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C.M.A(MD)No.1418 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.09.2022

Pronounced on : 10.10.2022

CORAM

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

C.M.A(MD)No.1418 of 2010

Ramar

...Appellant / Petitioner

Vs

1.Jesurajan

2.Iffco-Tokio General Insurance Co.Ltd.,

Through its Branch Manager,

No.28, 2nd Floor,

North Usman Road,

T.Nagar, Chennai - 600 017.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal and fixed the ability on the Insurance Company consequently enhance the award amount in M.C.O.P.No.278 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli, dated 17.02.2010.

For Appellant : Mr.T.Selvakumaran

For R1 : No appearance

For R2 : Mr.V.Sakthivel



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.278 of 2008 on the file of the Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli. The appellant herein is the petitioner, the respondents herein is the respondents in the claim petition.

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

On 13.06.2008, when the petitioner was travelling in a bus bearing registration number TN 72 N 0511 from Alangulam to Surandai at about 10.40 a.m., the bus was nearing VK Puram, a dipper lorry bearing registration number TN 76 C 8727 was driven by its driver in a rash and negligent manner, dashed against the side portion of the bus. The fittings in the bus window hit on the right hand of the petitioner. He sustained fracture. He was taken to a private hospital and was given first aid. Then he was admitted in Tirunelveli Government Hospital and took treatment as inpatient. The petitioner was a work and was earning Rs.5000/- per month. After the accident, the petitioner could not continue his work. The petitioner claimed a sum of Rs.3,00,000/- as compensation.



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

The manner of accident as mentioned in the petition is denied. The driver of the lorry drove the vehicle in a careful and cautious manner. It was the petitioner who negligently sat in the window seat in a negligent manner and invited the accident. The age, profession and income are all denied. The nature of injuries are denied. The claim is excessive.

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

The petition is not maintainable. The age, profession and income are denied. The nature of injuries, mode of treatment, medical expenses are denied. The accident has happened only due to the negligence of the driver of the vehicle. The claim is excessive.

5. Two witnesses were examined and 10 documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs. 98,000/- as compensation. Against the award, the claimant filed this appeal for enhancement of compensation.



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6.On the side of the appellant, it is stated that the Tribunal ought to have granted loss of income for the period of treatment. The Tribunal ought to have awarded Rs.25,000/- towards loss of amenities. The Tribunal ought to have applied multiplier method. The Tribunal ought to have awarded compensation for permanent disability and for loss of income. The Tribunal ought to have awarded Rs.15,000/- towards attendant charges.

7.On the side of the appellant it is stated that the Tribunal failed to consider that steel plate and screw were implanted and the same has to be removed. The Tribunal failed to award any amount towards future medical expenses.

8.On the side of the respondent it is stated that the elbow of the claimant was fractured. He was inpatient only for four days. No document was filed to prove that the claimant undergone further treatment. Even the private Doctor examined by the claimant did not depose anything regarding the necessity for any future medical treatment.



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9.It is seen that the Tribunal has awarded Rs.1,500/- towards each percentage of disability and it has to be increased. Considering the nature of the injury and the date of accident, it is decided that Rs.3000/- per percentage of disability has to be given. The Tribunal fixed the disability at 40%. Hence for 40% disability, the petitioner is entitled to Rs.1,20,000/- (3000 x 40) as compensation. The Tribunal awarded Rs.5000/- towards extra nourishment, Rs.5,000/- towards transport expenses, which are all reasonable.

10.On the side of the appellant it is stated that for pain and sufferings, the Tribunal has awarded Rs.15,000/- and Rs.25,000/- ought to have been granted. On the side of the appellant, a judgment of this Court reported in **2008(1) TNMAC 499** in the case of **The Managing Director, TNSTC Vs J.Senthil Kumar**, is cited, wherein, for 25% of disability, this Court has awarded 25,000/- towards pain and sufferings.

11.Considering the fact that the injuries are on the right elbow, the petitioner is granted Rs.25,000/- towards pain and sufferings. Considering the nature of the injury, Rs.10,000/- is awarded towards attendant charges.



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12.The Tribunal awarded Rs.5,000/- towards loss of income for the period of treatment. For the period of treatment and for the period of rehabilitation, a sum of Rs.20,000/- is awarded as temporary loss of income.

13.It is seen that steel plate and screw were implanted and the same has to be removed. Hence the appellant is entitled to Rs.10,000/- towards future medical expenses.

Hence, the award is modified as under:

For Disability	-	Rs.1,20,000/-
For pain and sufferings.	-	Rs. 25,000/-
Attendant charges	-	Rs. 10,000/-
Temporary loss of income -	Rs. 20,000/-	
Future medical expenses -	Rs. 10,000/-	
Extra nourishment,	-	Rs. 5000/-
Transport expenses,	-	Rs. 5,000/-

Total	-	Rs.1,95,000/-

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

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.98,000/- to Rs.1,95,000/- (Rupees One Lakh Ninety Five Thousand only) which shall carry interest at the rate of 7.5% per annum.



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(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.1,95,000/- (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.278 of 2008 on the file of the Motor Accidents Claims Tribunal / Principal Sub Court, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order. The appellant/claimant is not entitled for any interest for the default period.

(iii) The claimant is directed to pay the 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 the entire sum of Rs.1,95,000/- (Rupees One Lakh Ninety Five Thousand only), along with proportionate interest as apportioned by the Tribunal.

10.10.2022

Index: Yes / No
Internet : Yes / No

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R. THARANI, J

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To

- 1.The Motor Accident Claims Tribunal (Principal Sub Judge), Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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