



CMA No.579 of 2025

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 27.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

CMA No.579 of 2025

M.Rajagounder

...Appellant

vs.

1. A.Ashok Kumar

2. National Insurance Company Limited,
having its branch office at first floor,
Karthikeya Complex, No.403, B-10,
Mettur Main Road, Bhavani,
Erode District 638 301.

3. National Insurance Company Limited,
having its Divisional Office at No.73,
Perundurai Road, near Collector Office,
Erode District 638 011.

... Respondents

Prayer: The Civil Miscellaneous appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to enhance the compensation amount made in judgment and decree dated 10.01.2023 in MCOP No.191 of 2020 on the file of the Special Subordinate Judge, Motor Accident Claims Tribunal, Erode.



WEB COPY



CMA No.579 of 2025

For Appellant : Mr.S.P.Yuaraj

for M/s M.Malar

For Respondents : Mr.S.Senthilkumar

for second and third respondents

ORDER

Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has come before this court by filing the present appeal.

2. It is not in dispute that the appellant/claimant sustained grievous injury in a road accident that had occurred on 17.04.2020. According to the claimant, he was riding his two wheeler from North to South direction and after giving proper signal, he crossed the road from left to right and reached at Pillaiyar Kattur Privu at western side. At that time, the first respondent came in his two wheeler bearing registration No.TN 34 J 7114 from opposite direction in a rash and negligent manner and dashed against the two wheeler of the victim. As a result of accident, the claimant fell down and sustained grievous crush injuries. It was also claimed that the claimant was aged about 55



CMA No.579 of 2025

WEB COPY

years at the time of accident and he was engaged in agricultural work and milk vending.

3. The first respondent remained exparte before the Tribunal and hence, notice to the first respondent is dispensed with.

4. The National Insurance Company limited/ second and third respondents filed counter and denied the manner of accident as narrated in the claim petition. It was the case of the second and third respondents that the accident had occurred only due to the negligence on the part of the victim. The age and income of the claimant was also denied in the counter.

5. The Tribunal, based on the evidence available on record, came to the conclusion that the accident had occurred due to the rash and negligent driving of the first respondent and hence, the second and third respondents are liable to pay compensation of Rs.7,36,000/-. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has filed the present appeal before this court.



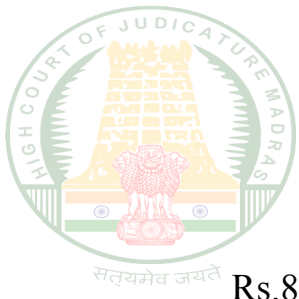
CMA No.579 of 2025

WEB COPY

6. The learned counsel for the appellant/ claimant and the respondents 2 and 3/ insurance company have not advanced any arguments on the questions of negligence as well as liability. Therefore, the facts necessary for deciding the above questions are not discussed in this appeal.

7. The learned counsel for the appellant would submit that the accident had occurred in the year 2020, however, the tribunal fixed notional income only at Rs.8000/-, which is on very much on lower side. He further submits that the Tribunal, even though fixed the age of the claimant about 55 years, at the time of calculating compensation under loss of earning capacity, had applied multiplier 9, instead of 11. He also submitted that the compensation awarded by the Tribunal under the other heads are also require enhancement.

8. The learned counsel for the respondents 2 and 3/ insurance company would submit that the claimant has not produced any documentary evidence to prove his avocation and income and therefore, the Tribunal was justified in fixing notional income at



CMA No.579 of 2025

WEB COPY

Rs.8,000/-. He further submitted that the amounts awarded under the heads pain and sufferings and attender charges are on higher side.

9. A perusal of the Award passed by the Tribunal would indicate that the Tribunal in paragraph No.9(i) of its order, observed that the age of the claimant was 55 years at the time of accident and the same was not disputed by the respondents/ insurance company. The Aadhaar Card of the claimant is marked as Ex.P13 and the copy of the same is also produced before this court by the learned counsel for the appellant. A perusal of the Aadhar Card would suggest that the claimant Rajagoundar was born on 12.09.1965. Therefore, on the date of accident on 17.04.2020, he was aged about 55 years. Hence, the Tribunal committed an error in applying multiplier of '9', while calculating compensation under loss of earning capacity and the proper multiplier applicable to the age of 55 years is '11'.

