



C.M.A.(MD)No.130 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.11.2022

Delivered On : 09.12.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.130 of 2013

R.Edison

.. Appellant / Petitioner

Vs.

1.Thatheu

2.The Oriental Insurance Company Ltd.,
6A, North Cotton Road, Thoothukudi.

3.Jeyasingh

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 20.04.2012, made in M.C.O.P.No.240 of 2010, on the file of the Motor Accident Claims Tribunal – II Additional District Judge, Thoothukudi.

For Appellant

: Mr.G.Prabhu Rajadurai

For Respondents

: Mr.C.Jawahar Ravindran for R2

: No appearance for R1&R3



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 20.04.2012, made in M.C.O.P.No.240 of 2010, on the file of the Motor Accident Claims Tribunal – II Additional District Judge, Thoothukudi. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.240 of 2010, is as follows:

On 02.11.2009, at about 7.00 pm., when the petitioner was travelling as a pillion rider in a motorcycle bearing Registration No.TN-69-Y-4808, near Thalaivanvadali diversion, another motorcycle, bearing Registration No.TN-69-Q-6937, came from the opposite direction in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries, he was taken to Thoothukudi Government Hospital. After getting first aid, he was taken to Nagercoil Krishnakumar Orthopedic Hospital. The petitioner sustained grievous injuries and disability. The petitioner was a building contractor, he was earning Rs.25,000/- per month and he claimed a sum of Rs.10,00,000/- as compensation.



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WEB COPY 3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.240 of 2010, is as follows:

The age, occupation and income of the petitioner are to be proved. The third respondent's driver drove the motorcycle with 2 pillion riders, he was rash and negligent and he dashed against the first respondent's motorcycle. F.I.R was registered against the third respondent. The petitioner has to prove that the first respondent vehicle was insured with the second respondent and the first respondent's rider was having valid driving licence. The claim is excessive.

4. 2 witnesses were examined and 22 documents were marked, on the side of the claimant. No witness was examined and 1 document was marked, on the side of the respondents. After considering both sides, the Tribunal has awarded Rs.3,31,790/- as compensation, 20% (ie.Rs.66,358/-) of the compensation to be paid by the respondents 1 and 2 and 80% (Rs.2,65,432/-) of the compensation to be paid by the third respondent.

5. Against the award, the claimant / appellant has filed this appeal, for enhancement of compensation, on the following grounds:-



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The Tribunal is wrong in fixing 20% : 80% apportionment of negligence against the respondents 1 and 3 respectively. The Tribunal failed to consider that the first respondent failed to appear before the Tribunal and that there was no witness examined on the side of the respondents and the respondents failed to mark any documents, except a letter from the R.T.O., regarding the manner of accident. The Tribunal failed to consider that the appellant sent a complaint against the first respondent to the D.I.G, Tirunelveli. The Tribunal is wrong in fixing the liability on both the two wheelers. The appellant has sustained 13 injuries all over his body, but, the Tribunal failed to apply multiplier method. The Tribunal granted only Rs.1,000/- per percentage of disability, which is very low. The Tribunal failed to consider that the appellant sustained 65% disability. Even after producing relevant documents ie.Ex.P16 to Ex.P20, the Tribunal has wrongly fixed the income as Rs.5,000/-, instead of Rs.25,000/-. The Tribunal has awarded Rs.25,000/- towards pain and sufferings, Rs.1,000/- towards transportation, Rs.3,000/- towards extra nourishment, which are all very low.

6. On the side of the appellant, it is stated that the criminal case is still pending. The accident is of the year 2009, there was a head on collision. Two 2 wheelers hit each other and the apportionment of negligence fixed by the Tribunal is wrong.



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7. On the side of the appellant, it is further stated that the appellant was injured and was taking treatment as inpatient and at that time, a false complaint was lodged against the appellant and the F.I.R was registered against the appellant. After being discharged from hospital, the appellant addressed the D.I.G and the Inspector of Police and the copy of the letters were marked as Ex.P6 and Ex.P7. There was no evidence on the side of the respondents, to disprove the manner of accident. Only a document from R.T.O office was marked on the side of the respondents and the first respondent failed to enter into the witness box.

8. On the side of the second respondent – Insurance company, it is stated that both the vehicles involved in the accident are two wheelers. The appellant is a pillion rider in the vehicle, that belonged to the third respondent, another vehicle belonged to the first respondent. The first respondent vehicle was insured with the second respondent. F.I.R is against the rider of the vehicle of the third respondent. 3 persons have travelled in the single motorcycle at the time of accident. There was no insurance for the vehicle. Hence, the liability was fixed on the opposite vehicle also. Since there is no merit in the claim, the Tribunal has apportioned the liability as 20% against the first respondent and 80% against the third respondent.



