



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 05.08.2021

Delivered On : 24.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.1078 of 2014

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Duraipazham

.. Appellant/Petitioner

Vs.

1.Rajagopal

2.United India Insurance Co. Ltd.,

Xavier building, 2nd Floor,

PWD Road,

Nagercoil - 629 001,

Kanyakumari District.

3.Shri Renganatha Match Industries,

Door No.43, Main Road,

Kovilpatti - 628 502,

Thoothukudi District.

4.United India Insurance Co. Ltd.,

Door No.924/A, Main Road,

C.C.C. Complex, Kovilpatti - 628 501.

Thoothukudi District.

.. Respondents/Respondents

(3rd respondent set exparte before Tribunal.

Hence, he is given up)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 28.02.2014 passed in M.C.O.P.No.7 of 2013, on the file of the Motor Accidents Claims Tribunal/(II Additional District Court), Tirunelveli.

For Appellant : Mr.V.Sasi kumar

For 2nd Respondent : Mr.N.Dilip kumar

For 1st Respondent : No Appearance

For 3rd Respondent : Exparte vide in E.B.

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.7 of 2013 dated 28.02.2014, on the file of the Motor Accidents Claims Tribunal/II Additional District Judge, Tirunelveli.

2.The appellant herein is the petitioner and the respondents 1 to 4 herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.7 of 2013, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 12.10.2012. The Tribunal has awarded a sum of Rs.5,15,000/- (Rupees Five Lakhs and Fifteen 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.7 of 2013 is as follows:

The claimant was aged about 55 years at the time of accident and was earning a sum of Rs.9,000/- (Rupees Nine Thousand only) per month. On 12.10.2012, at 06.00 p.m., the claimant was travelling in the lorry bearing registration No.TN-72-L-8645 that belongs to the first respondent along the Madurai to Tirunelveli National Highways. The driver of the lorry drove the vehicle in a rash and negligent manner and dashed against another lorry bearing registration No.TAC-1661 that belongs to the third respondent, which was stationed on the left side of the road. The claimant sustained injuries and was taken to TMVM hospital and took treatment as 'in patient' on 12.10.2012 and then he took treatment as 'inpatient' in Sri Ram Hospital, Nagercoil from 13.10.2012 to 11.11.2012. The claimant was permanently disabled and he claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards compensation.

4.The brief substance of the counter filed by the respondents 2 and 4 therein is as follows:

The claimant was not the cleaner and he was a gracious passenger. He is not entitled to get any compensation. The claimant has to prove the age, occupation, income and the manner of the accident. The claim is excessive.

5.On the side of the petitioners, 2 witnesses were examined and 12 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.5,15,000/- (Rupees Five Lakhs and Fifteen Thousand only) as compensation to be paid by the respondents 1 and 2. Against which, the appellant has preferred this Civil Miscellaneous Appeal.

6.On the side of the appellant, it is stated that the appellant sustained grievous injuries and the disability is 57%. The compensation awarded towards pain and suffering is very low. The compensation for future medical expenses has to be enhanced. Loss of income for the period of treatment was not awarded. The award amount under various other heads are also to be enhanced. On the side of the appellant, it is stated that the appellant worked as the cleaner in the lorry. No amount was awarded for loss of amenities, future medical expenses and attendant charges.

7.On the side of the respondents, it is stated that two lorries were colluded. The claimant was 55 years old and he was only a gracious passenger. The doctor, who gave treatment was not examined. P.W.2 did not give treatment to the injured. He fixed only the disability. There is no evidence for loss of earning capacity. The medical bills were not proved through any witness from the hospital. The award already awarded is very excessive and prayed the appeal has to be dismissed.



8.From Ex.P1 and Ex.P6, it is decided that the accident took place only due to rash and negligent driving of the lorry driver. There is no evidence to disprove that the claimant worked as the cleaner in the lorry. There is no evidence to prove that the claimant was only gracious passenger. The second respondent is liable to pay compensation. On the basis of the evidence of P.W.2 and on the basis of Ex.P11, disability certificate, it is decided that the claimant is having 57% disability. The age of the claimant is 55 years. The Tribunal has fixed Rs.2,000/- (Rupees Two Thousand only) for each percentage of the disability and the same has to be enhanced and hence, it is decided that the claimant is entitled for Rs.3,000/- for each percentage the disability. For 57% disability, a sum of Rs.1,71,000/- is awarded. The medical bills were marked as Ex.P9. A sum of Rs.3,71,000/- (Rupees Three Lakhs Seventy One Thousand only) was fixed towards medical expenses. It is seen that the Tribunal has not awarded any amount towards future medical expenses. A sum of Rs.78,000/- (Rupees Seventy Eight Thousand only) is awarded towards future expenses. The amount fixed under all other heads are reasonable.

9.In the above circumstances, it is decided that the claimant is entitled to Rs.6,50,685/-, which is rounded off to Rs.6,50,000/- (Rupees Six Lakhs and Fifty Thousand only) as total compensation.

10.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellant herein is entitled to a sum of Rs.6,50,000/- (Rupees Six Lakhs and Fifty 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.The respondents 1 and 2 are directed to deposit Rs.6,50,000/- (Rupees Six Lakhs and Fifty 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 claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by them earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

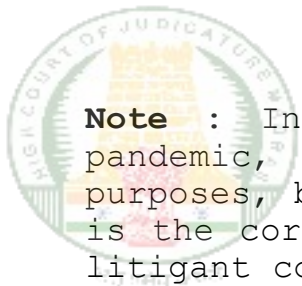
Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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.

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To

1.The Motor Accidents Claims Tribunal,
II Additional District Judge,
Tirunelveli.

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

+1 CC to M/s.V.SASI KUMAR, Advocate (SR-27251[F] dated 25/08/2021)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-27452[F] dated 26/08/2021)

C.M.A.(MD)No.1078 of 2014
24.08.2021

RK (16.09.2021) 4P 5C