



C.M.A.No.1387 & 1576 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 09.09.2022

PRONOUNCED ON:27.10.2022

CORAM

THE HON'BLE Ms.JUSTICE P.T.ASHA

C.M.A.Nos.1387 and 1576 of 2021

The Divisional Manager,
Reliance General Insurance Company Limited,
100 Feet Road, Mudaliarpeta,
Puducherry - 605 004 ... Appellant in C.M.A.No.1387 of 2021

D.Dhandapani ...Appellant in C.M.A.No.1576 of 2021

Vs

1. D.Dhandapani
2. S.Jayakumar ...Respondents in C.M.A.No.1387 of 2021

1. S.Jayakumar

2. The Divisional Manager,
Reliance General Insurance Company Limited,
100 Feet Road, Mudaliarpeta,
Puducherry - 605 004 ... Respondents in C.M.A.No.1576 of 2021



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PRAYER in both C.M.As: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 17.06.2019 passed in M.C.O.P.No.1130 of 2017 on the file of the Motor Accident Claims Tribunal cum Additional Sub Judge, Puducherry.

C.M.A.No.1387 of 2021

For Appellant : Ms.C.Bhuvanasundari
For Respondent-1 : Mr.Prakash Adiapam
For Respondent-2 : Served-No Appearance

C.M.A.No.1576 of 2021

For Appellant : Mr.Prakash Adiapam
For Respondent-1 : Served-No Appearance
For Respondent-2 : Ms.C.Bhuvanasundari

COMMON JUDGEMENT

C.M.A.No.1387 of 2021 is filed by the second respondent-Insurance Company challenging the compensation granted by the Motor Accident Claims Tribunal at Puducherry.

C.M.A.No.1576 of 2021 is filed by the petitioner seeking enhancement of the Award granted by the Motor Accident Claims Tribunal at Puducherry.



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2. It is necessary to set out the facts which has resulted in filing of the above appeals with the parties being referred to in the same litigative status as before the Tribunal.

The petitioner, who is 45 years and working as a coolie had on 29.08.2015 at about 08.50 pm proceeded to purchase a pair of slippers. For the said reason, he was riding his bicycle on the Villianur to Pondy road. As he attempted to cross the road in a North-South direction opposite the Thattanchavady Electricity Office after duly ensuring that there were no on-coming vehicles on either side, a Yamaha Fazer bearing Registration No.PY-02-L-5314 belonging to the first respondent and insured with the second respondent was driven by its driver in a rash and negligent manner and at a great speed proceeding from West-East. The vehicle hit the petitioner, who sustained grievous injuries. The petitioner in his claim petition would submit that he had suffered a fracture to the left temporal bone and zygomatic arch, multiple injuries all over the body. He had claimed a sum of Rs.5,00,000/- as compensation for the injuries sustained by him.



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3. The first respondent-owner of the vehicle remained absent and was set *ex-parte* before the Tribunal. The second respondent-Insurance Company had filed a counter denying the age, income and the occupation of the petitioner. The second respondent had also taken a defence that the petitioner had not let in any evidence either in the form of a legal or medical documents that he has sustained in a road traffic accident. The Insurance Company would submit that the place where the petitioner had crossed the road is a spot where there is always a heavy flow of traffic and therefore, it was impossible for the driver of the first respondent's vehicle to have driven the same in a rash and negligent manner and at a great speed. The counter would further state that the F.I.R.has been lodged with a delay of nearly 5 days. Though the accident had taken place on 29.08.2015, the F.I.R. has been lodged only on 03.09.2015. That apart, the F.I.R. shows the date of accident as 29.09.2015. The injuries sustained by the petitioner were only simple injuries, which have been falsely portrayed as grievous one.



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4. The Tribunal, by its Award dated 17.06.2019, held that the accident had taken place only on account of the rash and negligent driving by the rider of the first respondent's vehicle. The Tribunal has relied upon Ex.P1-F.I.R, Ex.P7-Accident Inspection Report and Ex.P8-Final Report coupled with the evidence of P.W1 to come to the conclusion that it was only the negligence of the rider of the first respondent's vehicle which has resulted in the accident.

