



WEB COPY

C.M.A.No.2597 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 17 / 12 / 2024

JUDGMENT PRONOUNCED ON : 09 / 01 / 2025

CORAM

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

C.M.A.No.2597 of 2024
and
C.M.P.No.20667 of 2024
in
C.M.A.No.2597 of 2024

R. Prakash

...Appellant/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Limited,
Pallavan House, Anna Salai,
Chennai - 600 002.

...Respondent/Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, praying to enhance the compensation awarded vide the Award dated December 6, 2023 made in M.C.O.P. No.7781 of 2018 on the file of the Motor Accident Claims Tribunal (IV Small Causes Court), Chennai.

For Appellant : Mr.S.Ravi Kumar
For Respondent : Mr.A.Vinothraj



C.M.A.No.2597 of 2024

WEB COPY

JUDGMENT

R.SAKTHIVEL, J.

Feeling aggrieved by the Award passed by the 'Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai' ['Tribunal' for short] in M.C.O.P. No.7781 of 2018, the petitioner therein has filed this Civil Miscellaneous Appeal under Section 173 of the Motor Vehicles Act, 1988 ['M.V. Act' for short], praying to enhance the compensation.

2. Hereinafter, for the sake of convenience, the parties will be referred to as per their array in the Claim Petition.

PETITIONER'S CASE

3. The case of the petitioner is that on November 10, 2018 at about 20.30 hours, when the petitioner was waiting in a motorcycle bearing Registration No.TN-01-AQ-3677 for the signal to turn West near Murasolimaran Flyover, Madhavaram High Road, Perambur, Chennai, the respondent's bus bearing Registration No.TN-01-N-4235, driven in a rash and negligent manner, dashed behind the motorcycle. Consequently, the petitioner fell down and sustained grievous injuries. He was taken to Government Stanley Hospital, Chennai, and thereafter to Billroth



C.M.A.No.2597 of 2024

Hospital, Chennai. He was also taking treatment in other private hospitals.

Due to the injuries sustained in the accident, his left leg had to be amputated. The driver of the said respondent's bus is alone responsible for the accident. The respondent, being the owner of the bus, is vicariously and statutorily liable to pay compensation to the petitioner. Accordingly, the petitioner claimed a compensation of Rs.80,00,000/- from the respondent.

RESPONDENT'S CASE

4. The respondent – Transport Corporation filed a counter denying all the petition averments contending that the petitioner is put to strict proof of the same. The respondent contended that the petitioner was a minor and did not possess a valid driving licence at the time of accident. It is the petitioner who rashly and negligently rode his vehicle and dashed against the respondent's bus. The compensation claimed is excessive. Further, the claim petition is bad for non-joinder of necessary parties viz., owner and insurer of the motorcycle which the petitioner was riding. Accordingly, the respondent sought for dismissal of the Claim Petition.



C.M.A.No.2597 of 2024

WEB COPY

5. In order to prove the case of the petitioner, he examined himself as P.W.1, one Harinath, Special Sub-Inspector, A4, Anna Nagar Police Station, was examined as P.W.2, one Senthil Kumar, Medical Record Officer, Billroth Hospital, was examined as P.W.3 and Ex-P.1 to Ex-P.14 were marked. On the side of the respondent, Jayaprakash, driver of the bus involved in the accident, was examined as R.W.1 and no exhibit was marked.

6. The Tribunal, based on Ex-P.1 – First Information Report (FIR), Ex-P.11 - Final Report, and oral evidence of P.W.1, concluded that the accident occurred due to the rash and negligent driving of the respondent's driver. Regarding the quantum, the Tribunal, considering Ex-P.6 – Disability Certificate issued by the Department of Orthopaedics, Government Kilpauk Medical College, as well as Ex-P.7 - Disability Certificate issued by the Department for the Welfare of the Differently Abled, concluded that the petitioner suffered 70% functional disability. Further, the Tribunal, fixed a sum of Rs.8,000/- as notional income of the



C.M.A.No.2597 of 2024

petitioner and awarded a sum of Rs.24,36,000/- as compensation to him as tabulated hereunder:-

