



C.M.A(MD)No.1094 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.10.2022

Pronounced on : 09.12.2022

CORAM

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

C.M.A(MD)No.1094 of 2009

Nethaji

... Appellant / petitioner

Vs

1.Saravanan

2.M/s. National Insurance Co. Ltd.,
represented by its Branch Manager,
Pudukkottai Town,
Pudukkottai District.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, to allow the appeal and modify the award passed in M.C.O.P.No. 380 of 2007 dated 31.03.2009 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Pattukottai, Thanjavur District, and allow this appeal.

For Appellant : Mr.V.Bharathidasan

For R2 : Mr.N.Murugesan

For R1 : No appearance



WEB COPY



C.M.A(MD)No.1094 of 2009

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 380 of 2007 on the file of Motor Accident Claims(Subordinate Court), Pattukottai, Thanjavur District. The appellant is the claimant, respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 08.08.2007, when the petitioner was travelling in a lorry bearing registration number TN 47 A 0699 along the Rajapalayam - Srivilliputhur main road near Aakash store, the driver Jesuraj, drove the vehicle in a rash and negligent manner, dashed against a Tamarind tree. The petitioner sustained injury in the accident. He was admitted in Srivilliputhur Government Hospital. Then he was admitted in the Rajapalayam Jawahar Hospital. Subsequently, he took treatment in Pattukotai GRAM Hospital as inpatient. Then he took treatment in Tanjore Keerthana Hospital from 12.08.2007 till 19.08.2007 as inpatient. The petitioner undergone various surgeries. The petitioner was working as a driver and was earning Rs.10,000/- per month. After the accident, the petitioner is not able to attend



C.M.A(MD)No.1094 of 2009

his day to day affairs. The petitioner claims a sum of Rs.15,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent is as follows:

Both the driver Jeyaraj and the petitioner were working under the first respondent as drivers. It is the usual practice to send two drivers in a lorry. The petitioner travelled as a spare driver. The petitioner sustained only simple injuries. The mode of treatment and medical expenses are to be proved. The claim is excessive. Both the petitioner and the driver of the vehicle are having valid driving licence. The insurance policy is valid. The second respondent alone is liable to pay compensation.

4.Brief substance of the counter filed by the second respondent is as follows:

The first respondent has to prove that he is the owner of the vehicle and the insurance policy was in force at the time of accident. The first respondent has to prove the fitness certificate for the vehicle, permit, trip sheet, etc. It is denied that the driver of the vehicle was having valid driving licence. The manner of accident is denied. The vehicle is a goods carrier ie., commercial



C.M.A(MD)No.1094 of 2009

vehicle. The petitioner is not entitled to travel in the vehicle. Only two persons apart from the driver can travel in the vehicle. The owner of the goods or his agent, can travel. The petitioner and two others travelled in the vehicle as unauthorized passenger. The income, medical expenses are all denied. The petitioner has to prove the income. The claim is excessive.

5.Three(3) witnesses were examined and eighteen(18) documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal has awarded a sum of Rs.2,80,950/- as compensation.

6.Against the same, the claimant has filed this appeal for enhancement of compensation on the following grounds:

The Tribunal failed to consider that the appellant was totally disabled and the Tribunal erroneously fixed the disability at 40% and failed to consider that there is 100% disability. The Tribunal failed to consider the monthly income of the petitioner and has erroneously fixed the monthly income as Rs.2000/-. The Tribunal has discussed in detail that the injury sustained by the appellant is not at all cured and he requires continuous treatment. But has erred in not granting compensation for future medical expenses. The Tribunal



C.M.A(MD)No.1094 of 2009

failed to consider the loss of amenities and expectations of life. The Court ought to have fixed loss of income by calculating the period from the date of accident instead of the date of trial. The Tribunal ought to have awarded compensation under the head of extra nourishment and attendant charges. The Tribunal failed to consider that the appellant is having injuries in the anus and extraction of the exhumations by inserting a tube in the rip of the petitioner which causes heavy pain and sufferings and also create a social stigma in his day to day life.

7.On the side of the appellant it is stated that the Tribunal has fixed the monthly income as Rs.2,000/- per month and that the notional income for a driver was Rs.10,000/- at the time.

8.On the side of the respondent it is stated that no proof was filed to prove that the appellant was a driver. The owner of the vehicle was not examined as a witness. The driver Jeyaraj was not examined and there is no evidence for the income. The driving licence of the appellant was not marked as a document. Hence, notional monthly income is fixed at Rs.6000/- per month.



