



WEB COPY



C.M.A. No.2431 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.M.A. No.2431 of 2022

and

C.M.P. No.19007 of 2022

Reliance General Insurance Company Ltd.,
15-APLA, Ganagu Tower,
11th Cross, Thillai Nagar,
Trichy-28.

... Appellant /
Respondent 3

-vs-

1. M.Raja

... Respondent 1 /
Petitioner

2. S.Manikam

3. N.Gurusamy

... Respondents 2 & 3 /
Respondents 1 & 2

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 20.04.2022 passed in M.C.O.P.No.201 of 2016 on the file of Special Subordinate Court, Coimbatore.

For Appellant : Mr.P.Suresh Srinivasan
For R1 : Mr.Deepan Udyia
For R2 : No Appearance
For R3 : Mr.Athimoolam

J U D G M E N T



C.M.A. No.2431 of 2022

(By J.Nisha Banu, J.)

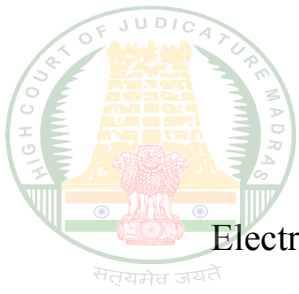
WEB COPY

Feeling aggrieved by the Award dated April 20, 2022 passed by the 'Motor Accident Claims Tribunal / Special Subordinate Court, Coimbatore' ['Tribunal' for short] in M.C.O.P. No.201 of 2016, the insurance company / 3rd respondent therein has preferred this appeal, praying to set aside the Award.

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Motor Accident Claims Original Petition.

Petitioner's case:

3. On June 24, 2015 at about 06.45 p.m., while the petitioner - Raja was riding a two-wheeler bearing Registration No.TN-37-CE-5573 in Kovai Bharathiar Road in north to south direction, a Mahindra Van bearing Registration No.TN-33-P-1418, driven by its driver / 1st respondent came from the opposite direction rash and negligent manner endangering the public safety, dashed against the petitioner, due to which, the petitioner sustained grievous injuries all over his body and consequently, his right leg was amputated below knee. At the time of accident, the petitioner was aged about 31 years and was working as an



WEB COPY

Electrician earning a sum of Rs.20,000/- per month. According to the petitioner, the accident occurred only due to the rash and negligent driving of the first respondent who was the driver of the 2nd respondent's van, the said Van was insured with the 3rd respondent / insurance company and hence, all the respondents are liable to pay compensation to the petitioner. Accordingly, the petitioner filed the Claim Petition before the Tribunal seeking compensation of Rs.60,00,000/- (Rupees Sixty Lakhs only) along with interest and costs.

Case of the Respondent Nos. 1 & 2

4. Both respondents remained absent before Tribunal and therefore, they were set *ex-parte*.

Case of the Respondent No. 3

5.The third respondent – Insurance Company, in its counter statement, denied the manner of the alleged accident, stating that though the driver of the van was driving it properly and following all the traffic rules, it was the petitioner who was rash and negligent in riding his two-wheeler, which led to the accident. The petitioner has to prove the injuries sustained by him, their nature, the nature & period of treatment, age, income and disability through proper documentary and oral evidence.



C.M.A. No.2431 of 2022

Stating that the amount of compensation claimed is unsustainable, the 3rd respondent prayed to dismiss the claim petition.

Tribunal

6. At trial, on the side of the petitioner, the petitioner was examined as P.W.1 and eye witnesses, namely Isaac Stalin and Satish were examined as P.W.2 & P.W.3 respectively, and Ex-P.1 to Ex-P.17 along with Ex-X.1 and Ex-X.2 were marked. Neither any witness was examined nor any document was marked on the side of the third respondent – Insurance Company. Ex-C.1 – Disability Certificate of the petitioner was marked as Court document.

7. The Tribunal, after analysing the oral and documentary evidence adduced before it, came to a conclusion that accident occurred due to the rash and negligent driving of the 1st respondent and held the 2nd respondent / Insurance Company liable to pay compensation. It awarded compensation as hereunder:

Sl.No.	Head	Amount
1	Loss of income	Rs.53,76,000/-
2	For Pain and Sufferings	Rs.3,00,000/-
3	Loss of Amenities	Rs.2,00,000/-
4	For Medical Expenses	Rs.3,16,476/-



WEB COPY



C.M.A. No.2431 of 2022

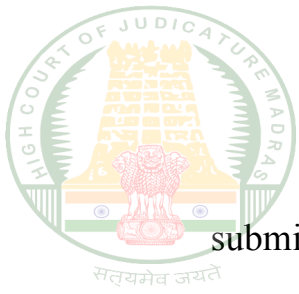
Sl.No.	Head	Amount
5	Extra Nourishment	Rs.50,000/-
6	Transporation Charges	Rs.25,000/-
7	Attender Charges	Rs.1,50,000/-
8	Loss of Clothes	Rs.3,000/-
9	Future Marriage Prospectus	Rs.3,00,000/-
10	Future Medical Expenses	Rs.2,00,000/-
	Total	Rs.69,20,476/-

8. Dissatisfied with the Award, the third respondent – Insurance Company has preferred the Civil Miscellaneous Appeal.

Arguments

9. The learned Counsel for the appellant / insurance company argued that though the petitioner filed the claim petition for Rs.60,00,000/- , the Tribunal awarded an excessive amount of Rs.69,20,476/- as compensation. The petitioner did not possess any valid driving licence at the time of accident. Though the disability was assessed at 80% by the Medical Board, the Tribunal has taken 100% functional disability, which is erroneous. There was no documentary evidence produced to justify the compensation awarded for loss of amenities future marriage prospects and for future medical expenses and thus, prayed for allowing the appeal

10. Per contra, learned Counsel for the petitioner would



submit that the petitioner sustained grievous injuries rendering him unable to perform even his day to day chores as before, and therefore, functional disability of 100% arrived at by the Tribunal is just and fair. The amputation of right leg has caused severe financial loss to the petitioner who is an Electrician by profession. Stating that there is no illegality and infirmity with the Award of the Tribunal, he prayed for dismissal of the present appeal.

