



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.09.2021

Delivered On : 10.11.2021

WEB COPY

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.428 of 2013

United India Insurance Company Ltd.,
Through it Divisional Manager,
54-A, Palani Road, Dindigul.

..Appellant/2nd Respondent

Vs.

1.Joy Stella
2.S.Mariappan

..Respondent/Petitioner
..Respondent/1st Respondent

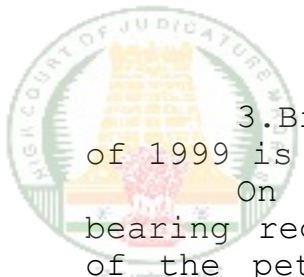
Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 09.06.2006 passed in M.A.C.O.P.No.2022 of 1999 on the file of the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Madurai.

For Appellant	: Mr.A.Shajahan
For 2 nd Respondent	: Mr.R.Suresh Kumar
For 1 st Respondent	: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.A.C.O.P.No.2022 of 1999 dated 09.06.2006, on the file of the Motor Accident Claims Tribunal, Additional District Court/Fast Track Court No.2, Madurai.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition. The first respondent herein has filed a claim petition in M.A.C.O.P.No.2022 of 1999, claiming compensation for the injuries sustained by him, in an accident that took place on 19.03.1999. The Tribunal has awarded a sum of Rs.5,05,854/- (Rupees Five Lakhs Five Thousand Eight Hundred and Fifty Four only) as compensation. Against which, the appellant has preferred this appeal.



3. Brief substance of the claim petition in M.A.C.O.P.No.2022 of 1999 is as follows:

On 19.03.1999, the petitioner travelled in a two wheeler bearing registration No.TN-59-9240 as a pillion rider. The husband of the petitioner, who drove the vehicle, parked the vehicle in front of a tea shop to enquire about an address. At the time, a van bearing registration No.TN-57-A-2070 was driven by its driver in a rash and negligent manner dashed against the scooter and both the petitioner and her husband sustained injuries. Both of them were taken to the Government Rajaji Hospital and then the petitioner was admitted in a private hospital. She undergone four surgeries and still she has to undergo two or three surgeries. The petitioner is disabled. The petitioner lost her job also. The petitioner claimed a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) as compensation.

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

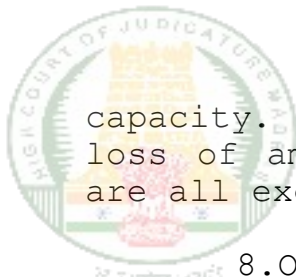
On 29.06.1998, the first respondent sold the vehicle to one Sakthivel. He has issued delivery note also. The said Sakthivel has to be impleaded in the petition. The first respondent is no way connected with the accident. The first respondent is not liable to pay compensation. The petition is to be dismissed.

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

The petitioner suppressed the facts regarding the accident. The driver drove the van in a careful and cautious manner. The rider of the scooter stopped the vehicle without any indication. Though the van driver tried his level best and applied the brake, the van hit on the back side of the scooter. The insurance company of the scooter is necessary to be impleaded in the case. The second respondent is not liable to pay compensation. The nature of injuries, mode of treatment, medical expenditure, age, income, profession are all denied. The claim is excessive.

6. On the side of the claimant, two witnesses were examined and 18 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.5,05,854/- (Rupees Five Lakhs Five Thousand Eight Hundred and Sixty only) as compensation to be paid by the respondents therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

7. On the side of the appellant, it is stated that the award is exorbitant and not in consonance with the facts and circumstances of the case. The Tribunal accepted the disability as 50% without any scientific proof for assessing the percentage of disability. The Tribunal wrongly applied multiplier method to assess compensation. The multiplier method cannot be mechanically applied for assessing the loss of earning capacity. The Tribunal is wrong in awarding permanent disability and for loss of earning



capacity. The amount awarded towards injury, pain and suffering, loss of amenities, inability to work and towards medical expenses are all exorbitant.

8.On the side of the appellant, it is further stated that there is no proof of income and it is wrong to fix the monthly income as Rs.2,700/- (Rupees Two Thousand and Seven Hundred only). Awarding compensation both for loss of earning capacity and for medical disability is wrong. The disability is only partial permanent. There is no functional disability. P.W.2 Doctor did not give treatment to the first respondent and he has only assessed the disability. P.W.2 has deposed that he has not seen the medical documents of any other expert regarding the particular case. The learned counsel for the appellant would rely upon a judgment of this Court in the case of **United India Insurance Company Limited v. Muniandi and others** in C.M.A.(MD)No.1079 of 2015.

