



C.M.A.(MD)No.1355 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 12.10.2022

Delivered On : 28.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1355 of 2012
and M.P.(MD)No.2 of 2012

ICICI Lombard General Insurance Co.,
No.5, United Arcade, III- Floor,
Annamalai Nagar, Karur Bye Road,
Trichy.

.. Appellant /2nd Respondent

Vs.

1.A.Rengammal

... 1st Respondent / Petitioner

2.N.Palanichamy

... 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order, dated 08.12.2011, made in M.C.O.P.No.44 of 2009, on the file of the Motor Accident Claims Tribunal - Sub Court, Kulithalai.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents

: Mr. T.Lenin Kumar for R2

: No appearance for R1



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 08.12.2011, made in M.C.O.P.No.44 of 2009, on the file of the Motor Accident Claims Tribunal - Sub Court, Kulithalai. The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition, in M.C.O.P.No.44 of 2009, is as follows:

On 03.11.2008, at about 11.45 am., when the petitioner and his brother were waiting for a bus, a tipper lorry bearing Registration No.TN-48-F-3406 came in a rash and negligent manner, dashed against the petitioner and the petitioner sustained injuries. He was taken to Trichy KMC Hospital and he took treatment from 03.11.2008 till 08.12.2008 as inpatient. The petitioner was doing coconut business and was earning Rs.3,200/- per month. The petitioner sustained permanent disability and loss of earning capacity and he claimed a sum of Rs.5,00,000/- as compensation.

3. The first respondent was set as exparte.



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4. Brief substance of the counter filed by the second respondent, in

M.C.O.P.No.44 of 2009, is as follows:

The manner of accident, place of accident, date of accident are all to be proved. The age, profession, income, period of treatment, medical expenses, permanent disability are to be proved. The driver of the tipper lorry drove the vehicle in a slow and cautious manner. It was the petitioner, who suddenly crossed the road, without observing the traffic and he invited the accident. The claim is excessive.

5. On the side of the claimant, 2 witnesses were examined and 6 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.3,28,810/- as compensation to be paid by the second respondent on behalf of the first respondent.

6. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal ought not to have applied multiplier method for 20% disability. The Tribunal failed to consider that the injured was about 60 years and there may not be any functional disability due to the injuries alone. There was no disablement and the award is excessive.



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7. On the side of the appellant, it is stated that the amount awarded towards conventional charges are also on the higher side.

8. On the side of the respondent, it is stated that the amount awarded by the Tribunal is reasonable. The petitioner sustained head injuries and there may be complications in future and prayed the award to be confirmed.

9. On the side of the appellant, it is stated that it was the claimant, who was negligent and suddenly crossed the road, without observing the traffic. But, the claimant has not chosen to examine any witness to prove the averments. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-copy of F.I.R, it is decided that the accident has happened only due to the appellant's driver. There is no dispute regarding the validity of the driving licence.

10. The Doctor has fixed the disability at 35%. On the basis of Ex.P3-discharge summary and and Ex.P6-wound certificate, the Tribunal fixed the disability at 20%. For 20% disability, the Tribunal has awarded Rs.64,800/-. After considering the quantum, it is decided that the amount awarded towards disability is reasonable.



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11. The Tribunal has awarded Rs.18,000/- towards temporary loss of income, Rs.35,000/- towards transport expenses & extra nourishment and Rs. 35,000/- towards pain and sufferings, which are all reasonable. The Tribunal has awarded Rs.1,76,010/- towards medical expenses, which is reasonable. In total, the compensation fixed by the Tribunal is reasonable. In the above circumstances, there is nothing sufficient enough to interfere in the orders of the Tribunal.

12. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

(i) The quantum of compensation awarded by the Tribunal is hereby confirmed.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs.3,28,810/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / Insurance Company, the first respondent /claimant is permitted to withdraw the entire award amount with interest and costs, on filing of proper petition before the Tribunal, less any amount, if



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already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

28.10.2022

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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- 1.The Sub Judge,
Motor Accident Claims Tribunal -
Kulithalai.
- 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.1355 of 2012

28.10.2022