C.M.A(MD)No.1094 of 2009

9.The petitioner is a driver, he could not use his left hand. It is stated that the petitioner has undergone a surgery in his left hand and he was not able to carry heavy load and there is a difficulty in using the left hand. The Tribunal fixed the disability at 40%. The petitioner took treatment in Rajapalayam Jawahar Hospital and he took treatment in the GRAM Hospital at Pattukottai. Ex.P2 is the wound certificate issued from the Jawahar Hospital, Rajapalayam. Ex.P4 is the discharge summary issued by Keerthana Hospital, Thanjavur. Ex.P5 is the discharge summary issued by GRAM Hospital, Pattukottai. Ex.P6, are the prescription of the doctors issued, from 19.08.2007 till 22.08.2007. From Ex.P.2 to Ex.P.6, it is clear that the petitioner took treatment in various hospitals from 09.08.2007 till 22.09.2007.

10.P.W.2 has deposed that the petitioner was having fracture in his left hand and that he fixed the disability at 40%. The wound certificate was marked as Ex.P16. The X-ray was marked as Ex.P.17. On the basis of the evidence of P.W.2 and Ex.P.16, the Tribunal has fixed the disability at 40%. From Ex.P2 to Ex.P6, it is clear that the anus portion of the petitioner was injured due to the accident. The petitioner cannot use the anus portion. After surgery, a tube and a plastic bag were annexed for collection of excretion and



C.M.A(MD)No.1094 of 2009

the petitioner has to clean it four times a day. P.W.3 - Dr.Anbarasu has deposed about the injuries sustained by the appellant and he gave a wound certificate- Ex.P18. Since P.W.3 has not fixed any percentage for the disability, the Tribunal has fixed Rs.50,000/- for the injury in the anus portion and for the pain and sufferings.

11.Considering the injuries and considering the wound certificates in Ex.P.16 and Ex.P18 and considering the evidence of P.W.2 and P.W.3, it is decided that the petitioner is having 60% functional disability. The age of the appellant at the time of accident is 29 years and hence multiplier 18 is applicable.

12. For 60% functional disability, the petitioner is entitled to Rs.3600/- (60% of 6000) per month. Hence, loss of income is calculated at Rs.7,77,600/- (3600 x 12 x 18).

13.Ex.P8 is the medical bills. The Tribunal has fixed the medical expenses at Rs.48,150/- on the basis of the Ex.P8 and Ex.P9, which is reasonable. The Tribunal failed to award any amount towards future



C.M.A(MD)No.1094 of 2009

medical expenses. The appellant is entitled to Rs.25,000/- towards future medical expenses. Considering the nature of injuries, the appellant is entitled to Rs.25,000/- towards attendant charges, Rs.50,000/- towards pain and sufferings, Rs.25,000/- towards loss of amenities, Rs.25,000/- towards loss of estate and Rs.10,000/- towards transport expenses. The compensation is calculated as below:

Loss of income	Rs.7,77,600/-
Medical expenses	Rs. 48,150/-
Future medical expenses	Rs. 25,000/-
Attendant charges	Rs. 25,000/-
Pain and sufferings	Rs. 50,000/-
Loss of amenities	Rs. 25,000/-
Loss of estate	Rs. 25,000/-
Transport expenses	Rs. 10,000/-

Total	Rs. 9,85,750/-

14. Accordingly, this Civil Miscellaneous Appeal is partly-allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from a sum of Rs.2,80,950/- to **Rs.9,85,750/- (Rupees Nine Lakhs Eighty Five Thousand Seven Fifty only)** which shall carry interest at the rate of 7.5% per annum.



C.M.A(MD)No.1094 of 2009

(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.9,85,750/- (Rupees Nine Lakhs Eighty Five Thousand Seven Fifty only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.380 of 2007 on the file of the Motor Accident Claims Tribunal cum Subordinate Court, Pattukottai, Thanjavur District, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is not entitled for any interest for the default period. The appellant is directed to pay Court fee for the enhanced amount.

(iv) On such deposit being made by the second respondent/insurance company, the appellant / claimant is permitted to withdraw an amount of Rs.9,85,750/- with proportionate interest as apportioned by the Tribunal.

09.12.2022

Index: Yes / No
Internet : Yes / No
pnn



WEB COPY



C.M.A(MD)No.1094 of 2009

R. THARANI, J

pnn

To

- 1.The Motor Accident Claims Tribunal cum Subordinate Court, Pattukottai,
Thanjavur District.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.1094 of 2009

09.12.2022