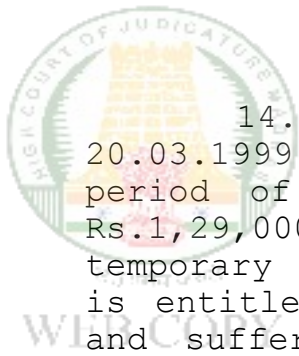
9.On the side of the appellant, it is further stated that no further surgery was suggested by the Doctor but the Tribunal has awarded 25,000/- (Rupees Twenty Five Thousand only) towards future pain and suffering, which is not acceptable.

10.On the side of the second respondent, it is stated that the second respondent is only a formal party and that though sufficient opportunity was given to the first respondent, there was no oral or documentary evidence on the side of the first respondent.

11.It is seen that FIR, Ex.P1, chargesheet Ex.P4 were against the driver of the van. There is no rebuttal evidence on the side of the respondent. In the above circumstances, it is decided that the van driver is responsible for the accident. There is no allegation of violation of policy conditions.

12.It is seen that the Tribunal has awarded Rs.1,94,400/- (Rupees One Lakhs Ninety Four Thousand and Four Hundred only) towards loss of income. The educational certificates of the injured were marked as Ex.P10 and Ex.P12. The salary certificate was marked as Ex.P13 and the xerox copy of the ID card was marked as Ex.P14. It is stated that before the accident, the first respondent worked as an accountant in a Social Service Centre and he was earning Rs.2,700/- (Rupees Two Thousand and Seven Hundred only) as salary.

13.The claimants sustained injuries. The wound certificate was marked as Ex.P3. The discharge summary was marked as Ex.P6. It is stated that the first respondent undergone surgeries on 20.03.1999, 19.06.1999, 03.08.1999, 04.06.1999, 13.01.2000, 16.08.2000 and on 15.04.2002. P.W.2 has deposed that the disability is 50%. The disability certificate was marked as Ex.P15 and X ray was marked as Ex.P16. Case sheet was marked as Ex.P17 and Photos and negatives were marked as Ex.P18. Considering the treatment undergone by the first respondent, the disability is fixed as 50%.



14.The first respondent has undergone treatment from 20.03.1999 till 15.04.2002. For the period of treatment and for a period of rehabilitation, the first respondent is entitled to Rs.1,29,000/- (Rupees One Lakh Twenty Nine Thousand only) toward temporary loss of income. For 50% disability, the first respondent is entitled to Rs.50,000/- (Rupees Fifty Thousand only). For pain and suffering, the first respondent is entitled to Rs.40,000/- (Rupees Forty Thousand only). The medical bills were marked as Ex.P7 and Ex.P9. For medical expenses, the first respondent is entitled to Rs.1,42,000/- (Rupees One Lakh and Forty Two Thousand only). For loss of amenities, the first respondent is entitled to Rs.50,000/- (Rupees Fifty Thousand only). The first respondent is entitled to Rs.30,000/- (Rupees Thirty Thousand only) towards attendant charges. No compensation can be awarded for future pain and suffering. In total, a sum of Rs.4,41,000/- (Rupees Four Lakhs and Forty One Thousand only) is awarded as compensation.

15.Hence, it is decided that the first respondent is entitled to a sum of Rs.4,41,000/- (Rupees Four Lakhs and Forty One Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

16.The appellant herein is directed to deposit Rs.4,41,000/- (Rupees Four Lakhs and Forty One Thousand only) with 7.5% interest from date of the claim petition till the date of realization with cost and the amount has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent is permitted to withdraw the award amount with interest after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. Excess amount, if any deposited shall be refunded to the appellant herein. In the result, this Civil Miscellaneous Appeal is **partly allowed**. No Costs.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

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.

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



To

1.The Motor Accidents Claims Tribunal, Additional District Judge,
Fast Track Court No.II, Madurai.

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

+1 CC to M/s.A.SHAJAHAN, Advocate (SR-33896[F] dated 10/11/2021)

C.M.A. (MD) No.428 of 2013

10.11.2021

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