5. As regards the quantum of compensation, the Tribunal has relied upon Ex.C1-Certificate of the Medical Board to come to the conclusion that the petitioner had suffered a "post traumatic brain injury with sequelae cognitive dysfunction with complex partial seizures" and assessed the disability at 80%. The Tribunal had reduced the percentage of disability to 70%. The Tribunal had also relied upon Exs.P13 and P14 to hold that the injury sustained by the petitioner is a permanent one and the petitioner had suffered a loss of earning capacity. Therefore, the future income was calculated by adopting a multiplier method. Ultimately, a Award of Rs.12,74,015/- was pronounced. Challenging the



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same, the Insurance Company has filed the appeal questioning the quantum of compensation and the petitioner has filed the appeal for enhancement of the Award.

6. Ms.Ms.C.Bhuvanasundari, learned counsel for the Insurance Company would submit that the petitioner has not sustained a permanent disablement and she would rely upon the Ex.P2-Wound Certificate issued by the Department of Health and Family Welfare Services, Puducherry which shows that the petitioner has sustained only a laceration to the scalp. The discharge slip-Ex.P3 issued by the Indira Gandhi Government Hospital, Puducherry would also show only a fracture to the left temporal bone. The details of the treatment would clearly indicate that the injuries sustained are only simple injuries and not a grievous one as now portrayed. She would therefore submit that the compensation granted by adopting a multiplier method was absolutely erroneous and has to be set aside. Further, she would submit that the delay in lodging the F.I.R would also create a doubt about the occurrence of the accident itself. Therefore, she would submit that the Award has to



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be set aside. It is also her argument that even assuming that the accident had taken place, the assessment of the compensation for disability by adopting the multiplier method is definitely erroneous and the petitioner would only be entitled to claim compensation by adopting percentage basis. The amount granted under the head of pain and suffering is also on the higher side. As regards the amount granted under the head of medical expenses on the basis of Exs.P13 to P18 and P20-Medical bills is totally misconceived, since the treatment which is covered under the above Exhibits does not in any way relate to the alleged injuries sustained in the road accident. She would therefore submit that the Award passed by the Tribunal has to be set aside/quantum of compensation has to be reduced.

7. Per contra, Mr.Prakash Adiapam, learned counsel for the petitioner would submit that the Medical Board has assessed the disability at 80%, which is evident from a perusal of Ex.C1-Medical Board Certificate. It would show that the petitioner has suffered from memory dysfunction together with seizures. He would draw the attention



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of the Court to the report of the Board, wherein, it was stated that the petitioner has suffered from post traumatic brain injury with sequelae with cognitive obstructions and ultimately, the Medical Board had directed the petitioner to consult the Neuro science department. The examination had taken place in February 2019 when the matter was pending before the Tribunal. He would therefore submit that taking into account the injuries sustained by him and the continuing treatment that he is undergoing, the Tribunal ought to have enhanced the compensation.

8. Heard the learned counsels on either side and perused the materials available on record.

9. The first point to be considered is whether had the accident taken place and whether the negligence was on the part of the rider of the first respondent's vehicle. The case of the petitioner is that the accident had taken place on 29.08.2015 at about 8.50p.m. The F.I.R has been lodged 5 days later by the petitioner himself. The learned counsel for the Insurance Company would argue that the accident itself has not occurred



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only on the ground that there is a delay of 5 days in filing the complaint and further, in the F.I.R, the date of accident is shown as 29.09.2015. However, a perusal of Exs.P1 and P2 would clearly establish that an accident had taken place on 29.08.2015. The complaint lodged by the petitioner also clearly states that the date of accident was on 29.08.2015. It was on account of some mistake that the date of the accident was filled up by the police authorities as 29.09.2015. This is purely a typographical error and it does not in any manner prove that an accident had not taken place. To prove that the accident has not taken place, the second respondent should have summoned the rider of the first respondent's vehicle, which exercise they failed to undertake. Therefore, the finding of the Tribunal that the accident had taken place on 29.08.2015 is confirmed.

10. As regard the negligence, the F.I.R has been lodged against the rider of the first respondent's vehicle and that apart, the accident inspection report-Exp7 would show that the first respondent's vehicle has suffered damages to its headlight shield. Further, the final report has also



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been lodged only against the rider of the first respondent's vehicle on the said date. Therefore, I see no reason to interfere with the finding of the Tribunal with reference to negligence as well.

