.17,89,400/-** (Rupees Seventeen Lakh Eighty-Nine Thousand and Four Hundred). The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1.	Loss of Earning (Rs.12,871/- + 25% x 12 x 13 x 45%)	Rs.11,29,430/-
2.	Pain and Sufferings	Rs.3,00,000/-
3.	Transportation	Rs.50,000/-
4.	Extra Nourishment	Rs.50,000/-
5.	Attender Charges	Rs.60,000/-
6.	Loss of amenities	Rs.2,00,000/-
Total		Rs.17,89,430/-
Rounded off to		Rs.17,89,400/-

17. Therefore, the 2nd respondent / Insurance Company is



C.M.A.No.1915 of 2022

directed to deposit the enhanced award amount of **Rs.17,89,400/-** (Rupees Seventeen Lakh Eighty-Nine Thousand and Four Hundred) along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.A.C.T. O.P.No.6593 of 2017 on the file of Motor Accident Claims Tribunal (Special Sub-Court No.2, Motor Accident Claims Petition) Small Causes Court, Chennai, less the amount if any already deposited, within a period of eight weeks from the date of receipt of copy of this Judgment. On such deposit being made, the claimant is entitled to withdraw the same by filing proper application. Further, the claimant is entitled for proportionate costs and Advocate fees as per Rules. The claimant is directed to pay necessary Court fee for the enhanced compensation, if any.

18. In the result, this Civil Miscellaneous Appeal filed by the appellant / claimant is partly allowed with proportionate costs and a modified Award is passed as detailed above.

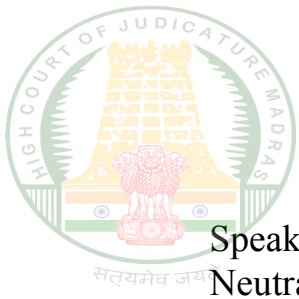
(J.N.B., J.)

(R.S.V., J.)

19 / 02 / 2025

Index : Yes

13/15



C.M.A.No.1915 of 2022

Speaking Order : Yes

Neutral Citation : Yes

WEB COPY ar/tk

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

ar/tk

To

The Motor Accident Claims Tribunal
(Special Sub-Court No.2, Motor Accident
Claims Petition)
Small Causes Court,
Chennai.

C.M.A.NO.1915 OF 2022



WEB COPY



C.M.A.No.1915 of 2022

19 / 02 / 2025