Discussion

11. This Court has considered the submissions on either side and perused the materials available on record.

12. There is no dispute with regard to the factum of the accident and involvement of the motorcycle bearing Registration No. TN-37-CE-5573 and the van bearing Registration No. TN-33-P-1418. The core contention of the 3rd respondent is that the petitioner was solely responsible for the accident, who drove the vehicle in a rash and negligent manner. On a perusal of Ex-P.1 - First Information Report (FIR) and Charge Sheet (Ex-P.3), it is evident that the driver of the van is responsible for the accident. Thus, the Tribunal rightly arrived at a decision that the accident happened due to the rash and negligent driving of the driver of



the van. Since the van was insured with 3rd respondent, the Tribunal was also right in its decision that the 3rd respondent / Insurance Company is liable to pay compensation.

13. As regards quantum, though several grounds were raised to assail the award of quantum, the main contention of the 3rd respondent / insurance company was that the Tribunal, without any substantial proof, granted compensation of Rs.3,00,000/- under the head 'loss of marriage prospects' and a sum of Rs.2,00,000/- under the head 'loss of amenities'.

14. It is true that the Tribunal awarded Rs.2,00,000/- for 'loss of amenities' without any substantial evidence to justify the same. However, since the petitioner's left leg has been amputated, an Artificial Limb is necessary to run his day to day life. Hence, this Court is of the view that the aforesaid amount shall be converted as awarded under the head of 'Artificial Limb'.

15. As far as the award of Rs.3,00,000/- under the head 'loss of marriage prospects' is concerned, this Court is of the view that without evidence, petitioner is not entitled to get compensation under this head. There is no evidence produced by the petitioner in this regard. Hence, the



petitioner is not entitled to claim compensation under the head 'loss of marriage prospects'.

16. In the given case, the right leg of the petitioner was amputated below knee and it can be inferred that the petitioner will incur some amount in towards future medical expenses and therefore, there is no reduction required under the head of future medical expenses.

17. In view of the finding that the negligence is on the driver of the van, whether or not the claimant was holding a valid driving licence at the time of accident is immaterial and inconsequential. The argument in this regard deserves to be rejected.

18. In the result, the compensation awarded to the petitioner is hereby reduced to Rs.66,20,476/-. It is settled law that the Tribunal / Court can award just compensation in Motor Accident Cases, even exceeding the compensation claimed, in appropriate cases [See ***Meena Devi -vs- Nunu Chand Mahto @ Nemchand Mahto, 2022 INSC 1080***]. This Court is of the view that Rs.66,20,476/- is a just and fair compensation. Hence, the argument that the compensation awarded exceeds the compensation claimed deserves to be rejected. Accordingly,



C.M.A. No.2431 of 2022

the petitioner is entitled to get a compensation of Rs.66,20,476/- (Rupees

Sixty Six Lakhs Twenty Thousand Four Hundred and Seventy Six only).

The revised compensation is as detailed below:-

Sl.No.	Head	Amount
1	Loss of income	Rs.53,76,000/-
2	For Pain and Sufferings	Rs.3,00,000/-
3	Artificial Leg	Rs.2,00,000/-
4	For Medical Expenses	Rs.3,16,476/-
5	Extra Nourishment	Rs.50,000/-
6	Transportation Charges	Rs.25,000/-
7	Attender Charges	Rs.1,50,000/-
8	Loss of Clothes	Rs.3,000/-
9	Future Marriage Prospects	NIL (Removed)
10	Future Medical Expenses	Rs.2,00,000/-
	Total	Rs.66,20,476/-

19. Therefore, the appellant / Insurance Company is directed to deposit the modified award amount of **Rs.66,20,476/-** (Rupees Sixty Six Lakhs Twenty Thousand Four Hundred and Seventy Six only) along with interest thereon at the rate of 7.5% per annum from the date of claim petition till the date of deposit, to the credit of M.C.O.P.No.201 of 2016 on the file of Special Subordinate Court, Coimbatore, 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 petitioner is



C.M.A. No.2431 of 2022

entitled to withdraw the same by filing proper application. Further, the petitioner is entitled for proportionate costs and Advocate fees as per Rules. It is made clear that petitioner is not entitled to get the interest for future medical expenses i.e., Rs.2,00,000/-.

Result:

20. In the result, this Civil Miscellaneous Appeal is allowed in part with proportionate costs. The Award passed by the Tribunal is modified as indicated above. Consequently, connected Miscellaneous Petition is closed.

(J.N.B., J.)

(R.S.V., J.)

23.01.2025

Index : Yes / No
Speaking Order : Yes / No
Neutral Citation : Yes / No
ar/tk

To
The Special Subordinate Judge
Coimbatore.



WEB COPY



C.M.A. No.2431 of 2022

J.NISHA BANU, J.

AND

R.SAKTHIVEL, J.

ar / tk

C.M.A.No.2431 of 2022

23.01.2025