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C.M.A.(MD)No.864 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 07.07.2021

Delivered On : 26.07.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No.864 of 2013

and

M.P. (MD) Nos.1 to 3 of 2015

Pandian

..Appellant/Petitioner

Vs.

1.S.K.Kavitha

2.The Branch Manager,
National Insurance Co. Ltd.,
T.S.4132, East Main Street,
Pudukkottai.

..Respondents/Respondent

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair order and decreetal order dated 21.12.2012 passed in M.C.O.P.No.150 of 2012 on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Pudukkottai in so far as it relates to restricting the claim amount at Rs.36,000/- (Rupees Thirty Six Thousand only) as against a sum of Rs.1,36,000/- (Rupees One Lakh and Thirty Six Thousand only)

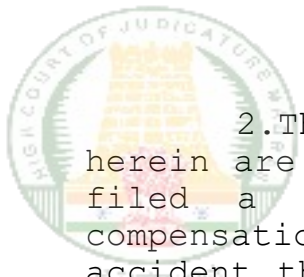
For Appellant : Mr.R.P.Ramachandran

For 2nd Respondent : Mr.D.Sivaraman

For 1st Respondent : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.150 of 2012 dated 21.12.2012, on the file of the Motor Accident Claims Tribunal (Additional District and Sessions Judge), Pudukkottai.



2.The appellant herein is the petitioner and the respondents herein are the respondents in the claim petition. The appellant has filed a claim petition in M.C.O.P.No.150 of 2012, claiming compensation for the injuries sustained by the claimant in an accident that took place on 03.04.2007. The Tribunal has awarded a sum of Rs.36,000/- (Rupees Thirty Six Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.150 of 2012 is as follows:

The claimant is an agriculturist and fire wood seller. He was earning Rs.5,000/- (Rupees Five Thousand only) and he was aged about 30 years at the time of accident. On 03.04.2007, at about 09.30 p.m., when the claimant was travelling in a bus bearing registration No.TN-55-B-0859 by standing near the rear foot-board, the driver of the bus applied the brake all of a sudden and the claimant thrown out of the bus and he sustained injuries. He was taken to Pudukkottai Government Hospital and then he was taken to Thanjavur Government Hospital and he took treatment till 12.04.2007. Later he took treatment in a private hospital. The claimant is getting giddiness and headache. He was unable to walk for a long distance and he was unable to do any work as before and claimed a sum of Rs.4,00,000/- (Rupees Four Lakhs only) as compensation.

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

The respondents denied age, income and profession of the claimant. The nature of injuries and medical expenses are to be proved by the claimant. The bus driver drove the bus slowly and carefully. But the claimant travelled in the foot-board of the bus carelessly in spite of the warnings of the conductor.

5.On the side of the claimant, two witnesses were examined and seven 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.72,000/- (Rupees Seven Two Thousand only) as compensation and that since the claimant contributed negligence for the accident, the Tribunal deducted 50% towards contributory negligence and has awarded a sum of Rs.36,000/- (Rupees Thirty Six Thousand 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 the Tribunal has wrongly fixed contributory negligence on the appellant. The appellant was thrown out of the bus only due to the rash and negligent driving of the bus. The disability is 26 % and



the Tribunal has failed to consider Ex.P6, the disability certificate. The award under various head is very low. The appellant is eligible for Rs.4,00,000/- (Rupees Four Lakhs only) as compensation but the appellant has restricted his claim to a sum of Rs.1,36,000/- (Rupees One Lakh and Thirty Six Thousand only).

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7.On the side of the second respondent, it is stated that there is contributory negligence on the part of the appellant. The appellant was standing on the foot-board without holding the handle or railing. Only due to the negligence of the appellant, he was thrown out of the bus. P.W.2 has not given treatment to the appellant. The private doctor has fixed the disability in a excessive manner and prayed the appeal to be dismissed.

8.On the basis of Ex.P1, Ex.P3 to Ex.P5 and on the basis of P.W.1, the Tribunal has fixed the liability on the driver of the bus. But at the same time, the Tribunal came to the conclusion that it is for the passengers to catch hold of the railings and handle, while travelling in the bus. Admittedly, the appellant was standing near rear foot-board. It is for the appellant to take proper care of himself. Hence, it is decided that the fixation of contributory negligence on the part of the appellant is reasonable.

9.On the side of the appellant, it is stated that the disability fixed by the Tribunal is very low. The Tribunal has fixed the disability as 15%. Considering the fact that the appellant has sustained head injury, it is decided that the disability is 26%. For 26% disability, the appellant is entitled for a sum of Rs.78,000/- (Rupees Seventy Eight Thousand only). The compensation fixed by the Tribunal under various other heads are reasonable.

10.In the above circumstances, it is decided that the total compensation is fixed as Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only). Since there is contributory negligence on the part of the claimant, he is entitled only for 50% of the award amount. Hence, the appellant is entitled to a sum of Rs.60,000/- (Rupees Sixty 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 second respondent is directed to deposit Rs.60,000/- (Rupees Sixty 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 the award amount 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 second



respondent. The claimant is not entitled for interest for the default period, if there is any. No Costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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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, Additional District and Sessions Judge,
Trichy.

Copy to

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

+1 CC to M/s.R.P.RAMACHANTHIRAN, Advocate (SR-23899[F] dated 26/07/2021)

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-24063[F] dated 27/07/2021)

C.M.A. (MD) No.864 of 2013
26.07.2021

SE (CO)
KB(08.10.2021) 4P 6C