11. Coming to the 2nd question viz; quantum, the injuries sustained by the petitioner has to be perused. Ex.P2 is the Wound Certificate issued as soon as the accident had taken place when the petitioner was brought immediately after the accident. The wound certificate issued by the Department of Health and Family Welfare Services, Pondicherry would record the injuries only as a "laceration to the scalp". The next document is Ex.P3-Discharge Summary, which only describes the diagnosis as "fracture to the left temporal bone". The treatment given thereafter would also throw light on the seriousness/grievous nature of the injury. The discharge slip would show that the injury has been treated with antibiotics, combiflam and supportive care. The petitioner has also been examined by the Orthopedic surgeon, Neuro Surgeon and the Dental surgeon. Ex.P3 would further show that the CT scan of the brain showed the fracture to the temporal bone and zygomatic



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arch. The discharge summary does not state that the petitioner has suffered from seizures etc., though the slip has been issued after the patient had undergone 5 days of treatment as an inpatient. The document does not indicate that the petitioner had undergone a surgery or any kind of an invasive treatment. Ex.P11-Disability Certificate is the first certificate, which has been given by the Medical Board on 21.12.2018. The Medical Board has opined that the disability is a non progressive one and likely to improve. They have asked the petitioner to come back for a review after 5 years. However, under Ex.C1-Medical Board Certificate, the very same Board has made a reference to seizures and emotional disability, which has not been stated in Ex.P11- Disability Certificate issued by the very same Board. Therefore, there is no finding to show that the petitioner has sustained a permanent disablement, which has resulted in reducing his normal functioning or his going to work. Therefore, the adoption of multiplier method is totally mis-conceived.

12. The Tribunal has taken into account Exs.P.13 to P.20- Medical Bills to come to the conclusion that the petitioner is undergoing



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continuous treatment, which would clearly indicate that the disability is of a permanent nature. In this regard, a perusal of each of these Exhibits highlighting the findings and the diagnosis would show that these documents do not in any way relate to the injuries that have been sustained by the petitioner in the alleged accident on 29.08.2015.

Ex.P13 dated 05.12.2015 gives the following findings and diagnosis:

Findings:

- Severe Headache, Giddiness, Urinal Irritations and Urine passages @ every one hour
- Thirst, more tiredness, cold and cough for the last one week.
- Nasal blockages, intolerable pain in left ear.

Diagnosis:

- DIABETIC MELLINCTUS (BLOOD SUGAR TYPE II)
- MIGRAINE
- UTI (URINARY TRACT INFECTION)
- (L) CSOM (LEFT EAR CHRONIC SYNDROME OF OPTIC MEDIA)
- NASAL DECONGESTION & ACUTE SINUSITIS



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Ex.P14 dated 17.05.2016 gives the following findings and diagnosis:

Findings:

Severe shoulder pain, tension feelings, joint pains.

Swelling of knees of both legs, severe back bone pain, giddiness

Diagnosis:

- CLERVICAL SPONDYLYTES
- OSTEOMALACIA
- HYPERTENSION
- RHUMATIOD ARTHRITIES
- LOW BACK PAIN

Ex.P15 dated 22.11.2016 gives the following findings and diagnosis:

Findings:

- Irritation on the fingertips, eye redness and painful
- Throat not possible for eating food items
- Un-tolerable pain for all joints and sever food items



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Diagnosis:

- TANEIA CORPORISIS
- ACUTE CONJECTIVITIES
- OSTEOPORISOSES
- TONSILITIES
- POLY ARTHHIRITIES

Ex.P16 dated 21.04.2017 gives the following findings and diagnosis:

Findings:

- Loose Motion for the last 5 days, headache, vomiting sensation
- Throat not comfortable, grid lines, and loss of weight
- Pressure with tension, body pain and stomach pain, frequent urinals

Diagnosis:

- ANEMIA
- THYROID
- AMOEBIC DYSENTAX
- HYPERTENSION
- DIABETIC MELLINCTUS

Ex.P17 dated 18.09.2017 gives the following findings and diagnosis:

Findings:

- Giddiness, Numbness, Sleeplessness, headache, pain in joints
- Shoulder pain, swelling in both legs, un-tolerable pain



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Diagnosis:

- DIABETIC MELLINCTUS
- VERCOSIS OF BOTH LEGS
- OSTEOPORISOIS
- HYPERTENSION
- NEURALGIA

In the above mentioned Exs.P13 to P17, there is no reference that the injuries said to have been sustained by the petitioner in a road accident is the reason for the petitioner consulting the doctor.