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9. Though the name of the respondents 1 and 3 were printed, there was no representation on the side of the respondents 1 and 3. Hence, no oral argument on the side of the respondents 1 and 3 is recorded

10. Copy of the F.I.R was marked as Ex.P1. After discharge, the petitioner sent complaint to the D.I.G, Tirunelveli and to the Inspector of Police, Tirunelveli. The complaints and acknowledgement cards were marked as Ex.P6 to Ex.P9. There was no evidence on the side of the respondents, regarding the manner of accident.

11. No witness was examined on the side of the respondents to prove that the third respondent's vehicle was having 2 pillion riders at the time of accident. Both the claimant and the respondents failed to produce M.V.I reports, observation mahazer or rough sketch. Charge sheet and judgment copies were not produced on the side of the appellant. Since the first respondent and the third respondent's vehicles dashed against each other from opposite directions, it is decided that both the riders of the first respondent and the third respondent's vehicle responsible for the accident. Hence, the liability is fixed at the ratio of 50% and 50%. Hence, it is decided that both the first and third respondents are equally liable to pay compensation.



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12. On the side of the appellant, it is stated the Tribunal has fixed the income as Rs.5,000/- instead of Rs.25,000/- and the Tribunal failed to consider that the appellant was working as a building contractor and he was earning Rs.25,000/- per month. Contractor certificate issued by the Tirunelveli Diocesan Trust Association was marked as Ex.P16. Copy of construction bills regarding Sinthiya Hospital was marked as Ex.P17. Copy of construction bill regarding Meignanapuram Church was marked as Ex.P18. Copy of construction bills regarding Sivakalai School was marked as Ex.P19. Construction bill regarding Veerapandiapatinanam Prayer room was marked as Ex.P20. Income of the appellant could not be assessed from Ex.P16 to Ex.P20. Income tax returns were not filed on the side of the appellant and the documents - Ex.P16 to Ex.P20 were not proved by examination of witness.

13. On the side of the appellant, it is stated that the appellant sustained 65% disability. Wound certificate was marked as Ex.P2. Discharge summary was marked as Ex.P5. O.P card issued by the Pondichery Jipmer Hospital was marked as Ex.P13. Medical prescriptions were marked as Ex.P14. Medical bills were marked as Ex.P15. Disability certificate was marked as Ex.P21. X-ray was marked as Ex.P22. Doctor-Ramaguru was examined as P.W.2 and he has deposed that the



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appellant sustained fractures in the right thigh bone near the knee joint and a surgery was conducted and 10 screws were fixed and hence, he assessed the disability at 65%. The Tribunal awarded Rs.65,000/- for the partial permanent disability. The appellant is entitled to Rs.3,000/- per percentage of disability. Hence, the compensation for 65% disability, is fixed as Rs.1,95,000/- (Rs.3,000/- X 65).

14. For a period of 3 months, the Tribunal has awarded Rs.15,000/- for temporary loss of income. Considering the date of accident, it is decided that the monthly income is fixed as Rs.6,500/-. Considering the nature of injuries and considering the period of treatment and rehabilitation, it is decided that the appellant is entitled to Rs.39,000/- as compensation (Rs.6,500/- X 6). The Tribunal has awarded Rs.1,000/- towards transport expenses, Rs.3,000/- towards extra nourishment, Rs.25,000/- towards pain and sufferings, which are all reasonable.

15. The Tribunal has awarded Rs.2,22,790/- towards medical expenses. Medical bills were marked as Ex.P3 and Ex.P14. The amount awarded towards medical expenses is reasonable.



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16. The total compensation is calculated as follows:-

65% Disability	:	Rs. 1,95,000/-
Medical bills	:	Rs. 2,22,790/-
temporary loss of income	:	Rs. 39,000/-
pain and sufferings	:	Rs. 25,000/-
transport expenses	:	Rs. 1,000/-
extra nourishment	:	Rs. 3,000/-
Total compensation	:	Rs. 4,85,790/-

17. The insurance company, on behalf of first respondent, is liable to pay 50% of the award amount, that is, Rs.2,42,895/- with proportionate interest and costs and the third respondent herein is liable to pay 50% of the award amount, that is, Rs.2,42,895/- with proportionate interest and costs.

18. This appeal is partly allowed. No costs.

(i) The quantum of compensation is enhanced from Rs.3,31,790/- to Rs. 4,85,790/-.

(ii) The second respondent herein - Insurance Company, is directed to deposit the 50% of total compensation ie. Rs.2,42,895/- (less the amount, if any already deposited) together with interest at the rate of 7.5% per annum from the date



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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 Insurance Company.

(iii) The third respondent herein - owner of the vehicle, is directed to deposit the 50% of total compensation ie. Rs.2,42,895/- 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.

(iv) The claimant is not entitled for interest for the default period, if there is any.

09.12.2022

Index : Yes/No

Internet : Yes/No

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To

1.The II Additional District Judge,
Motor Accident Claims Tribunal,
Thoothukudi.

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
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