



C.M.A.(MD)No.1231 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.10.2022

Delivered On : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1231 of 2012

Selvi

.. Appellant /claimant

Vs.

1.Swaminathan

2.IFFCI TOKIO General Insurance Co. Ltd.,

195, T.V.Swamy Road,

R.S.Puram, Coimbatore.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 11.01.2010, in M.C.O.P.No.1842 of 2008, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Trichy.

For Appellant

: Ms.P.Malini

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.S.Srinivasa Raghavan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed dated 11.01.2010, in M.C.O.P.No.1842 of 2008, on the file of the Motor Accident Claims Tribunal – Principal District Judge, Trichy. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the petition, in M.C.O.P.No.1842 of 2008, is as follows:-

On 04.07.2008, at about 5.00 pm., when the deceased and the petitioners in M.C.O.P.Nos.1841 to 1844 and 1846 of 2008 were travelling in a Car bearing Registration No.TN-57-J-2320, near in Athimanam Burial ground, the driver drove the vehicle in a rash and negligent manner, while he tried to overtake a lorry bearing Registration No.AP-TU-9920, the car dashed against the front right portion of the lorry. The petitioner and others sustained injuries and one of the passenger-Vijayakumar died on the spot. The petitioner sustained fracture in left thigh, crush injury on the face and fracture near the left eye and she lost 2 of her teeth in the upper jaw and 4 teeth in the lower jaw. The petitioner claimed a sum of Rs.10,00,000/- as compensation.



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3. Six claim petitions, in MCOP.Nos.1841 to 1844 and 1846 of 2008 were filed claiming compensation for the injuries sustained by the claimants and M.C.O.P.No.1845 of 2008 was filed claiming compensation for the death of the deceased - Vijayakumar in the very same accident. A common judgment was pronounced by the Motor Accident Claims Tribunal – Principal District Judge, Trichy.

4. Brief substance of the counter filed by the second respondent, in all the petitions, is as follows:-

The accident is denied. The petitioner suppressed the true manner of accident. The vehicle was proceeding along the Chengulput -Chennai road, in a moderate speed, after getting traffic signal from the driver of the lorry, the Car overtook the lorry. It was the car driver, who violated the traffic rules, suddenly, turned the vehicle on the right side. Though the driver of the Car applied the sudden brake, the accident has happened. The accident has taken place only due to the rash and negligent driving of the lorry driver. The petition is bad for non-joinder of necessary parties. The first respondent allowed more number of persons to travel the vehicle. The policy conditions are violated. The injuries, period of treatment, nature of disability and medical expenses are all exorbitant. The age, occupation and income are all to be proved.



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5. In the common trial, 9 witnesses were examined and 34 documents were marked, on the side of the claimants. No witness was examined and no document was marked, on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.2,30,000/- as compensation for the claimant in M.C.O.P.No. 1842 of 2008.

6. Against the award amount, the appellant / claimant has filed this appeal, for enhancement, on the following grounds:-

The Tribunal has failed to consider that the petitioner sustained nasal bone fracture and she suffering to breath. Considering that the petitioner had undergone various treatment for teeth, nose and fracture in her left thigh, the award of Rs.25,000/- for pain and sufferings is very low. The Tribunal ought to have applied multiplier method, considering the age of the appellant. The Tribunal awarded Rs.10,000/- for extra nourishment, transport charges and attender charges, which are very low. The Tribunal failed to award any sum under the head of loss of amenities.

7. On the side of the appellant/claimant, it is stated that the appellant sustained injury, she lost 5 of her teeth, there was fracture in the nasal bone and that there was fracture in the left thigh. The Tribunal has fixed the disability at 70% and



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has awarded Rs.1,40,000/-. The Tribunal failed to consider that the appellant has to fix dentures for the teeth. The appellant is suffering due to lip split, and she is 24 years lady, she sustained 3 fractures in the fact, which leads disfigurement. She has undergone surgery for fracture on the leg, but, the Tribunal has awarded only Rs. 25,000/- towards pain and sufferings.

8. On the side of the second respondent, it is stated that disfigurement is not a ground to award compensation by applying multiplier method. There is no functional disability and hence, multiplier method cannot be applied in this case.

9. Copy of the accident register for the appellant was marked as Ex.A11. Treatment notebook was marked as Ex.A12. Treatment notebook issued by dental hospital was marked as Ex.A13. Disability certificate was marked as Ex.A30. Scan report was marked as Ex.A34. P.W.7-Doctor has deposed that lower jaw bone was broken. He has further stated that due to the injury on the thigh bone, the appellant could not sit or stand and due to fracture on the lower jaw bone she was not able to take hard objects and he has fixed the disability at 48%. P.W.8-Dr.Thirumurugan has deposed that due to bone fracture in both upper and lower jaw, the appellant could not chew the food. The plates were inserted in the lower jaw and there was disfigurement in the face and he assessed the disability at 30%.



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10. The Tribunal has fixed the disability at 70%. **There is no evidence that the appellant could not do any work and that there was functional disability.** Most of the injuries are on the face and hence, there is no question of loss of earning capacity. The Tribunal has awarded Rs.1,50,000/- as compensation. The appellant is entitled to Rs.2,000/- per 1% percentage of disability. Hence, it is decided that the appellant is entitled to Rs.1,56,000/- for 78% disability.

11. The Tribunal has awarded Rs.25,000/-towards pain and sufferings. It is seen that the appellant has sustained four fractures and she has to undergo various treatment for fracture in the nasal bone, pubic bone and thigh bone. Hence, it is decided that the appellant is entitled to Rs.40,000/- for pain and sufferings. Medical bills are marked as Ex.A33. The Tribunal has awarded Rs.15,000/- towards medical expenses and Rs.10,000/- towards extra nourishment, transport charges and attender charges, which are all reasonable. Considering the nature of injuries and fractures, it is decided that the appellant is entitled to Rs.40,000/- towards future medical expenses and Rs.15,000/- towards disfigurement of the face.



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WEB COPY 12. The total compensation is calculated as follows:-

78% Disability	:	Rs. 1,56,000/-
Medical expenses	:	Rs. 15,000/-
Extra nourishment, transport and attender charges	:	Rs. 10,000/-
Pain and sufferings	:	Rs. 40,000/-
Future medical expenses	:	Rs. 40,000/-
Disfigurement of face	:	Rs. 15,000/-
Total compensation	:	Rs. 2,76,000/-

11. This Appeal is partly allowed. The compensation is enhanced from Rs.2,30,000/- to Rs.2,76,000/-.

(i) The claimant / appellant is entitled to Rs.2,76,000/- as compensation.

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.2,76,000/- (less the amount if any 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 with costs, 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 Insurance Company, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

07.11.2022

Index : Yes/No

Internet : Yes/No

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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.



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- To
- 1.The Principal District Judge
Motor Accident Claims Tribunal,
Trichy.
 - 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1231 of 2012

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