



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.08.2021

Delivered On : 07.09.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD)No.581 of 2014

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Nagaiyyan

...Appellant/Petitioner

Vs.

1.Devendran

2.United India Insurance Company Limited,
By its Divisional Manager,
No.61/2694, Ist Floor (Indian Bank Upstairs),
South Main Street,
Thanjavur.

... Respondents/ Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 20.09.2013 made in M.C.O.P.No.293 of 2012, on the file of the Motor Accidents Claims Tribunal, Additional Sub Court, Kumbakonam.

For Appellant	: Mr.S.Siva Thilakar
For 1 st Respondent	: Mr.G.Kannan
For 2 nd Respondent	: Mr.J.S.Murali

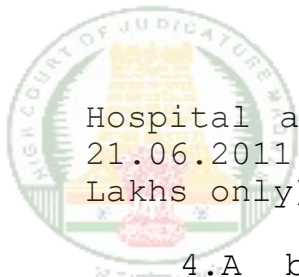
JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.293 of 2012 dated 20.09.2013, on the file of the Motor Accidents Claims Tribunal, Additional Sub Judge, Kumbakonam.

2.The appellant herein is the petitioner and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.293 of 2012, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 01.05.2011. The Tribunal has awarded a sum of Rs.1,79,847/- (Rupees One Lakh Seventy Nine Thousand Eight Hundred and Forty Seven 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.293 of 2012 is as follows:

On 01.05.2011, at 04.05 p.m., when the claimant was walking along the Thanjavur Nagapattinum Main Road at Ammapettai near Vellaikulam, a car bearing Registration No.TN-07-D-4077 was driven by its driver in a rash and negligent manner dashed against the claimant. The claimant sustained grievous injury and he was admitted in Thanjavur TMCH hospital and then he was taken to Chennai Central



Hospital and he took treatment as 'in patient' from 02.05.2011 to 21.06.2011. The claimant claimed a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) as compensation.

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

The driver of the car was having valid driving licence. The car was not insured with the second respondent. The second respondent is not liable to pay compensation. The claimant violated the traffic rules and contributed to the accident. The injuries are simple in nature.

5.On the side of the petitioner, 2 witnesses were examined and 12 documents were marked. On the side of the respondents, one witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.1,79,847/- (Rupees One Lakh Seventy Nine Thousand Eight Hundred and Forty Seven only) as compensation to be paid by the first respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

6.On the side of the appellant, it is stated that the loss of income at the ratio of Rs.4,000/- (Rupees Four Thousand only) per month has to be awarded. The disability is 70%. The disability is proved through Ex.P14 and Ex.P15. A sum of Rs.50,000/- (Rupees Fifty Thousand only) ought to be awarded towards pain and sufferings and a sum of Rs.7,000/- (Rupees Seven Thousand only) ought to be awarded for transport expenses. A sum of Rs.10,000/- (Rupees Ten Thousand only) ought to be awarded for attendant charges and Rs.10,000 (Rupees Ten Thousand only) to be awarded for extra nourishment.

7.On the side of the appellant, it is stated that the injured was 37 years. The doctor was examined as P.W.2. The accident register copy was marked as Ex.P2. The medical opinion was marked as Ex.P3. The accident summary was marked as Ex.P4. The hospital note was marked as Ex.P5. The prescriptions were marked as Ex.P7. Medical bills were marked as Ex.P8. Photos were marked as Ex.P9. C.T. Scan was marked as Ex.P10. C.T. Brain was marked as Ex.P11. Motor vehicle report was marked as Ex.P12. P.W.2 has deposed that the disability is 69.6%. The Tribunal has awarded Rs.2,000/- (Rupees Two Thousand only) for each percentage disability and awarded Rs.1,40,000/- (Rupees One Lakh and Forty Thousand only) and Rs.3,000/- for each percentage of disability has to be awarded.

In support of his contention, a judgment passed by this Court in the case of **National Insurance Co. Ltd., V. G.Ramesh and others** reported in **2013 (2) TN MAC 583** is cited, wherein it is held as follows:



"Applying percentage method, disability compensation awarded at rate of Rs.3,000/- per percentage of disability, at Rs.81,000/- (Rs.3,000 x 27) - Practice of awarding at Rs.2,000/- per percentage of disability, held, not correct in view of present day cost of living- Award of Rs.2,55,000/- by Tribunal under Loss of Future income set aside."

8.Considering the costs of living and considering the above cited judgment, it is decided that fixation of Rs.3,000/- (Rupees Three Thousand only) per percentage of disability will be reasonable. The disability is fixed as 70%. A sum of Rs.2,10,000/- (Rupees Two Lakhs and Ten Thousand only) is awarded for 70% disability sustained by the appellant. The Tribunal has awarded a sum of Rs.25,000/- (Rupees Twenty Thousand only) towards loss of income, which is reasonable. The appellant is entitled to Rs.3,000/- (Rupees Three Thousand only) for transport expenses, a sum of Rs.5,000/- (Rupees Five Thousand only), for extra nourishment, a sum of Rs.5,000/- (Rupees Five Thousand only) towards attendant charges and a sum of Rs.7,000/- (Rupees Seven Thousand only) towards medical expenses and a sum of Rs.10,000/- (Rupees Ten Thousand only) towards pain and suffering. In total, a sum of Rs.2,65,000/- (Rupees Two Lakhs and Sixty Five Thousand only) is awarded as compensation.

9.In the result, this Civil Miscellenaous Appeal is partly allowed. The appellant herein is entitled to a sum of Rs.2,65,000/- (Rupees Two Lakhs and Sixty Five Thousand only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization.

10.The first respondent is directed to deposit Rs.2,65,000/- (Rupees Two Lakhs and Sixty Five 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. Excess amount, if any deposited shall be refunded to the first respondent. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-I)

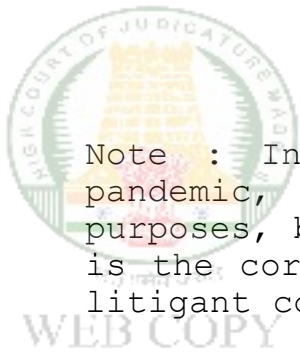
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Sub Assistant Registrar(CS)

MRN

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



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.Additional Sub Judge,
The Motor Accidents Claims Tribunal,
Kumbakonam.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-28373[F] dated 07/09/2021)

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-28634[F]
dated 09/09/2021)

C.M.A. (MD) No.581 of 2014

07.09.2021

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