Ex.P18 dated 21.12.2017 gives the following findings and diagnosis:

Findings:

- P.O Case of RTA# (Fracture) Left Temporal Bone
- Untolerable pain all over body, severe migraine
- Insomnia for the last two months, low back pain and fever

Diagnosis:

- P.O.CASE OF RTA3 (FRACTURE) (LEFT) TEMPORAL BONE
- OSTERIO-ARTHIRITES
- D.U.O.(DUODINAL ULCER ODEMA)
- INSOMNIA (SLEEPLESSNESS)
- LAMBARIAGO AND NEUROLGIA

For the first time, a reference is made to the accident.



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Ex.P20 dated 11.06.2018 gives the following findings and diagnosis:

Findings:

Post operative case of RTA(Road Traffic Accident), #(Fracture)@Left Temporal Bone, Headache, Nausea, Giddiness,Swellings of both legs knee joints, shoulder pain, stomach ache, untolourable pains, Sleeplessness, tension, Fever, Severe Back pain, Frequer Urinals and Running Nose.

Diagnosis:

- POST OPERATIVE CASE RTA WITH FRACTURE LEFT TEMPORAL BONE.
- HYPER TENSION
- DIABETIC MELLINCTUS(BLOOD SUGAR TYPE II)
- RHUMATOID ARTHRITIS.
- NUERALGIA
- OSTEO MALCIA.
- ALLERGIC REACTIONS.
- PETIC ULCER
- ACUTE RHIGINITIES
- LUMBARSPONDYLYTIES

Here also there is a reference to the road accident.



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13. The above details would clearly show that none of the complaints that the petitioner had was the result of the injuries sustained from the accident. As discussed in Para 11 supra the compensation granted by the Tribunal under the head of future income calculated on a multiplier method is set aside and the amount under the head would be calculated on a percentage basis @ Rs.4,000/- per percentage. Therefore, under the head of Future Income a sum of Rs.3,20,000/- (Rs.4,000/- x 80%) is awarded. The petitioner has only undergone the medical treatment for 15 days, therefore the amount granted under the head of pain and suffering is reduced to a sum of Rs.5,000/-. A sum of Rs.1,55,415/- has been granted by the Tribunal under the head of medical expenses. Since the Court has given reasons why mere perusal of Exs.P13 to P18 and P20-Medical bills would demonstrate that the findings/complaints does not in any manner relate to the injuries in a road accident and they are all unconnected to the accident the petitioner is not entitled to any amount under this head. Therefore, the Award of compensation towards medical expenses has to necessarily be set aside. That apart, the petitioner was admitted in the Government Hospital for 15



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days and no bills from there has been produced. The petitioner has also not sustained any permanent disability which calls for a continued treatment. Accordingly, the amount granted under the head of medical expenses is deleted. The re-worked compensation would be as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal in Rs</i>	<i>Amount awarded by this Court in Rs</i>
Future income	8,73,600	3,20,000
pain and suffering	1,50,000	5,000
medical expenses	1,55,415	-
Rich and nutritious food	25,000	25,000
Attender charges	10,000	10,000
Transport Charges	10,000	10,000
Loss of expectation of life	50,000	50,000
Total	12,74,015	4,20,000

14. In the result, C.M.A.No.1576 of 2021 filed by the claimant is dismissed. C.M.A.No.1387 of 2021 filed by the Insurance Company is partly allowed and the Award of the Tribunal is modified, reducing the compensation amount from Rs.**12,74,015/-** to Rs.4,20,000/- The first respondent is directed to deposit the said amount to the credit of M.C.O.P.No.1130 of 2017 along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and costs as



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awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. The claimant is directed to pay the Court fee for the compensation amount now determined by this Court, if required. The Tribunal below shall not disburse the award amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. Excess amount if any deposited shall be withdrawn by the first respondent. In other respects, the Award of the Tribunal is hereby confirmed. There shall be no order as to costs in the present appeal.

27.10.2022

Index : Yes/ No
Speaking Order : Yes/No
srn



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To

1. The Subordinate Judge,
Motor Accident Claims Tribunal, Puducherry.
2. The Section Officer,
V.R.Section, High Court, Madras



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P.T.ASHA.J

srn

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