



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A (MD) No.1324 of 2009

and

M.P (MD) No.4 of 2009

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United India Insurance Company Ltd.,
Branch Manager,
Thanjavur.

: Appellant/2nd Respondent

Vs.

1.Suresh Kumar
2.Siva Kumar

: 1st Respondent/Petitioner
: 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, against the order passed by the Motor Accident Claims Tribunal before the Additional Sub-Court, Thanjavur, dated 17.07.2006 in M.C.O.P.No.384 of 2004.

For Appellant : Mr.P.Jaganathan
For R1 : Mr.G.Karnan
For R2 : No appearance

JUDGMENT

This appeal has been preferred by the appellant/Insurance Company questioning the award passed by the Motor Accidents Claims Tribunal, Additional Sub-Court, Thanjavur in M.C.O.P.No.384 of 2004.

2. It is the case of the claimant that on 21.08.2003 he was driving the first respondent's TATA SUMO car TN-51-X-1819 from Thanjavur to Ooty in a careful manner. One Sivakumar and his friends were travelling in the said Car. At about 11.15 p.m., the first respondent's car was proceeding near Thanjavur Medical College First Gate from east towards west direction, the 1st respondent's car capsized due to a Pit in the road. In the impact, the claimant and some of the inmates of the said car sustained injuries. Immediately, he was taken to TMCH, Thanjavur and thereafter, referred to Vinodagan Private Hospital, Thanjavur, where he was treated as inpatient from 22.08.2003 to 08.09.2003. In this accident, the claimant sustained fractures on Right frontal bone; right side mandible; nasal bones fracture of maxila and mandible; eye lids badly affected and injuries.

3. The claimant would further state that the claimant was 22



years old at the time of accident and he was a driver by profession. He was working under the first respondent and earned Rs.4,000/- per month.

4. The claim petition was opposed by the appellant contending that the driver of the Car was responsible for the accident and the claim was exorbitant and excessive and disputing the age, avocation and income of the injured and its liability to pay the compensation.

5. Before the Tribunal, both parties adduced oral and documentary evidence. The claimant examined himself as P.W.1 and examined the Doctor as P.W.2 and marked Ex.P1 to Ex.P9. The appellant examined one Veerappan as R.W.1, but no document was marked.

6. The Tribunal after considering the oral and documentary evidence held that the driver of the Car caused the accident and the Car was insured with the appellant Insurance Company and hence, both are jointly liable to pay compensation and awarded a sum of Rs.1,83,000/- with interest at the rate of 7.5% Challenging the same, the present appeal has been filed.

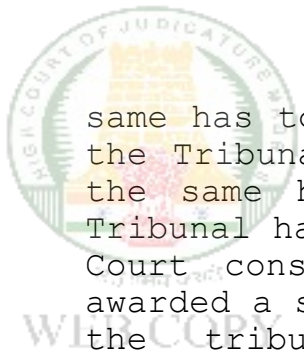
7. Mr.P.Jaganathan, learned counsel appearing for the appellant would urge that the evidence adduced by the appellant was not properly appreciated by the Tribunal. It is his contention that Ex.P1 and Ex.P7 would amply prove that the injured has also contributed to the occurrence, therefore, the Tribunal would have fixed the contributory negligence, however, the entire liability was fixed on the Insurance Company. The appellant has preferred this appeal only challenging the quantum of compensation

8. Per contra, the learned counsel for the claimant contented that the Tribunal awarded a just and reasonable compensation and the same does not require interference and hence, this appeal is to be dismissed.

9. Heard the rival submissions made by both sides and perused the materials available on record.

10. As regards quantum, though the claimant has stated that he was earning Rs.4,000/- per month, admittedly no document was produced to prove the same. The Tribunal taking into consideration the age of the injured, fixed the annual income at Rs.24,000/- and applied the multiplier '17', awarded a sum of Rs.1,02,000/- towards 25% permanent disability. I am of the opinion that it is not a fit case to apply multiplier method in the injury case.

11. Ex.P8 would show that the claimant has suffered 25% permanent disability and therefore, this Court awarded a sum of Rs.50,000/- (25% X 2,000) towards permanent disability. The



same has to be enhanced from Rs.12,000/- to Rs.30,000/-. Further, the Tribunal has awarded a lesser amount for loss of amenities and the same has to be enhanced from 12,000/- to Rs.50,000/-. The Tribunal has not awarded any amount towards attendant charges. This Court considering period of treatment taken by the injured has awarded a sum of Rs.13,000/- towards attendant charges. The award of the Tribunal in all other heads are just and reasonable and the same are confirmed. The award of the Tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Permanent Disability	1,02,000	50,000	reduced
2.	For pain and suffering	12,000	30,000	enhanced
3.	Loss of amenities	12,000	15,000	enhanced
4.	Attendant charges	-	13,000	awarded
5.	For Medical expenses	57,000	57,000	confirmed
	Total	Rs.1,83,000	Rs.1,65,000	

12. In the result, the appeal is partly allowed. The award is modified to Rs.1,65,000/- as against Rs.1,83,000/-. The interest at the rate of 7.5% is maintained. The appellant is directed to deposit the modified amount, less the amount already deposited. On such compliance, the claimant is permitted to withdraw the award amount. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant



To

- 1.The Motor Accident Claims Tribunal,
The Additional Sub-Judge,
Thanjavur,
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

C.M.A(MD)No.1324 of 2009
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