S.No.	Head	Amount
1	Loss of income towards Functional Disability	Rs.16,93,440.00
2	Medical Expenses	Rs.3,37,000.00
3	Pain and Suffering	Rs.50,000.00
4	Transportation Expenses	Rs.20,000.00
5	Nutrition Expenses	Rs.25,000.00
6	Damages to Clothes	Rs.1,000.00
7	Attender Charges	Rs.9,500.00
8	Loss of Amenities	Rs.50,000.00
9	Artificial Leg	Rs.1,50,000.00
10	Marital Prospects	Rs.1,00,000.00
Total		Rs.24,35,940.00
Rounded off		Rs.24,36,000.00

7. Feeling aggrieved by the Award, the petitioner has filed this Civil Miscellaneous Appeal seeking enhancement of compensation.



C.M.A.No.2597 of 2024

ARGUMENTS

WEB COPY

8. Mr.S.Ravi Kumar, learned Counsel appearing for the appellant / petitioner would argue that at the time of the accident, the petitioner was 20 years old. Due to the accident, left leg of the petitioner was amputated. The petitioner is not able perform his day-to-day activities as he used to before the accident. The Tribunal has underestimated the cost of an artificial limb and in this regard, he would rely on ***Mohd. Sabeer @ Shabir Hussain -vs- Regional Manager, U.P. State Road Transport Corporation***, reported in ***2022 LiveLaw (SC) 1017***. The Tribunal had taken a sum of Rs.8,000/- as the notional income of the petitioner, which is on the lower side. Accordingly, he prayed to allow the appeal and enhance the compensation.

9. Per contra, Mr.A.Vinoth Raj, learned Counsel appearing for the respondent / Insurance Company would contend that the petitioner did not produce any document to substantiate his alleged income. In these circumstances, the Tribunal has rightly taken the notional income at Rs.8,000/- per month. Further, the petitioner has not produced any evidence to substantiate the alleged expenses he would incur for an artificial limb. Thus, there is no necessity to interfere with the Award passed by the Tribunal. Accordingly, he would pray to dismiss this appeal.



DISCUSSION

10. This Court has considered the submissions made by the learned Counsels appearing on either side and perused the materials available on record.

11. There is no serious dispute with regard to the manner of accident in this Civil Miscellaneous Appeal. The Tribunal concluded that the accident occurred due to the rash and negligent driving of respondent's driver based on Ex-P.1 - F.I.R., Ex-P11 - Final Report, as well as the oral evidence of P.W.1. This Court has perused Ex-P.1, Ex-P11, and oral evidence of P.W.1 as well as R.W.1. The evidence of P.W.1 coupled with Ex-P.1 and Ex-P.11, would *prima facie* establish the case of the petitioner. Though the respondent's driver was examined as R.W.1, no independent witness was examined to substantiate their defence. This Court finds no reason to reject the evidence of P.W.1. Therefore, this Court concludes that the accident occurred due to the rash and negligent driving of the driver of the respondent. Hence, the respondent is liable to pay compensation to the petitioner.

12. Regarding the quantum of compensation, the petitioner



C.M.A.No.2597 of 2024

had produced Ex-P.8 - School Transfer Certificate and Ex-P.9 - PAN Card & Aadhar Card to prove his age. From these documents, it is clear that on the date of the accident, the petitioner was 18 years old.

13. According to the petitioner, he was a student at the time of the accident, and he was also working as a part-time Paper Supplier earning a sum of Rs.10,000/- per month. Admittedly, no document was filed to prove the alleged income. The Tribunal had notionally taken a sum of Rs.8,000/- per month as his income, which appears to be on the lower side. Considering the age of the petitioner, his socio-economic condition (See *Shabir Hussain's Case*) as well as the cost of living prevailing in the year 2018, this Court is inclined to fix Rs.10,000/- as notional monthly income of the petitioner. By adding 40% future prospects ($\text{Rs.10,000/-} \times 40/100 = \text{Rs.4,000/-}$) thereto, the total monthly income comes to Rs.14,000/- [$\text{Rs.10,000} + \text{Rs.4,000/-}$]. Since the petitioner's left leg has been amputated above the knee, he cannot perform his routine as before without assistance from others. He would no longer be able move freely and easily, and involve himself in sports and other activities as before. His job prospects are seriously hit because of the amputation. Further, Ex-P.6 and Ex-P.7 – Disability Certificates show that the petitioner suffers from



