



C.M.A.(MD)No.1362 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 18.11.2022

Delivered On : 21.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1362 of 2012

The Branch Manager,

Iffco Tokyo General Insurance Company Limited,

Dulasi Chamber, III-floor,

No.195, T.V.Samy Road West,

R.S.Puram, Coimbatore City.

.. Appellant /2nd Respondent

Vs.

1.Anabzhagan

... 1st Respondent / Petitioner

2.Joseph

... 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 23.03.2011, made in M.C.O.P.No.198 of 2008, on the file of the Motor Accident Claims Tribunal – Fast Track Court-II/ Additional District Judge, Pattukkottai.

For Appellant

: Mr.S.Srinivasa Raghavan

For Respondents

: Mr.D.Ramesh Kumar for R1

: No appearance for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 23.03.2011, made in M.C.O.P.No.198 of 2008, on the file of the Motor Accident Claims Tribunal – Fast Track Court-II/ Additional District Judge, Pattukkottai. 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. A Brief substance of the claim petition, in M.C.O.P.No.198 of 2008, is as follows:

On 04.11.2006, when the petitioner was travelling in a mini door vehicle, bearing Registration No.TN-49-Q-2333, the driver of the vehicle drove the vehicle in a rash and negligent manner and the vehicle capsized. The petitioner sustained grievous injury, his right thigh was fractured, he was immediately taken to the Government Hospital, Pattukkottai, then, he was referred to Thanjavur Medical College Hospital. The petitioner was doing centring work and was earning Rs.5,000/- per month. The petitioner become disabled and could not attend his work and he claimed a sum of Rs.5,00,000/- as compensation.



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WEB COPY 3. A brief substance of the counter filed by the first respondent in M.C.O.P.No.198 of 2008, is as follows:

The driver drove the vehicle in a slow and cautious manner. The vehicle was insured with the second respondent. It was the second respondent, who is liable to pay compensation. The nature of injury is simple. The age, income, profession and medical expenses are to be proved.

4. A brief substance of the counter filed by the second respondent in M.C.O.P.No.198 of 2008, is as follows:

The petitioner has to prove that the vehicle was insured with the respondent. The petitioner has to prove that the first respondent was having valid R.C., F.C and permit. The vehicle involved is only a goods carrier, intended to be used only for the purpose of carrying goods. Carrying passengers in the goods vehicle is prohibited and it amounts to breach of terms and conditions of the policy and the second respondent is not liable to pay compensation. The accident has happened, due to the was overload in the auto. The profession, income and age of the petitioner are to be proved. The quantum claimed is excessive. The petition is liable to be dismissed.



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5. 2 witnesses were examined and 8 documents were marked, on the side of the claimant. 1 witness was examined and 7 documents were marked, on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.2,31,050/- as compensation.

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

The Tribunal is wrong in applying multiplier theory. There is no proof that the injured has lost his avocation permanently, due to the injuries. The Tribunal failed to consider that there is no functional disability. The Tribunal is wrong in awarding Rs.2,14,200/- for 35% disability.

7. On the side of the appellant, it is stated that the claimant was not having any functional disability. There is no loss of avocation. Applying multiplier is not at all necessary. There was no total disability. There was no evidence that the claimant could not continue his avocation. A judgment of the Hon'ble Supreme Court reported in **2011-ACJ-1 (Rajkumar V. Ajaykumar)** is cited.

8. A perusal of the records reveals that the appellant has admitted the liability to the tune of Rs.81,050/-. On the basis of the evidence of P.W.1 and on the



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basis of Ex.P1 to P3 and Ex.P4, the Tribunal has fixed the responsibility on the driver of the mini door vehicle. Since the appellant also admits the liability, it is decided that the appellant is liable to pay compensation.

9. The appellant has questioned the multiplier method adopted by the Tribunal. Wound certificate was marked as Ex.P6. It is seen that the Tribunal fixed the disability at 35%, which is reasonable. Though the claimant has sought for a sum of Rs.2,00,000/- as compensation for disability, the Tribunal has awarded Rs.2,14,200/- towards loss of income, which is excessive. Applying multiplier method theory for 35% disability is not reasonable. There is no proof that the claimant totally lost his avocation. Hence, it is decided that the claimant is entitled to Rs.1,05,000/- (Rs.3,000/- X 3) for 35% disability. The Tribunal has awarded Rs.3,000/- towards transport expenses, Rs.3,000/- towards extra nourishment, which are all reasonable. The Tribunal has awarded Rs.5,850/- towards temporary loss of income for the period of treatment and the same is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.5,000/- for pain and sufferings and the same is enhanced to Rs.10,000/-.

10. Though no medical bills were produced, there may be some medical expenses for the claimant, hence, it is decided that the claimant is entitled to Rs.4,000/- towards medical expenses.



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WEB COPY 11. The total compensation is calculated as follows:-

For 35% disability	:	Rs. 1,05,000/-
Transport expenses	:	Rs. 3,000/-
Extra nourishment	:	Rs. 3,000/-
Temporary loss of income	:	Rs. 10,000/-
Pain and sufferings	:	Rs. 10,000/-
Medical expenses	:	Rs. 4,000/-
Total compensation	:	 Rs. 1,35,000/-

12. The Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.2,31,050/- to Rs. 1,35,000/-.

(ii) The appellant - Insurance Company, is directed to deposit the entire compensation of Rs. 1,35,000/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order. **Excess amount, if any, shall be refunded to the appellant- Insurance Company.**



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WEB COPY (iii) On such deposit being made by the appellant / Insurance Company, the first respondent herein / 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 already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

21.12.2022

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.

To

- 1.The Additional District Judge,
Motor Accident Claims Tribunal –
Fast Track Court-II,
Pattukkottai.
- 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.1362 of 2012

21.12.2022