



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.08.2021

Delivered on : 27.08.2021

CORAM:

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

C.M.A(MD) No.526 of 2014

WEB COPY

P.Muthupandy

... Appellant/Petitioner

Vs.

1.P.Chellapandi

2.Shriram General Insurance Company Limited,
Represented by its Authorized Signatory
Door No.30, HAK Road,
Chinnachokkikulam,
Near ICICI Bank,
Madurai.

... Respondents/Respondents

(R1 was exparte in the lower Court,
hence, notice may be dispensed with)

Prayer:

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the judgment and decree passed in M.C.O.P.No.1304 of 2010, dated 21.10.2013, on the file of the Motor Accidents Claims Tribunal - I Additional Sub Judge, Madurai.

For Appellant	: Mr.C.Godwin
For R2	: Mr. D.Sivaraman
R1	: Exparte vide E.B.

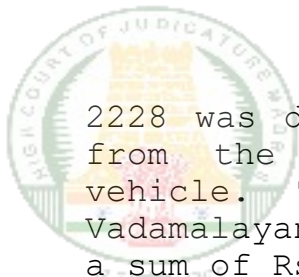
JUDGMENT

This Civil Miscellaneous Appeal is filed against the award, dated 21.10.2013, passed in M.C.O.P.No.1304 of 2010, on the file of the Motor Accidents Claims Tribunal - I Additional Sub Judge, Madurai.

2.The appellant herein was the petitioner and the respondents herein were the respondents in the original claim petition in M.C.O.P.No.1304 of 2010.

3.Brief substance of the petition in M.C.O.P.No.1304 of 2010 is as follows:-

The petitioner was working as a Real Estate Broker and was earning Rs.5,000/- per month. On 04.04.2010, at about 4.00 p.m, the petitioner was riding as a pillion rider in a motorcycle bearing Registration No.TN-65-A-2940 from Tirupparankundrum to Thirunagar. At that time, another motorcycle bearing Registration No.TN-58-U-



2228 was driven by its driver in a rash and negligent manner came from the opposite direction, dashed against the petitioner's vehicle. The petitioner sustained injuries. He was taken to Vadamalayan Hospital, Madurai, for treatment. The petitioner claimed a sum of Rs.7,00,000/- as compensation.

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4. Brief substance of the counter of the second respondent in M.C.O.P.No.1304 of 2010 is as follows:-

The manner of the accident has to be proved. There was no negligence on the part of the first respondent's driver. The first respondent's driver drove the vehicle with two pillion riders and has violated the policy conditions. The Insurance Company is not liable to pay compensation. The petitioner has to prove the age, occupation, income, injuries, medical expenses through documents. The claim is excessive.

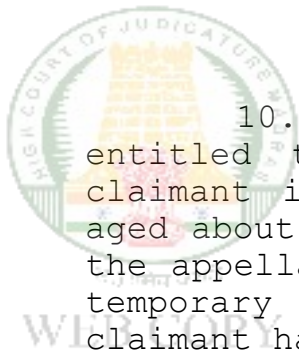
5. On the side of the petitioner, three witnesses were examined and Twelve documents were marked. On the side of the respondents, no witness was examined and no document was marked.

6. After considering both sides, the Tribunal awarded a sum of Rs.1,09,446/- as compensation. Against which, the appellant approached this Court, for enhancement of compensation.

7. On the side of the appellant, it is stated that the appellant / claimant has sustained 60% disability, but, the Tribunal fixed the disability only at 40%, which is very low. The Tribunal failed to consider the evidence of P.W.3 / Doctor and the disability certificate. The appellant / claimant spent a sum of Rs.1,21,326/- towards medical expenses, but, he received only Rs.90,995/- from the Government and the appellant / claimant is entitled for Rs.30,331/- towards medical expenses. The award fixed for pain and suffering, Transportation, Medical Expenses, Extra nourishment are to be enhanced.

8. On the side of the respondents, it is stated that P.W.2 is a private Doctor and that the disability was not fixed by the Government Doctor. Medical Bills Ex.P8 and Ex.P9 were produced and the medical expenses mentioned in Ex.P8 and Ex.P9 were already awarded by the Tribunal and prayed the Appeal to be dismissed.

9. Copy of the wound certificate was marked as Ex.P3. Discharge summary was marked as Ex.P6. Case sheet was marked as Ex.P10. Disability certificate was marked as Ex.P11. X-ray was marked as Ex.P12. The appellant / claimant sustained grievous injury. The spinal card of the appellant / claimant was affected and he undergone surgery on 10.04.2010. The Tribunal fixed the disability at 40%. The disability fixed by the Tribunal is reasonable. For 40% disability, the appellant is entitled to Rs.1,00,000/- as compensation. For 1% Disability = Rs.3,000/-] as compensation.



10. For pain and suffering, the appellant /claimant is entitled to Rs.30,000/-. For transportation, the appellant /claimant is entitled to Rs.2,000/- The appellant is a pensioner, aged about 64 years, there is no proof of any other income. Hence, the appellant / claimant is not entitled to claim compensation, for temporary loss of income. There is no proof that the appellant / claimant has spent to Rs.1,21,326/- as medical expenses. Apart from Rs.90,995/-, received by the appellant from the Government, the Tribunal has awarded Rs.7,446/- for the expenses mentioned in Ex.P8 and Ex.P9, which is reasonable and the same is rounded off as Rs.8000/-. The Tribunal has awarded Rs.20,000/- for extra nourishment and the same is reasonable. In total, the appellant / claimant is entitled to Rs.1,80,000/- as compensation.

11. This Civil Miscellaneous Appeal is partly allowed and the award, dated 21.10.2013, passed in M.C.O.P.No.1304 of 2010 on the file of the Motor Accidents Claims Tribunal - I Additional Sub Judge, Madurai, is hereby enhanced from Rs.1,09,446/- to Rs.1,80,000/-.

12. The second respondent / Insurance Company is directed to deposit Rs.1,80,000/- 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 III)

// 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.

To

1. The Motor Accidents Claims Tribunal,
I Additional Sub Judge,
Madurai.

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



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

+1 CC to M/s.D.SIVARAMAN, Advocate (SR-27556[F] dated 27/08/2021)

+1 CC to M/s.C.GODWIN, Advocate (SR-27571[F] dated 27/08/2021)

Pre-delivery Judgment made in
C.M.A(MD)No.526 of 2014
27.08.2021

_RS (09.09.2021) 4P 6C