C.M.A.No.2597 of 2024

70% functional disability after the accident. Hence, this Court is of the view that multiplier method is to be adopted in this case. As the age of the petitioner is 18 years, as per **Sarala Verma vs. Delhi Transport Corporation**, reported in (2009) 6 SCC 121, the appropriate multiplier is 18. Thus, by applying the multiplier of 18, the loss of income towards 70% functional disability would be Rs.21,16,800/- [Rs.14,000/- x 12 x 18 x 70% = Rs.21,16,800/-]

14. As regards pain and suffering, the Tribunal awarded Rs.50,000/- under this head. As stated *supra*, the petitioner's left leg has been amputated. In view of the grievous injuries sustained in the accident, this Court is of the view that the compensation awarded under this head is on the lower side. Hence this Court is inclined to enhance the same to Rs.1,00,000/- which appears to be just and reasonable.

15. Further, the Tribunal has awarded Rs.50,000/- under the head of loss of amenities, which appears to be on the lower side. Amputation of the petitioner's left leg, would be causing him much inconvenience. Hence, this Court is of the view that Rs.1,00,000/- under this head would be a just and reasonable compensation.



C.M.A.No.2597 of 2024

16. As regards compensation for purchase of an artificial leg,

in the absence of any evidence before the Tribunal, it awarded a nominal amount of Rs.1,50,000/- as compensation under this head. In this Civil Miscellaneous Appeal, the petitioner has filed an application under Order XLI Rule 27 of the Code of Civil Procedure, 1908 ['CPC' for short] in C.M.P. No.20667 of 2024, praying to receive and mark two additional evidence, namely (i) Quote for purchase of an artificial limb and (ii) Quote for lifetime maintenance of the artificial limb. This Court is of the view that these two documents are necessary for awarding a fair compensation towards the purchase and maintenance of an artificial limb and therefore, inclined to receive and mark the same as Ex-P.15 and Ex-P.16 respectively. It is true that when an Order XLI Rule 27 Application is allowed, recourse has to be made to Order XLI Rule 28 of CPC. But this Court reminds itself that the enquiry under the M.V. Act is a summary procedure, as well as that the M.V. Act. is a beneficial legislation and therefore has to be interpreted in favour of the victim. Hence, given the nature of the document, being a quote for purchase of a medical external aid (as opposed to sophisticated medical procedure or treatment), and in order to avoid any further delay, this Court is inclined to mark the same without recourse to Order XLI Rule 28 of CPC.



C.M.A.No.2597 of 2024

17. This Court has perused the two documents. Ex-P.15 shows that the cost of an artificial limb would be around Rs.2,50,000/-. Ex-P.16 estimates the lifetime maintenance cost for the said artificial limb at around Rs.23,58,000/- considering the life span of the petitioner as 70 years. This Court is mindful of the fact that prosthetic limbs are now manufactured in India, even in Chennai, and that its cost ranges from Rs.50,000/- onwards. Be that as it may, Ex-P.15 shows the cost as Rs.2,50,000/- and the same appears to be reasonable considering the fact that the petitioner suffered above knee amputation. Ex-P.16 prescribes the functional life of the artificial limb as 6-7 years. It further shows that the artificial limb's life time maintenance cost would be around Rs.23,58,000/- as stated *supra* and the same appears to be on the higher side in the considered opinion of this Court.

