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C.M.A.(MD)No.750 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 05.08.2021

Delivered On : 31.08.2021

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A. (MD) No.750 of 2014

The Branch Manager,
National Insurance Company Ltd.,
4132, East Main Street,
Pudukkottai.

..Appellant/2nd Respondent

Vs.

1.S.Selvaraj	..1 st Respondent/Petitioner
2.S.Balasubramanian	..2 nd Respondent.1 st respondent
3.S.Rengaraj	..3 rd Respondent/3 rd Respondent
4.Bajaj Alliance General Life Insurance Co. Ltd., Madurai.	..4 th Respondents/4 th Respondent

(Since the respondents 2 to 4 remained exparte
in the Court below, notice dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order and decree dated 31.03.2011 passed in M.A.C.O.P.No.127 of 2009 on the file of the Motor Accidents Claims Tribunal/Additional District and Sessions Court/Fast Track Court, Pudukkottai.

For Appellant	: Mr.J.S.Murali
For 1 st Respondent	: Mr.B.Sekar
	For Mr.P.Ganapathi Subramanian
Respondents 2 to 4	: Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.A.C.O.P.No.127 of 2009 dated 31.03.2011, on the file of the Motor Accidents Claims Tribunal, Additional District and Sessions Judge/Fast Track Court, Pudukkottai.

2.The appellant herein was the second respondent, the first respondent herein was the petitioner and the respondents 2 to 4 herein were the respondents 1, 3 and 4 in the claim petition. The claimant has filed a claim petition in M.A.C.O.P.No.127 of 2009,

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claiming compensation for the injuries sustained by him, in an accident that took place on 25.05.2005. The Tribunal has awarded a sum of Rs.3,99,300/- (Rupees Three Lakhs Ninety Nine Thousand and Three Hundred only) as compensation. Against which, the appellant has preferred this appeal.

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3.A brief substance of the claim petition in M.A.C.O.P.No.127 of 2009 is as follows:

The claimant was a mechanic aged about 24 years and was earning a sum of Rs.8,000/- (Rupees Eight Thousand only) per month. On 25.05.2005, at about 03.00 p.m., when the claimant was riding his motorcycle bearing registration No.TN-55-F-2468 that belonged to the third respondent along the Pudukkottai to Alangudy road, a lorry bearing registration No.TN-25-4057 was driven by its driver in a rash and negligent manner came from the opposite direction dashed against the two wheeler. The claimant sustained grievous injuries. The claimant claimed a sum of Rs.8,00,000/- (Rupees Eight Lakhs only) as compensation.

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

The claimant should prove the accident. As per the inspection done by the second respondent, the claimant alone was responsible for the accident. At least he was liable for contributory negligence. The age, avocation and income of the claimant has to be proved. The nature of injuries, mode of treatment and expenses are all false. The claimant did not sustain any injury or disability. He is not entitled for any compensation. He took treatment in the government hospital free of costs. The claim is excessive.

5.A brief substance of the counter filed by the fourth respondent therein is as follows:

The respondents denied the age, occupation and income of the claimant. The nature of injuries and medical expenses are to be proved with documentary evidence. This respondent is only a formal party. The fourth respondent has to be exonerated. FIR and chargesheet were filed only against the driver of the first respondent. The driver of the first respondent admitted the offence and has paid the fine.

6.On the side of the petitioner therein, two witnesses were examined and 12 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.3,99,300/- (Rupees Three Lakhs Ninety Nine Thousand and Three Hundred only) as compensation to be paid by the appellant herein. Against which, the appellant herein has preferred this Civil Miscellaneous Appeal.



7. On the side of the appellant, it is stated that the Tribunal failed to consider that the claimant has not proved his avocation and income. Fixing of monthly income is on the higher side. The Tribunal fixed the disability at 30%. But for 30% disability, the Tribunal applied multiplier method and fixed the loss of income. There is no functional disability. Fixing a sum of Rs.3,21,300/- (Rupees Three Lakhs Twenty One Thousand and Three Hundred only) as partial permanent disability is excessive. Awarding Rs.21,000/- (Rupees Twenty One Thousand only) towards temporary loss of income for the period of treatment and awarding Rs.3,21,300/- (Rupees Three Lakhs Twenty One Thousand and Three Hundred only) again for loss of income is wrong. Awarding Rs.10,000/- (Rupees Ten Thousand only) towards loss of expectation of life is unsustainable.

8. On the side of the appellant, it is stated that the appellant has not proved that he is running a two wheeler mechanic work shop. No proof of income was adduced. The Tribunal has fixed the monthly income as Rs.5,250/- (Rupees Five Thousand Two Hundred and Fifty only) without any basis. The registration certificate for running a mechanic shop was not filed. The claimant was not even a member of any Association of Mechanics. Applying multiplier method and awarding both loss of earning capacity and loss of temporary income is wrong.

9. On the side of the respondent, it is stated that the victim is aged only 25 years and he was a running mechanic shop. The doctor has examined the claimant and has fixed the disability as 60%. There is no possibility of producing any document for running a mechanic shop. Considering the fracture, the multiplier method was adopted by the Tribunal. The claimant was not in a position to continue the mechanic work due to the injuries sustained by him. The claimant undergone treatment for four months. The respondents did not produce any document or examine any witness to disprove the case.

10. A perusal of the records reveals that from Ex.P1, FIR, Ex.P4, chargesheet, Ex.P5 judgment of criminal Court, it is decided that the accident took place due to rash and negligent driving of the lorry driver. The doctor fixed the disability as 60%. The copy of the wound certificate was marked as Ex.P6. The disability certificate was marked as Ex.P9. Xray was marked as Ex.P10. Photo and negative of the right leg of the claimant was marked as Ex.P11. The treatment record was marked as Ex.P12. It is seen that the claimant was having fracture only on the toe of the leg. Hence, it is decided that the disability fixed by the Tribunal is reasonable.

11. For a two wheeler mechanic, to start the two wheeler, the foot functions are very necessary. Hence, it is decided that there is some functional disability. For the functional disability, the Tribunal has applied multiplier method, which is also reasonable.



Since an amount is fixed for the loss of earning capacity, there is no necessity for awarding loss of income. Hence, it is decided that the claimant is not entitled for loss of temporary income. Since multiplier method is followed, there is no necessity to fix the compensation for loss of amenities and loss of expectation of life. By applying multiplier method, the Tribunal has awarded a sum of Rs.3,21,300/- (Rupees Three Lakhs Twenty One Thousand and Three Hundred only). For pain and suffering, the Tribunal has awarded a sum of Rs.27,000/- (Rupees Twenty Seven Thousand only). For transport and attendor charges, the Tribunal has awarded Rs.2,000/- (Rupees Two Thousand only). In total, the claimant is entitled for a sum of Rs.3,50,000/- (Rupees Three Lakhs and Fifty Thousand only) towards compensation.

12.In the result, this Civil Miscellenaous Appeal is partly allowed. The first respondent is entitled to a sum of Rs.3,50,000/- (Rupees Three 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.

13.The appellant is directed to deposit Rs.3,50,000/- (Rupees Three 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 first respondent is permitted to withdraw the award amount with proportionate interest after deducting any amount received by her earlier. Excess amount, if any deposited shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No Costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MRN

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, Additional District and Sessions Judge,
Fast Track Court, Pudukkottai.

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

+1 CC to M/s.J.S.MURALI, Advocate (SR-27707[F] dated 31/08/2021)

C.M.A. (MD) No.750 of 2014
31.08.2021

KS (CO)
KB(13.09.2021) 5P 5C