



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.06.2021

Delivered on : 02.07.2021

CORAM:

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

C.M.A(MD) No.1051 of 2016

WEB COPY

C.Selvaraj

... Appellant / Claimant

Vs.

1.Nadarajan

2.The Branch Manager,

National Insurance Company Ltd.,

Kumbakonam Branch,

Kumbakonam Post,

Thanjavur District.

... Respondents / Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed in M.C.O.P.No.747 of 2010 by the Motor Accident Claims Tribunal, Additional District cum Sessions Court, Pudukkottai, dated 07.01.2015.

For Appellant : Mr.Porkodi Karnan

For R2 : Mr.S.Srinivasa Raghavan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the award passed in M.C.O.P.No.747 of 2010, dated 07.01.2015, on the file of the Motor Accident Claims Tribunal- Additional District cum Sessions Judge, Pudukkottai.

2.The appellant herein is the claimant. The appellant filed a petition claiming a sum of Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) as compensation for the injuries sustained by him in a road accident, which took place on 09.03.2010.

3.Brief substance of the petition in M.C.O.P.No.747 of 2010, is as follows:-

On 09.03.2010, at about 8.30 a.m., when the claimant was riding his two wheeler viz., TVS XL Super, bearing Registration No.TN-55-4369 in a careful and cautious manner, an Ambassador car, bearing Registration No.TN-49-W-6269 dashed against him. The claimant sustained injuries and he took treatment as in-patient in the Pudukkottai Government Hospital from 09.03.2010 till 12.03.2010 and he took treatment as in-patient in a private hospital at Madurai, from 12.03.2010 to 06.04.2010. The claimant was running a Sweet Stall and Tea Stall and was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month and he claimed Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) as compensation.



4. Brief substance of the counter in M.C.O.P.No.747 of 2010, is as follows:-

The driver of the first respondent drove the vehicle in a cautious and careful manner, observing all the road rules. It was the claimant, who drove his vehicle in a rash and negligent manner and invited the accident. The Ambassador Car was parked at the time of accident and the claimant drove the two wheeler in a rash and negligent manner along the right side of the road and dashed against the Ambassador Car. The claimant was not having valid driving license at the time of the accident. The Insurance Company for the two wheeler was not impleaded in the case and the second respondent is not liable to pay compensation.

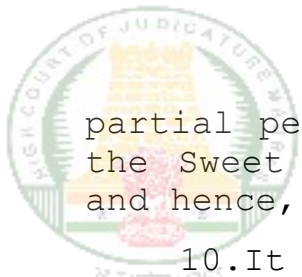
5. Two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Ex.P1 to Ex.P9, on the side of the claimant. No witness was examined and no document was marked on the side of the respondents.

6. The Tribunal, after hearing both sides, awarded a sum of Rs.3,02,388/- (Rupees Three Lakhs Two Thousand Three Hundred and Eighty Eight only) as compensation. Against the same, the appellant / claimant has preferred this Civil Miscellaneous Appeal for enhancement of compensation.

7. On the side of the appellant, it is stated that the Tribunal has failed to consider the Medical Bills of the appellant in a proper perspective. The Tribunal failed to consider Ex.P5/ Medical bills. The Disability Certificate (Ex.P8) was not properly considered by the Tribunal. The monthly income was wrongly fixed by the Tribunal. Loss of Future prospects was not considered by the Tribunal and the appellant filed this Appeal praying for compensation of Rs.15,00,000/- (Rupees Fifteen Lakhs only).

8. On the side of the appellant, it is stated that the appellant has undergone a surgery and he has to remove the plate and screw fixed on the right leg of the appellant. The appellant claimed Rs.27,00,000/- (Rupees Twenty Seven Lakhs only) as compensation, but, the Tribunal has awarded only Rs.3,02,388/- (Rupees Three Lakhs Two Thousand Three Hundred and Eighty Eight only) which was very low. The appellant was having functional Disability and he could not run the Sweet Stall and Tea Stall any further. The Tribunal fixed the compensation as Rs.2,000/- for each percentage of the disability, but, considering the functional disability, the Tribunal should have applied multiplier method. P.W.2/Doctor has deposed that the disability is 35%, the disability certificate was marked as Ex.P8. P.W.2/Doctor has deposed that the claimant could not sit.

9. On the side of the second respondent, it is stated that there is no functional disability and the disability is only



partial permanent disability. The appellant was only an owner of the Sweet Stall. The disability is not a functional disability and hence, there is no necessity to adopt multiplier method.

10.It is seen that the claimant has not filed any document to show that he was running a Sweet Stall. There was no evidence to prove that he was earning Rs.15,000/- (Rupees Fifteen Thousand only) per month, at the time of accident. The Disability is only 35%. The Tribunal has accepted the disability as per the Disability Certificate (Ex.P8). Hence, it is decided that the claimant is entitled for Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) towards 35% of the Disability (1% Disability = Rs.3,000/-).

11.On the side of the appellant, it is stated that the Medical Bills were not properly considered by the Tribunal. On the basis of Ex.P5, the Tribunal has fixed the medical expenses as Ex.1,52,388/-. Considering the rehabilitation charges, it is decided that the appellant / claimant is entitled for a sum of Rs.1,65,000/- (Rupees One Lakh Sixty Five Thousand only) towards Medical Expenses. The award fixed by the Tribunal under Various other heads are reasonable. In total, the appellant /claimant is entitled for Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand only) as compensation.

12.In the result, this Civil Miscellaneous Appeal is partly allowed. The award passed in M.C.O.P.No.747 of 2010 by the learned Motor Accident Claims Tribunal, Additional District cum Sessions Court, Pudukkottai, dated 07.01.2015, is hereby enhanced.

13. The second respondent / Insurance Company is directed to deposit Rs.3,50,000/- (Rupees Three Lakhs Fifty 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-I)

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/ /2021

Sub Assistant Registrar(CS)



Ls
To

1.The Motor Accident Claims Tribunal,
Additional District cum Sessions Court,
Pudukkottai.

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

Copy to

1.The Branch Manager, National Insurance Company Ltd.,
Kumbakonam Branch, Kumbakonam Post, Thanjavur District.

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-21243[F] dated
05/07/2021)

+1 CC to M/s.S.SRINIVASA RAGHAVAN, Advocate (SR-21407[F] dated
06/07/2021)

Judgment made in
C.M.A(MD)No.1051 of 2016

02.07.2021

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