18. The Hon'ble Supreme Court in *Shabir Hussain's Case* (cited *supra*), relied on by the learned Counsel for the petitioner, has held thus:

“COMPENSATION FOR THE PURCHASE AND
MAINTENANCE OF THE PROSTHETIC LEG

22. The High Court has awarded a compensation of



C.M.A.No.2597 of 2024

Rs.5,20,000/- for the prosthetic limb and Rs.50,000/- towards repair and maintenance of the same. The Appellant submits that the cost of the prosthetic limb itself is Rs. 2,60,000/- and the life of the prosthetic limb is only 5-6 years. The prosthetic limb also requires repair and maintenance after every 6 months to 1 year, and each repair costs between Rs.15,000 to Rs.20,000/- . This would mean that the prosthetic limb would last the Appellant for only 15 years under the current compensation. The Appellant at the time of the accident was aged 37 years and has a full life ahead. It has been clearly stated by this Court in the case of Anant Son of Sidheshwar Dukre (Supra) that the purpose of fair compensation is to restore the injured to the position he was in prior to the accident as best as possible. The relevant paragraph of the judgment is being extracted herein:

“In cases of motor accidents leading to injuries and disablements, it is a well settled principle that a person must not only be compensated for his physical injury, but also for the non-pecuniary losses which he has suffered due to the injury. The Claimant is entitled to be compensated for his inability to lead a full life and enjoy those things and amenities which he would have enjoyed, but for the injuries.”

“The purpose of compensation under the Motor Vehicles Act is to fully and adequately restore the aggrieved to the position prior to the accident.”

23. *As per the current compensation given for the*



WEB COPY



C.M.A.No.2597 of 2024

prosthetic limb and its maintenance, it would last the Appellant for only 15 years, even if we were to assume that the limb would not need to be replaced after a few years. The Appellant was only 37 years at the time of the accident, and it would be reasonable to assume that he would live till he is 70 years old if not more. We are of the opinion that the Appellant must be compensated so that he is able to purchase three prosthetic limbs in his lifetime and is able to maintain the same at least till he has reached 70 years of age. For the Prosthetic limbs alone, the Appellant is to be awarded compensation of Rs. 7,80,000 and for maintenance of the same he is to be awarded an additional Rs. 5,00,000/- .”

18.1. The Hon'ble Supreme Court in the facts and circumstances of that case and considering the evidence adduced before it, has awarded a total sum of Rs.12,80,000/- towards purchase and maintenance of artificial leg, and the same cannot be applied as such to the facts and circumstances of the case on hand. But nothing prevents this Court from adopting the same as a guiding factor.

19. Ex-P.16 shows that the artificial limb requires a maintenance for around Rs.52,000/- every three years and for around Rs.2,00,000/- every six years. From Exs-P.15 and P.16, it appears that one may have to replace the entire apparatus every 6-7 years as the cost of



C.M.A.No.2597 of 2024

maintenance at the end of every 6-7 years is pretty much equal to that of a new one. Considering Ex-P.15 and Ex-P.16, bearing in mind the compensation awarded in this regard in ***Shabir Hussain's Case***, as well as the fact that major portion of the compensation sought for by the petitioner under this head is towards future maintenance / replacement, this Court is of the view that awarding a lumpsum amount of Rs.12,50,000/- under this head would be fair and proper. Assuming that the petitioner purchases an artificial limb out of the said amount, as per the quote in Ex-P.15, Rs.10,00,000/- would be remaining, which under deposit would fetch a minimum interest of around 6% per annum. With 6% interest per annum thereon, the petitioner would be receiving Rs.60,000/- every year as interest. As per Ex-P.16, the functional life of the artificial limb is 6 – 7 years and it requires a periodic maintenance every three years which would cost around Rs.52,000/-. The said 6% interest accrued over a span of 6 years would be Rs.3,60,000/- with which the petitioner can very well take care of the maintenance as well as the replacement of the artificial limb. The same holds good even if inflation is to be factored in.

