



C.M.A.(MD)No.195 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.06.2022

Delivered On : 01.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.195 of 2012

Pitchaiyah

.. Appellant /claimant

Vs.

1.T.Murugan

2.New India Insurance Company Ltd.,

Balamore Road,

Nagercoil.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount by modifying the award and decree passed in M.C.O.P.No.846 of 1995, dated 11.10.2006, by the learned IV Additional Sub Judge, Madurai.

For Appellant

: Mr.S.Natesh Raja

for M/s. B.S.G.Firm

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.D.Sivaraman



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount by modifying the award passed in M.C.O.P.No.846 of 1995, dated 11.10.2006, by the IV Additional Sub Judge, Madurai. 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.846 of 1995 is as follows:-

On 26.03.1993, the petitioner and others travelled in an Ambassador Car, bearing Registration No.TNR-5110 that belonged to the third respondent along the Madurai - Virudhunagar National Highways, at about 12.30 pm., a Van, bearing Registration No.TN-74-A-2088 that belonged to the first respondent, insured with the second respondent, was driven by its driver in a rash and negligent manner, dashed against the car. The petitioner and four others sustained injuries. The accident occurred due to the rash and negligent driving of the drivers of the van and the car. The petitioner sustained injuries and he claimed a sum of Rs.1,25,000/- as compensation.



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3. Brief substance of the counter filed by the first respondent, in

M.C.O.P.No.846 of 1995, is as follows:-

The first respondent driver drove the van in a careful and cautious manner, it was the car that came from the opposite direction, overtook a lorry and dashed against the van. The accident has occurred only due to the rash and negligent driving of the car driver and the petition to be dismissed as against the first respondent.

4. Brief substance of the counter filed by the respondents 2 and 4, in M.C.O.P.No.846 of 1995, is as follows:-

It is denied that the van belonged to the first respondent and that the van was insured with the second respondent. It is denied that the third respondent is the car owner and the car was insured with the fourth respondent. Age, avocation, income, injuries, medical expenses, disability of the petitioner are all denied. The claim is excessive.

5. Four claim petitions, in MCOP.Nos.845 of 1995, 846 of 1995, 471 of 1995 and 472 of 1995, were filed claiming compensation for injuries sustained by the claimants in the very same accident. A common judgment was pronounced by the IV Additional Sub Judge, Madurai.



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6. On the side of the claimants, 6 witnesses were examined and 24 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After trial, the Tribunal awarded a sum of Rs.50,250/- as compensation for the claimant in M.C.O.P.No.846 of 1995. Against the award amount, the appellant / claimant has filed this appeal.

7. On the side of the appellant, it is stated that P.W.4 – Nambiraj, the driver of the ambassador car was also responsible for the accident. The respondents 2 and 4 have not taken any steps to rebut the evidence of P.W.1, in respect of the negligence on the part of the first respondent's driver. The Tribunal ought to have awarded compensation for mental agony. The Tribunal ought to have accepted the medical bills-Ex.P6 and Ex.P14 and ought to have awarded Rs.30,895.80 as medical expenses. The Tribunal ought to have considered that even after a lapse of 16 years, P.W.5 - Doctor, has assessed the partial permanent disability at 10% . The Tribunal ought to have awarded Rs.20,000/- for pain and suffering, Rs.50,000/- for partial permanent disability and Rs.5,000/- for attender charges.

8. On the side of the appellant, it is further stated that the medical bills were not considered by the Tribunal. The Tribunal awarded Rs.25,000/- towards medical expenses on the sole ground that the claimant restrict his claim. The Insurance Company failed to file any cross objection or an appeal.



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9. On the side of the second respondent, it is stated that totally three appeals were filed by the claimants and two of the appeals in CMA(MD)Nos.193 and 194 of 2012 were dismissed, on 16.06.2022. One murugan is the owner of the van. Pitchaiya is the owner of the car. Both the vehicles are insured with the same insurance company - respondents 2 and 4. The Tribunal fixed 50% liability on each of the vehicle. For the sake of convenience, the Tribunal has awarded compensation to be held by the second respondent on behalf of the respondents 2 and 4. The driver of the van – Nambiraj filed a claim petition in M.C.O.P.No.471 of 1995. Since Nambiraj is liable for contributory negligence, he was awarded only 50% of the compensation amount. The accident took place in the year 1993 and during that period, fixing Rs.500/- to Rs.700/- for each percentage of disability was the usual norms followed by the Tribunals. In view of the same, the compensation awarded by the Tribunal is reasonable and prayed the appeal is to be dismissed.

10. It is stated that the petitioner sustained fracture on the right hand and left index finger. He took treatment as inpatient for a period of 21 days. The Tribunal after considering the medical reports - Ex.P6, P8, P14 and come to a conclusion that the claimant / appellant is entitled to Rs.35,880/- towards medical expenses. Since the claimant / appellant has restricted to Rs.25,000/-, the Tribunal



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has awarded Rs.25,000/- as medical expenses. On verification of records, it is decided that the petitioner is entitled to Rs.31,000/- towards medical expenses.

11. P.W.5 has fixed the disability at 10% and issued disability certificate – Ex.P15. X-Ray was marked as Ex.P13. The Tribunal has awarded Rs.10,000/- towards 10% of disability. Considering the date of accident, the amount awarded for disability is reasonable. The tribunal has awarded Rs.250/- towards transport expenses, Rs.5,000/- towards extra nourishment, Rs.10,000/- towards pain and suffering, which are all reasonable. The claimant is entitled to a sum of Rs.1,750/- towards attender charges. In total, the claimant / appellant is entitled for a sum of Rs.58,000/- as compensation, which is calculated as follows:-

For 10% disability	: Rs.10,000/-
For medical expenses	: Rs.31,000/-
For Transport expenses	: Rs. 250/-
For pain and sufferings	: Rs.10,000/-
For Extra nourishment	: Rs.5,000/-
For attender charges	: Rs. 1,750/-
Total compensation	: Rs.58,000/-



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WEB COPY 11. This Appeal is partly allowed. The compensation is enhanced from Rs.50,250/- to Rs.58,000/-

(i) The claimant / appellant is entitled to Rs.58,000/- as compensation.

(ii) The second respondent - Insurance Company, is directed to deposit the entire compensation of Rs.58,000/- (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.

(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.

01.08.2022

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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R. THARANI, J.

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To

1.The IV Additional Sub Judge,
Madurai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.195 of 2012

01.08.2022