



WEB COPY

C.M.A.(MD)No.402 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.06.2021

Delivered On : 09.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.402 of 2013

Karthik Kumar

..Appellant

Vs.

1.Minor Balashanmugam,
S/o Balasubramanian, Rep by his mother

2.ICICI Lombard General Insurance Co. Ltd.,
Through its Branch Manager,
Tirunelveli.

..Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.176 of 2009 dated 19.10.2010, on the file of the Motor Accident Claims Tribunal, (Principal Sub Judge), Tirunelveli.

For Appellant	: Mr.T.Selvakumaran
For 1 st Respondent	: Minor
For 2 nd Respondent	: Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.176 of 2009 dated 19.10.2010, on the file of the Motor Accidents Claims Tribunal/Principal Sub Judge, Tirunelveli.

2.The appellant herein is the petitioner, the respondents 1 and 2 herein are the respondents in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.176 of 2009, claiming compensation for the injuries sustained by him in an accident that took place on 09.12.2008. The Tribunal has awarded a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.176 of 2009 is as follows:

On 09.12.2008, at about 9.00 p.m., when the petitioner was riding his bicycle along the Sankarankovil - Puliyangudi main road,
<https://hcservices.ecourts.gov.in/hcservices/>



near Veeruppu villaku, a bus bearing registration No.TN-72-B-7949 that belong to the first respondent was driven by its driver in a rash and negligent manner dashed against the claimant. The claimant sustained injuries. He took treatment in the Palayamkottai Medical Collage Hospital as 'in patient' till 17.12.2008. The claimant was aged about 30 years and he was working as loadman and was earning Rs.7,000/- (Rupees Seven Thousand only) at the time of accident. The claimant claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

4.Brief substance of the counter filed by the second respondent therein is as follows:

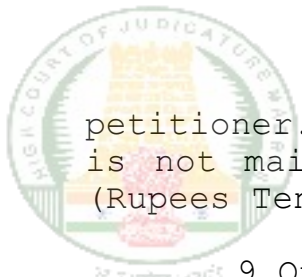
The first respondent driver was not rash and negligent. It was the claimant who ride the bicycle in a drunken state. The claimant hit against the bus and he invited the accident. The injuries are only simple in nature and the claim is excessive.

5.On the side of the claimant, two witnesses were examined and eight documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only) as compensation to be paid to the appellant. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that only a person driving a motor vehicle in a drunken mood is punishable under Section 185 of the Motor Vehicles Act. The doctor, who took the breathing test was not examined. The Tribunal has to fix the disability as 50%. The appellant has lost two teeth and there was also disfigurement. In support of his contention, the judgment of the Hon'ble Supreme Court reported in **2004 (1) TANMAC 390** is cited.

7.On the side of the appellant, it is further stated that the Tribunal should have awarded a sum of Rs.50,000/- towards pain and sufferings and Rs.50,000/- towards loss of amenities and Rs.20,000/- towards extra nourishment. The Tribunal has failed to consider that loss of two teeth is grievous in nature. The wound certificate, Ex.P2 was marked to show the injuries. Under Section 185 of the Motor Vehicle Act, the consumption of alcohol can be proved only by the examination of the doctor. Mere AIR copy is insufficient to prove the same. There was no evidence to prove that 100 ml of the blood of the claimant contains more than 30 ml of alcohol. There was no contributory negligence on the part of the claimant. P.W.2 has deposed that the claimant has 20% disability. The appellant is eligible for more than one lakh as compensation.

8.On the side of the respondents, it is stated that the injuries are simple in nature. P.W.2 has not given treatment to the



petitioner. Under Section 172 of the Motor Vehicles Act, an appeal is not maintainable, if the award amount is less than Rs.10,000/- (Rupees Ten Thousand only).

9. On the side of the appellant, it is stated that the appellant was admitted as 'in patient' for eight days and the injuries are grievous in nature. The evidence of P.W.2, reveals that there is only partial damage to two of the teeth. There is no loss of teeth and there is only damage. P.W.2 did not give treatment to the claimant and he is not a dentist. Except an entry in the AIR copy that there was smell of alcohol, there was no other evidence for proving the drunkenness of the claimant. No medical bills marked.

10. In the above circumstances, it is decided that the claimant is entitled to a sum of Rs.20,000/- (Rupees Twenty Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

11. In the result, this Civil Miscellenaous Appeal is partly allowed. The respondents are directed to deposit Rs.20,000/- (Rupees Twenty Thousand only) with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant is permitted to withdraw his respective share with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. Excess amount, if any deposited shall be refunded to the respondents. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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 Accidents Claims Tribunal, Principal Sub Judge,
Tirunelveli.

2.The Section Officer, (2C)
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A. (MD) No.420 of 2013
09.07.2021

SJ(CO)
KB(12.08.2021) 4P 4C