



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.08.2021

Delivered on : 01.09.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

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C.M.A(MD) No.1047 of 2014

and

M.P. (MD) No.3 of 2014

The Divisional Manager,
United India Insurance Company Ltd.,
Promenade Road,
Contonment, Trichy.

... Appellant/Respondent No.2

Vs.

1.V.Jayapal
2.The Correspondent,
Srivasan Vidyalaya Nursery &
Primary School, No.1,
Sannathi Street, T.V. Kovil,
Trichy District.

... Respondent No.1/Petitioner

... Respondent No.2/Respondent No.1

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.505 of 2009, dated 26.11.2013, on the file of the Motor Accident Claims Tribunal cum III Additional Sub Court, Thiruchirapalli.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.N.Sudhagar Nagaraj
R2 : Given up

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 26.11.2013, passed in M.C.O.P.No.505 of 2009, on the file of the Motor Accident Claims Tribunal cum III Additional Sub Court, Thiruchirapalli.

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.

3.Brief substance of the petition in M.C.O.P.No.505 of 2009 is as follows:-

On 26.06.2008, at about 4.30 p.m., when the petitioner was riding a motorcycle bearing Registration No.TN-45-S-6403, a van bearing Registration No.TN-49-B-8181 was driven by its driver in a



rash and negligent manner, dashed against the motorcycle. The petitioner sustained grievous injuries. The petitioner claimed a sum of Rs.6,00,000/- toward compensation.

3.Brief substance of the counter by the second respondent in M.C.O.P.No.505 of 2009 is as follows:-

The petition is bad for non-joinder of the necessary party. The owner and the insurer of the vehicle bearing Registration No.TN-45-S-6403 were not impleaded as parties. The petitioner did not possess a valid driving licence. The first respondent was not rash or negligent at the time of accident. The petitioner is the cause of accident and the injuries are simple in nature.

4.On the side of the petitioner, two witnesses were examined and Twenty One documents were marked. On the side of the respondents, one witness was examined and one document was marked.

5.The Tribunal after considering both sides, awarded a sum of Rs.7,62,193/- as compensation. Against the same, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the Tribunal has erroneously applied multiplier method for an injury case. The disability fixed by the Doctor is excessive. The award of Rs.4,36,800/- towards partial permanent disability is erroneous. The award on the ground of medical expenses is excessive. There is no permanent loss of income, there is only a single fracture, and there is no necessity to apply multiplier method. There was no functional disability or permanent disability. No amputation of limbs and prayed the award to be reduced.

7.On the side of the first respondent, it is stated that the claimant was 43 years old and at the time of accident, he was working as Electrician and Plumber. The injuries were proved. The discharge summaries were marked as Ex.P3, P4, P13 and P19 and the disability was proved through Ex.P6, P9, P14 and P18. Medical Bills were proved through Ex.P7, P15 and P20. On the side of the first respondent, a judgment reported in 2011-ACJ-1434 and another judgment reported in 2017(1)TNMAC-232 were cited.

8.Copy of the F.I.R was marked as Ex.P1. Copy of the rough sketch was marked as Ex.P11. Copy of the criminal Court judgment was marked as Ex.P12. The evidence of P.W.1 reveals that the accident took place due to the rash and negligent driving of the van driver. The accident Register copy was marked as Ex.P2. C.T. Scan report was marked as Ex.P6. Photo and C.D was marked as as Ex.P9. Scan report was marked as Ex.P14. Ex.P18, X-ray reveals the injuries sustained by the claimant. Ex.P3, P4, P13 and P19 were discharge summaries. Ex.P5 and Ex.P16 were Prescriptions. P.W.2/ Doctor's report of the disability certificate Ex.P17.



9.It is seen that the claimant sustained injuries in the accident and he took treatment. The claimant was admitted as inpatient from 26.02.2008 till 31.03.2008. Again, he took treatment as inpatient from 26.05.2008 till 18.06.2008. Thereafter, he was admitted as inpatient from 13.03.2013 till 05.04.2013.

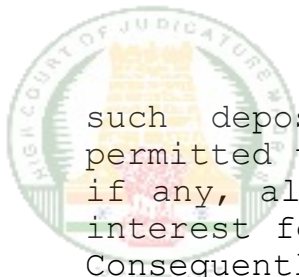
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10.On the side of the appellant, it is sated that P.W.2 has fixed disability as 65%. There is only one fracture and the ratio of disability fixed by the Doctor is excessive. On the side of the claimant, it is stated that the claimant took treatment as inpatient for 58 days. The Tribunal applied multiplier method and the Tribunal fixed the monthly income of the claimant as Rs.4,000/- per month and the Tribunal fixed Rs.4,36,800/- towards loss of earning capacity.

11.In Ex.P2, Accident Register copy, it is stated that the claimant sustained injuries on the right leg and head injuries. In Ex.P3, it is stated that the claimant took treatment as inpatient from 26.02.2008 till 31.03.2008 and he undergone surgery and K Wire was fixed on the right lower limb. In Ex.P4, it is stated that the claimant took treatment as inpatient from 26.05.2008 till 18.06.2008 and he undertook surgery and another K wire was fixed. P.W.2/ Doctor has fixed disability as 65%. As the injury is on the leg and the hip, the disability fixed by the Doctor is taken as correct. Hence, it is decided that the petitioner is entitled for a sum of Rs.1,95,000/- for 65% disability [$\text{Rs.3,000} \times 65 = \text{Rs.1,95,000/-}$]. There is no proof that the claimant was functionally disabled and he could not earn. But, for the period of treatment and considering the period of rehabilitation, this Court awarded a sum of Rs.75,000/- towards temporary loss of income. Medical Bills were marked as Ex.P7, Ex.P15 and Ex.P20. The Tribunal has awarded Rs.2,92,393/- towards medical expenses is reasonable. The award amount fixed by the Tribunal under all other heads [ie., Transportation - Rs.2,000/-, Extra Nourishment - Rs.5,000/-, Damages to clothing and articles - Rs.1,000/-, pain and sufferings - Rs.25,000/-] are reasonable.

13.In total, the claimant is entitled to Rs.5,95,393/- and rounded off to **Rs.5,95,500/-** as compensation. In the result, this Civil Miscellaneous Appeal is partly allowed and the award dated 26.11.2013, passed in M.C.O.P.No.505 of 2009, on the file of the Motor Accident Claims Tribunal cum III Additional Sub Court, Thiruchirapalli, is hereby modified and the award is reduced from Rs.7,62,193/- to Rs.5,95,500/-.

14. The appellant / Insurance company is directed to deposit the entire compensation of Rs.5,95,500/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. Excess amount, if any deposited shall be refunded to the appellant. On



such deposit being made, the first respondent / claimant is permitted to withdraw the entire amount, after deducting the amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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
III Additional Sub Court,
Thiruchirapalli.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-27835[F]
dated 01/09/2021)

Judgment made in
C.M.A(MD)No.1047 of 2014
01.09.2021

GC(08.10.2021) 4P 5C