



C.M.A(MD)No.1223 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2022

Pronounced on : 23.11.2022

CORAM

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

C.M.A(MD)No.1223 of 2009

S.N.R.Josuva Rathnaraj

...Appellant / 1st Respondent

Vs

1.T.K.Srinivasan

... 1st respondent / claimant

2.Reliance General Insurance Company Ltd.,
No.10/4, Ghaha Blaza, II Floor,
South Bye Pass Road,
Vannarpettai, Tirunelveli-3.

(Second Appellant transposed as
R2 vide Court order dated 16.08.2010)

... 2nd Respondent / 2nd Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the fair and decreetal order dated 07.07.2009 made in MCOP No.195 of 2008 on the file of the Motor Accidents Claims Tribunal (Additional District Judge/Fast Track Court No.1), Thoothukudi, and allow this Civil Miscellaneous Appeal.



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For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.G.Thalaimutharasu
For R2 : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.195 of 2008 on the file of the Motor Accident Claims Tribunal / Additional District Judge, Fast Track Court-I, Thoothukudi. The appellant is the first respondent. The first respondent is the claimant. The second respondent is the second respondent in the claim petition.

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

On 19.04.2008, at about 10.15 hours, when the claimant was riding his bicycle, a new unregistered Hyundai i10 Car was driven by its driver in a rash and negligent manner, dashed against the petitioner and he sustained injury. He was taken to Sundaram Arunachalam Hospital, Thoothukudi and was admitted in the hospital from 19.04.2008 till 03.05.2008. He undergone surgery on 20.04.2009. Still now, the petitioner is taking treatment and the petitioner claims a sum of Rs.15,00,000/- as compensation.



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

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The accident did not occur in the manner as alleged in the claim petition. The accident took place only due to the negligence on the part of the claimant. The amount claimed is excessive.

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

The accident took place only due to the negligence of the claimant who abruptly turned his bicycle to his right in the middle of the road without noticing the car that was coming behind. The driver of the abutting car was not having any right to ply the unregistered car on the road and the first respondent alone is responsible for payment of compensation.

5. Two(2) witnesses were examined and twelve(12) 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 awarded a sum of Rs.5,21,000 as compensation to be paid by the respondents with interest at the rate of 8.5% per annum.

6. Against the award, the first respondent filed this appeal on the following grounds:



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There is no proof that the claimant suffered total disablement. Even after the accident, the claimant is working in BSNL as Chief Section Supervisor. There is no permanent or functional disability. The claimant did not lost his job and there is no justification in adopting multiplier method. For 30% partial permanent disability, the Tribunal has granted Rs.4,27,910/- as loss of income which is arbitrary. The Tribunal has awarded Rs.33,425/- for installation of Air Conditioner on the basis of Ex.A10 which is untenable. The injury in the right forearm will not be in any way necessitated an Air Conditioned atmosphere. The Tribunal failed to consider that the claimant was working in a public sector corporation and that he was at the verge of his superannuation and the award is excessive.

7. On the side of the appellant it is stated that the owner of the vehicle and the insurance company have jointly filed the appeal. After 2010, the second appellant was transposed as respondent No.2. The Tribunal has fixed the disability only at 30% and adopting multiplier method is unwarranted and only percentage formula has to be followed in fixing the compensation for the disability.



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8. On the side of the respondent it is stated that the claimant was having multiple injuries and the Doctor certified that the claimant is having 60% disability. But the Tribunal wrongly fixed the disability at 30% and pray the appeal to be dismissed.

9. Ex.A2 accident register, reveals that there was a fracture on the right forearm. The disability certificate was marked as Ex.A11 and the X-ray taken for fixing the disability was marked as Ex.A12. P.W.2 has deposed that there was permanent partial disablement which would be assessed as 60%.

10. Considering that the claimant is having only one fracture on the right forearm, the Tribunal has fixed the disability at 30%. The claimant was working as a Chief Section Supervisor in BSNL office, Thoothukudi. So his nature of work may not be affected by the fracture in the forearm. The claimant has not stated that he was removed from service or that he was de-promoted. No document to that effect was marked on the side of the claimant. Hence it is decided that the second respondent herein/insurance company is liable to pay compensation to the claimant.



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11. It is decided that applying multiplier method is not necessary. It is decided that for 60% disability, the claimant is entitled to Rs.1,20,000/- as compensation.

12.The Tribunal has awarded Rs.33,425/- for installing Air Conditioner. P.W.2 has not stated that the claimant is having any substantial health condition that require an Air Conditioned atmosphere. In the above circumstances, the compensation for installing an Air Conditioner is not justifiable. The claimant is entitled to Rs.5,000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.33,498/- towards medical expenses. Rs.25,000/- towards pain and sufferings and Rs.10,000/- towards Attendant charges. Totally, the claimant is entitled to,

For disability	- Rs.1,20,000/-
Transport expenses	- Rs. 5,000/-
Extra nourishment	- Rs. 10,000/-
Medical expenses	- Rs. 33,498/-
Pain and sufferings	- Rs. 25,000/-
Attendant charges	- Rs. 10,000/-

Total	- Rs.1,98,498/-
Rounded off to	- Rs.1,98,500/-



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It is seen that the Tribunal has fixed the rate of interest at 8.5% p.m., which is excessive. Hence the rate of interest is fixed at 7.5% per month.

13. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.5,21,000/- to Rs.1,98,500/- (Rupees One Lakh Ninety Eight Thousand Five Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.1,98,500/- (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.195 of 2008 on the file of the Motor Accidents Claims Tribunal / Additional District Judge / Fast Track Court No.1), Thoothukudi, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the second respondent /insurance company, the 1st respondent / claimant is permitted to withdraw the entire sum of Rs.1,98,500/- (Rupees One Lakh Ninety Eight Thousand and Five Hundred only) along with proportionate interest as apportioned by the Tribunal.

23.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal (Additional District Judge/
Fast Track Court No.1),
Thoothukudi.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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