10. As far as the income of the claimant is concerned, the claimant has not produced any document to prove the avocation and monthly income. However, taking into consideration the year of



CMA No.579 of 2025

WEB COPY

accident and the cost of living, this court proceeds to fix notional income of the claimant at Rs.16,500/-. As per the ratio laid down by the Apex Court in *National Insurance Company Limited Vs. Pranay Sethi and others reported in AIR 2017 SC 5157(Special Leave Petition (Civil) No.25590 of 2014 dated 31.10.2017)*, 10% enhancement should be awarded towards future prospects.

11. The Tribunal, after perusing the photographs Ex.P14 recorded in its order that the claimant suffered amputation of left leg below knee level. The claimant, who examined himself as PW1 also deposed that his left leg was amputated below knee level. The Medical Board, which examined the claimant has given disability certificate Ex.C1, assessing the disability suffered by the claimant at 65% . The above disability certificate was marked before the Tribunal as Ex.C1, without any objection by the respondents 2 and 3. Therefore, this court proceeds to fix disability percentage at 65%. Accordingly, a sum of Rs.15,57,270/- (16,500 x 1.1 x 12 x 11 x 65%) is awarded towards loss of earning capacity.



CMA No.579 of 2025

WEB COPY

12. It is seen from the discharge summary EX.P12 that the claimant was in hospital for eight days from 17.04.2020 to 24.04.2020. Therefore, the compensation awarded by the Tribunal towards attender charges is reduced from Rs.50,000/- to Rs.10,000/-. Further the amount of Rs.2,000/- awarded under the head Damages to clothes and articles is set aside.

13. The Tribunal has not awarded any amount towards loss of amenities, however, awarded a sum of Rs.50,000/- towards pain and sufferings. Considering the fact that multiplier method is adopted for calculating the compensation under the head loss of earning capacity, a sum of Rs.25,000/- each is awarded towards pain and sufferings and loss of amenities.

14. The compensation awarded by the Tribunal under other heads, viz. Transportation charges, Extra nourishment and Medical expenses as per bills are confirmed.



WEB COPY

15. Accordingly, the compensation awarded by the Tribunal is modified as under:

Sl. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of earning capacity	4,81,000	15,57,270	enhanced
2.	Transportation expenses	5,000	5,000	confirmed
3.	Extra Nourishment	7,000	7,000	confirmed
4.	Attender charges	50,000	10,000	reduced
5.	Damages to clothes and articles	2,000	-	set aside
6.	Medical expenses	1,41,000	1,41,000	confirmed
7.	Pain and sufferings	50,000	25,000	reduced
8.	Loss of amenities	-	25,000	granted
	Total	7,36,000	17,70,270	enhanced by 10,34,270

16. With the above modifications, this **Civil Miscellaneous Appeal** is **allowed** and the compensation awarded by the Tribunal at Rs.7,36,000/- is hereby enhanced to **Rs.17,70,270/-** together with interest at 7.5% per annum (excluding the default period, i.e. **504 days**, as ordered by this court, while pending appeal in CMP No.21567 of



CMA No.579 of 2025

WEB COPY

2024) from the date of petition till the date of deposit. **The appellant/claimant is directed to pay applicable court fee on the above mentioned enhanced compensation.**

17. The respondents 2 and 3/insurance company are directed to deposit the compensation amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of **four weeks** from the date of receipt of a copy of this judgment. On such deposit, the appellant/claimant shall be permitted to withdraw the compensation amount along with interest and costs, less the amount if any, already withdrawn, after making formal application before the Tribunal. There shall be no order as to costs.

27.02.2025

Index:Yes/No
Internet:Yes/No
mst



CMA No.579 of 2025

WEB COPY **To**

1. The Special Subordinate Judge,
Motor Accident Claims Tribunal,
Erode.
2. The Section Officer,
V.R. Section, Madras High Court,
Chennai-104.



WEB COPY



CMA No.579 of 2025

S.SOUNTHAR, J.

mst

CMA No.579 of 2025

27.02.2025