



C.M.A(MD)No.1428 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 11.11.2022

Pronounced on : .2022

CORAM

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

C.M.A(MD)No.1428 of 2012

M/s. Oriental Insurance Company Limited,
12A, Covai Road,
Karur.

...Appellant/ 3rd respondent

Vs

1.Panneerselvam

2.A.Kanndasan

3.K.Ramamoorthy

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 06.01.2004 made in M.C.O.P.No.195 of 2003 on the file of the Motor Accident Claims Tribunal (Sub-Court), Karur.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : No Appearance



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JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.195 of 2003 on the file of the Motor Accident Claims Tribunal (Sub-Court), Karur. The appellant herein is the third respondent. The first Respondent herein is the claimant. The respondents 2 and 3 are the respondents 1 and 2 in the claim petition.

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

On 21.10.2001, when the petitioner was travelling as a pillion rider in a two wheeler bearing registration number TN 47 9636 which was driven by one Dharmar, when they were nearing Kadhaparai Lakshmi Vilas Bank, another two wheeler bearing registration number TN 47 B 4010, came in a rash and negligent manner, from the back side, dashed against the petitioner. The petitioner sustained injuries. He was taken to Dr.Selvakumar Hospital at Karur, then he was admitted in K.G.Hospital, Coimbatore, for treatment. The petitioner sustained disability and could not attend his work. The petitioner claimed a sum of Rs.5,00,000/- as compensation.

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



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It was the driver of the petitioner's two wheeler, who was rash and negligent and who was not having valid driving licence. The petitioner's vehicle dashed against some unknown vehicle and only with a motive to claim compensation the vehicle of the respondent was impleaded. The injuries, medical expenses are denied. The age of the petitioner, income, profession are all denied. The claim is excessive.

4.The driver of the two wheeler Dharmar also sustained injuries and he has filed a claim petition in M.C.O.P.No.194 of 2003. Since both the claims arose out of the same accident, both the cases were taken up for joint trial and a common judgment was pronounced by the Tribunal. In the joint trial, five(5) witnesses were examined and thirty(30) 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.3,30,200/- as compensation.

4.Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal decided the question as to the negligence, only on the



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basis of the criminal court records. The Tribunal failed to form its own calculation. The Tribunal fixed the disability as 40% which is excessive. The Tribunal fixed the monthly income as Rs.3000/- which is excessive. The award is excessive.

5. On the side of the appellant, it is stated that there was no evidence that after the accident, the claimant could not continue his work. The Tribunal has not decided whether the claimant was able to continue his work. For 40% disability, the Tribunal has applied multiplier method which is wrong. There was no rebuttal evidence on the side of the respondent. Hence, on the basis of the evidence of P.W.1 and P.W.2 and on the basis of Ex.P1, the tribunal fixed the liability on the appellant which is reasonable.

6. The wound certificate was marked as Ex.P12, prescriptions were marked as Ex.P13. The disability certificate was marked as Ex.P25, X-rays were marked as Ex.26. P.W.4 has deposed that the petitioner sustained head injury, there was hemorrhage in the brain and fracture in the spinal cord and the petitioner is having giddiness and loss of memory power. Scan reports were marked as Ex.P.27 and Ex.P.28. The tribunal has fixed the disability at



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40%. On the basis of Ex.P12, Ex.P.25, Ex.P.27, Ex.P.28, it is decided that the disability fixed by the Tribunal is reasonable.

7. It is seen that the complainant was running a small industrial manufacturing unit and the document for the same, was marked as Ex.P22. On the side of the appellant, it is stated that the Tribunal has failed to decide whether the claimant was able to continue the same profession and that without deciding that there was functional disability, the Tribunal has adopted multiplier method, which is unfair.

8.It is seen that the petitioner sustained head injury and fracture in the spinal cord. There is a possibility of reduction in the earning capacity and hence it is decided that there is functional disability and adopting multiplier method is reasonable.

9.The claim of the claimant is that he was receiving Rs.10,000/- per month. The tribunal fixed the monthly income as Rs.3000/-. Considering the date of accident and considering the fact that there was no documents to prove the income, it is decided that the monthly income fixed by the Tribunal is reasonable.



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10.The Tribunal calculated the age of the claimant as 26 years. The Tribunal applied multiplier 18 and fixed the loss of income as Rs.2,59,200/- (3000 x 12 x 40 x 18/100)which is reasonable. The Tribunal has awarded Rs.40,000/- towards medical expenses, Rs.20,000/- towards pain and sufferings, Rs.5000/- towards extra nourishment which are all reasonable. For the above said reasons, it is decided that the award amount of Rs.3,30,200/-, fixed by the Tribunal, is reasonable.

11.In the above circumstances, this Civil Miscellaneous Appeal is dismissed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs. 3,30,200/- (Rupees Three Lakhs Thirty Thousand and Two Hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.3,30,200/- (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 2003 on the file of the Motor Accident Claims Tribunal (Sub-Court), Karur, within a



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period of eight weeks from the date of receipt of a copy of this order and permitted to collect the same from the owner of the vehicle.

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ claimant is permitted to withdraw the entire award amount of Rs.3,30,200/- (Rupees Three Lakhs Thirty Thousand and Two Hundred only) with proportionate interest.

25.11 .2022

Index: Yes / No
Internet : Yes / No
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To

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



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