



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.12.2021

CORAM :

WEB COPY

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.1628 of 2013

Minor P.Dahmaodhara Balaji

...Appellant/Petitioner

(Minor Appellant in Rep. Thro his father and natural guardian palanikumar)

Vs.

1.Kopi

2.M/s.New India Assurance Co.Ltd.,
through its Branch Manager,
82, New Dharapuram Road,
Thirumalai Palaza 1st Floor,
Dindigul District.

...Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to amend the orders and fair order of the lower Court by enhancing the quantum of compensation and allowing the claim of the appellants in toto as prayed for.

For Appellant :Mr.N.Kumar

For R2 :Mr.B.Vijay Karthikeyan

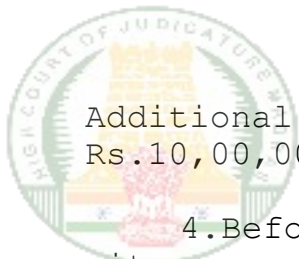
JUDGMENT

The appellant is the claimant in MCOP.No.326 of 2009 on the file of the Motor Accident Claims Tribunal cum Additional Sub Court, Dindigul. He filed the claim petition under Section 166(1)(A) of the Motor Vehicles Act, 1988 seeking compensation of Rs.10,00,000/- for the injuries sustained by him in a road accident on 22.11.2009.

2.The case of the claimant is that on 22.11.2009, at about 3.00 p.m. when the minor claimant get down from the bus at Kollampatti pirivu bus stop and walked towards south, at that time a TATA ACE bearing Registration No.TN-39-AK-08264 was coming from east to west in a rash and negligent manner and dashed against the minor claimant. Due to that accident, the petitioner sustained grievous and multiple injuries and admitted in the Christian Hospital, Ottanchatiram. Further, he admitted in the Meenakshi Hospital, Madurai in coma stage.

3.The claimant has filed the claim petition in M.C.O.P.No.326 of 2009 on the file of the Motor Accidents Claims Tribunal cum

<https://hcservices.ecourts.gov.in/hcservices/>



Additional Sub Court, Dindigul, seeking compensation of Rs.10,00,000/-.

4.Before the Tribunal, on the side of the claimant, two witnesses were examined as P.W.1 and P.W.2 and eleven documents were marked as Exs.P.1 to P.12. On the side of the respondents herein, no one was examined and no document was marked.

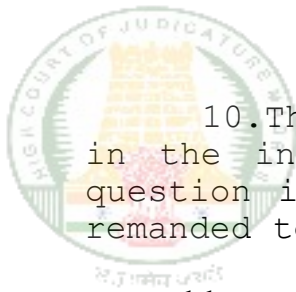
5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondents and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the first respondent and directed the first and second respondents to pay a sum of Rs.4,25,950/- as compensation. Aggrieved over the orders passed by the Tribunal, the claimant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Mr.N.Kumar, learned counsel appearing for the appellant/claimant and Mr.B.Vijay Karthikeyan, learned counsel appearing for the second respondent.

7.The learned counsel for the appellant contended that the accident occurred only due to the rash and negligent driving of the driver of the TATA ACE belonging to the first respondent. Though the petitioner sustained 65% of disability due to head injury and he was treated in a coma stage, the Tribunal has without any reason taken 55% disability alone. He further submitted that the appellant has taken prolonged treatment and undergone pain and suffering for long time, but the Tribunal has not awarded for pain and suffering, extra nourishment and Transportation. Hence, it requires modification.

8.The learned counsel appearing for the second respondent / New India Assurance Company Ltd., contended that the Tribunal after considering all the aspects of the case, awarded a sum of Rs.4,25,950/- as compensation and the same need not be disturbed at this stage.

9.A perusal of the records, it show that the Doctor, who was examined as PW.2, has assessed the partial permanent disability as 65%. However, the Tribunal reduced the same to 55% and fixed Rs.2,000/- for 1% disability and awarded a sum of Rs.1,10,000/-. At that time of accident the claimant has attained the age of 11 years and due to injury, he could not walk. Now he produced the disability certificate from the Medical Board and also wants to adopt multiplier method for his functional disability. But no evidence let in by the claimant. However, while perusing the evidence, this Court is of the opinion that it is necessary to remand the matter to the Court below for marking of additional evidence by the claimant.



10. Therefore for the purpose of getting more evidence and also in the interest of justice, this Court feels that the award in question is liable to be set aside and the matter is liable to be remanded to the file of the Motor Accidents Claims Tribunal.

11. In the result, the Civil Miscellaneous Appeal is disposed of. The order dated, 08.03.2013 passed in M.C.O.P.No.326 of 2009 by the Motor Accidents Claims Tribunal/Additional Sub Court, Dindigul, is set aside and the case is remanded back to the trial court for getting additional evidence regarding functional disability by the claimant. The Motor Accidents Claims Tribunal/Additional Sub Court, Dindigul, is directed to dispose of the same within a period of two months from the dated of receipt of a copy of this judgment. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vsd

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 concerned.

To

1. The Motor Accident Claims Tribunal cum Additional Sub Court,
Dindigul.

2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-38197[F] dated 10/12/2021)

C.M.A. (MD)No.1628 of 2013
10.12.2021

VR(CO)

KB(17.02.2022) 3P 5C