20. With regard to the compensation awarded under the other heads, this Court is of the view that there is no need to interfere with the



C.M.A.No.2597 of 2024

same as they seem to be just and fair. Thus, the compensation awarded by the Tribunal is now modified as under:-

S. No.	Head	Amount
1	Loss of income towards Functional Disability $\{[\text{Rs.10,000/- (NI)} + 40\% \text{ of Rs.10,000/- (FP)}] \times 12 \text{ (m)} \times 18 \text{ (M)} \times 70\% \text{ (FD)} = \text{Rs.21,16,800/-}\}$	Rs.21,16,800.00
2	Medical Expenses	Rs.3,37,000.00
3	Pain and Suffering	Rs.1,00,000.00
4	Transportation Expenses	Rs.20,000.00
5	Nutrition Expenses	Rs.25,000.00
6	Damages to Clothes	Rs.1,000.00
7	Attender Charges	Rs.9,500.00
8	Loss of Amenities	Rs.1,00,000.00
9	Marital Prospects	Rs.1,00,000.00
	Total (excluding 'Artificial Leg')	Rs.28,09,300.00
10	Artificial Leg	Rs.12,50,000.00
	Grand Total (including 'Artificial Leg')	Rs.40,59,300.00
Note: 'NI' denotes 'Notional Income', 'FP' denotes 'Future Prospects', 'm' denotes 'months', 'FD' denotes 'Functional Disability' and 'M' denotes 'multiplier'		

CONCLUSION:

21. The respondent / Transport Corporation is directed to deposit the modified award amount *i.e.*, **Rs.40,59,300/- (Rupees Fourty**



C.M.A.No.2597 of 2024

Lakh Fifty Nine Thousand and Three Hundred only).

WEB COPY

21.1. The respondent / Transport Corporation is also directed to deposit interest at the rate of 7.5% per annum on Rs.28,09,300/- [total compensation excluding that for artificial leg] from the date of claim petition till the date of deposit. This is for the reason that the compensation under the head of artificial leg is towards future expenses.

21.2. The aforesaid amounts shall be deposited to the credit of M.C.O.P. No.7781 of 2018 on the file of Motor Accident Claims Tribunal (IV Court of Small Causes), Chennai, after deducting the amount if any already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment.

21.3. On such deposit being made, the petitioner is permitted to withdraw Rs.28,09,300/-, which is the total amount excluding the compensation for purchase and maintenance of artificial leg, along with the accrued interest thereon.

21.4. As regards the compensation awarded for purchase and



C.M.A.No.2597 of 2024

maintenance of the artificial leg viz., Rs.12,50,000/-, upon such deposit by the Transport Corporation, the petitioner is permitted to withdraw Rs.2,50,000/- for the purpose of purchasing an artificial leg. The remaining amount of Rs.10,00,000/- shall lie deposited in a nationalised bank and the petitioner is entitled to receive the interest accruing thereon once in every year towards the maintenance of the artificial limb. The deposited amount of Rs.10,00,000/- shall not be withdrawn by the petitioner unless the Tribunal is satisfied about the necessity for the same.

22. In view of the foregoing narrative, connected Civil Miscellaneous Petition in C.M.P. No.20667 of 2024 is allowed. The Civil Miscellaneous Appeal is allowed by awarding an enhanced compensation of Rs.40,59,300/- with proportionate costs in the manner detailed above.

[J.N.B., J.] [R.S.V., J.]
.01.2025

List of Additional Documents marked vide C.M.P. No.20667 of 2024			
S.No.	Date	Description of Document	Marked as
1	July 22,	Quote for Artificial Limb issued by KARE Prosthetics and Orthotics,	Ex-P.15



C.M.A.No.2597 of 2024

	2023	Chennai (Original)	
2	July 22, 2023	Quote for lifetime maintenance of the Artificial Limb, issued by KARE Prosthetics and Orthotics, Chennai (Original)	Ex-P.16

[J.N.B., J.] [R.S.V., J.]
09.01.2025

Index : Yes / No
Neutral Citation : Yes / No
Internet : Yes / No
Speaking Order : Yes / No
asi

To

The Motor Accident Claims Tribunal,
(IV Court of Small Causes),
Chennai.



WEB COPY



C.M.A.No.2597 of 2024

J. NISHA BANU, J.
and
R. SAKTHIVEL, J.

asi

PRE-DELIVERY JUDGMENT MADE IN

C.M.A.No.2597 of 2024

09.01.2025