



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.09.2021

Delivered on : 24.09.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

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C.M.A(MD) No.293 of 2014

L.Selvam

... Appellant / Claimant

Vs.

1.P.Selvam

2.The Branch Manager,

M/s.National Insurance Company Ltd.,

Branch Office, Third floor,

Unity Building Annexe,

No.72, Mission Road, P.O.No.2701,

Bangalore, Karnataka.

... Respondents /
Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the fair and decreetal order, dated 30.01.2013, made in M.C.O.P.No.966 of 2006, on the file of the Chief Judicial Magistrate, Tiruchirappalli and to allow the appeal.

For Appellant : Mr.N.Anandakumar

For R2 : Mr.J.S.Murali

For R1 : No appearance

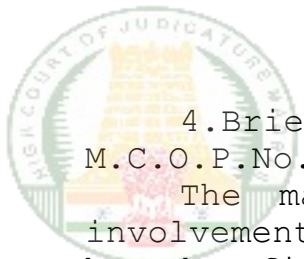
JUDGMENT

This Civil Miscellaneous Appeal is filed to enhance the fair and decreetal order, dated 30.01.2013, made in M.C.O.P.No.966 of 2006, on the file of the Chief Judicial Magistrate, Tiruchirappalli.

2.The appellant herein is the claimant and the respondents herein are the respondents in the original claim petition.

3.Brief substance of the petition in M.C.O.P.No.966 of 2006 is as follows:-

On 07.02.2005, at about 07.30 am., the petitioner was walking along the left side of the Trichy-Madras main road, near Banamangalam Chathiram, at that time, a TATA sumo car that belonged to the first respondent was driven by its driver in a rash and negligent manner, dashed against the petitioner from the back side, and then hit against a bicycle. The petitioner sustained injuries and immediately he was taken to the hospital. The petitioner claimed a sum of Rs.5,00,000/- as compensation.



4.Brief substance of the counter of the second respondent in M.C.O.P.No.966 of 2006 is as follows:-

The manner of accident is denied. The date of accident, involvement of the vehicle and possession of valid driving licence by the first respondent driver are all to be proved. Without noticing the vehicle, the petitioner tried to cross the road and invited the accident. There was no negligence on the part of the driver of the car. The injuries are simple in nature. The amount claimed is excessive.

5.On the side of the petitioner, three witnesses were examined and ten documents were marked. On the side of the respondents, no witness was examined and no document was marked.

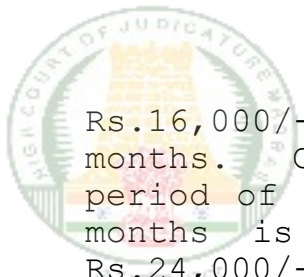
6.The Tribunal, after considering both sides, awarded a sum of Rs.76,000/- as compensation. Against the same, the claimant / appellant approached this Court by way of Appeal for enhancement of compensation.

7.On the side of the appellant, it is stated that the Tribunal failed to apply multiplier method and simply awarded Rs.1,000/- per percentage of disability. The amount awarded under the head of pain and suffering is very low. The Tribunal failed to consider that the appellant took treatment as inpatient from 07.02.2005 till 23.02.2005. The compensation awarded under the head of medical expenses, extra nourishment, transportation, loss of income, are to be enhanced. Due to head injury, the appellant was not able to continue his work. The appellant suffered from brain haemorrhage and for one or two minutes, the appellant was not in a position to know what is going on.

8.On the side of the second respondent, it is stated that there was no fracture. Only for simple injuries, the appellant is claiming enhancement. There was no fracture or functional disability and the appellant is not entitled to get an award by applying multiplier method. The amount awarded by the Tribunal is reasonable.

9.First Information Report was registered against the driver of the car. There was no rebuttal evidence on the side of the respondents. Hence, it is decided that the accident took place due to the rash and negligent driving of the driver of the first respondent vehicle. The appellant sustained injuries and he was admitted in hospital. Discharge summary was marked as Ex.P2. Wound certificate was marked as Ex.P3. Disability certificate was marked as Ex.P6.

X-ray was marked as Ex.P7. P.W.2/Doctor has deposed that the appellant is having 30% partial permanent disability. The Tribunal has awarded a sum of Rs.30,000/- for the partial permanent disability. Considering the date of accident, the amount awarded for the disability is enhanced to Rs.60,000/- (1% disability - Rs.2,000/-) . The Tribunal has awarded a sum of



Rs.16,000/- towards temporary loss of income for a period of four months. Considering the period of treatment and considering the period of rehabilitation, the loss of income for a period of six months is granted and temporary loss of income is fixed at Rs.24,000/-.

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10.The Tribunal has awarded a sum of Rs.15,000/-, for pain and suffering, Rs.5,000/- for medical expenses, Rs.10,000/- for nutritious food and for transport expenses and the award is reasonable. In total the appellant is entitled for a sum of Rs.1,14,000/-. Hence, this Civil Miscellaneous Appeal is partly allowed. The award, dated 30.01.2013, made in M.C.O.P.No.966 of 2006, on the file of the Chief Judicial Magistrate, Tiruchirappalli, is enhanced from Rs.76,000/- to Rs.1,14,000/-.

11. The second respondent / Insurance Company is directed to deposit Rs.1,14,000/- (Rupees One Lakh Fourteen Thousand only) along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the appellant / claimant is permitted to withdraw the entire award amount, after deducting 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.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

1.The Chief Judicial Magistrate,
Tiruchirappalli.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-30267[F] dated 24/09/2021)

C.M.A(MD)No.293 of 2014

24.09.2021

MGJ/SKN(18.11.2021) 3P 5C