



C.M.A(MD)No.435 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 14.07.2022

Pronounced on : 23.08.2022

CORAM

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

C.M.A(MD)No.435 of 2012

Manohar

... Appellant

Vs

1.Sivakumar

2.The National Insurance Company Ltd.,
Through its Branch Manager,
No.63, Rasi Plaza, West Radhakrishnan Road,
Karur.

... Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.266 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tirunelveli, dated 28.07.2011.

For Appellants : Mr.T.Selvakumaran

For Respondents : Mr.R.Murugappan - for R1
Mr.D.Sivaraman - for R2



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JUDGMENT

This appeal is filed against the order made in M.C.O.P.No.266 of 2009, on the file of the learned Principal Subordinate Judge, Tirunelveli. The appellant is the claimant. The respondents are the respondents in the claim petition.

2.Brief substance of the claim petition, in M.C.O.P.No.266 of 2009, is as follows:

On 21.03.2009, at about 3.20 p.m., when the petitioner was travelling in a Mahindra Xylo car bearing registration number TN 72 AC 6669, along the Chennai - Tirunelveli Road, near Parakiyur Primary Health Centre, a lorry bearing registration number TN 64 C 4802 driven by its driver in a rash and negligent manner, dashed against the car. The petitioner sustained injuries and he claimed a sum of Rs.10 Lakhs as compensation.

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

The age, income and profession of the petitioner are denied. The



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manner of accident as narrated in the petition is wrong. It was the car driver who without observing the road rules, suddenly tried to cross the road and invited the accident. The owner of the car and the insurer of the car, are necessary parties to the case. The vehicle was insured with the second respondent and the first respondent is not liable to pay compensation.

4. Brief substance of the counter filed by the second respondent is as follows:

The petitioner sustained only simple injuries. The income of the petitioner is to be proved. Only on the basis of the surveyor report, a sum of Rs.4,46,662/- was awarded to the petitioner towards damages to his own vehicle and that amount was already received by the petitioner on full satisfaction. The damaged spare parts are changed after the accident. The old spare parts are with the petitioner. The petitioner is not entitled to claim any amount towards damages to the vehicle. The case has been dismissed as to the damages to the vehicle.

5. Two(2) witnesses were examined and twenty four (24) documents were marked on the side of the petitioner. One(1) witness was examined and



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six(6) documents were marked on the side of the respondent. The Tribunal awarded Rs.2,89,289/- as compensation.

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

The Tribunal failed to consider the nature of injuries ie., there was fracture in the right leg, right hip joint, right hand and there were multiple injuries all over the body. The Tribunal ought to have granted Rs.10,000/- towards transport expenses. Rs.50,000/- towards pain and sufferings. Rs. 1,00,000/- towards loss of amenities. Rs.3,00,000/- towards loss of earning power, Rs.50,000/- towards loss of expectations of life and pray for the enhancement of compensation.

7.On the side of the appellant, it is stated that the disability is fixed at 39%, the Tribunal has awarded only Rs.2,89,289/- which is very low. Only Rs.2,000/- per percentage of disability was awarded by the Tribunal. The sum has to be enhanced to Rs.3,000/- per percentage of disability. The amount awarded towards pain and sufferings, transport expenses, extra nourishment are to be increased.



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8.A judgment of this Court reported in **2013(2) TN MAC 583** in the case of **National Insurance Co.Ltd., vs G.Ramesh and another**, is cited, wherein this Court has awarded compensation at the rate of Rs.3,000/- per percentage of disability.

9.On the side of the respondent it is stated that adopting multiplier method is not necessary. P.W.2, the Doctor has deposed that the claimant can do his day-to-day activities. The accident took place in the year 2009 and at that time, Rs.2,000/- per percentage of disability was the norms and that there is no grounds sufficient enough to interfere with the orders of the Tribunal.

10.A perusal of the records reveals that P.W.2 has deposed that the claimant can do his day-to-day affairs. The Tribunal has awarded Rs.50,000/- towards loss of income for a period of two months.

11.Considering the fact that there is a fracture in the hip joint, considering the nature of injuries, for the period of treatment and for the period of rehabilitation, the loss of income is fixed as Rs.3,00,000/- (50,000/-



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x 6) towards for 6 months. For disability at 39% the petitioner is entitled to (39 x 2,000) Rs.78,000/-. The petitioner is entitled to Rs.10,000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.1,30,289/- towards medical expenses. For pain and sufferings and mental agony, an amount of Rs.50,000/- is awarded. Total award of Rs.5,78,289/- is rounded off to Rs.5,78,500/- (Rupees Five Lakhs Seventy Eight Thousand and Five Hundred only).

12.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.2,89,289/- to Rs.5,78,500/- which shall carry interest at the rate of 7.5% per annum.

(ii) The appellants/claimants are directed to pay the court fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iii) The second respondent - the National Insurance Company Limited, is directed to deposit the entire compensation of Rs.5,78,500/- (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 to the credit of



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M.C.O.P.No.266 of 2009 on the file of the Motor Accident Claims Tribunal (Principal Subordinate Judge), Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the National Insurance Company Limited, the appellant is permitted to withdraw the entire award amount, along with proportionate interest as apportioned above. The appellant is not entitled to interest for the default period, if there is any.

23.08.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accident Claims Tribunal (Principal Subordinate Judge),
Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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**Pre - Delivery Judgment made in
C.M.A(MD)No.435 of 2012**

23.08.2022