



C.M.A.(MD)No.905 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 28.10.2022

Delivered On : 08.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.905 of 2012

Murugan

.. Appellant /claimant

Vs.

1.Balakrishnaveni

2.The Branch Manager,

Bharathi AXA General Insurance Co.Ltd.,

I Floor, the Ferns Icon, Survey No.28,

Next to Akme Baller, Doodanekundi,

Off outer Ring Road,

Bangalore – 560 037.

.. Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to enhance the award amount in M.C.O.P.No.232 of 2010, on the file of the Motor Accident Claims Authority–(Chief Judicial Magistrate), Tirunelveli, dated 06.09.2011.

For Appellant

: Mr.T.Selvakumaran

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.S.Srinivasa Raghavan



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount, in M.C.O.P.No.232 of 2010, on the file of the Motor Accident Claims Authority – (Chief Judicial Magistrate), Tirunelveli, dated 06.09.2011. 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 petition, in M.C.O.P.No. 232 of 2010, is as follows:-

On 17.03.2010, when the petitioner was travelling as a passenger, in a bus bearing Registration No.TN-32-9193 that belonged to the first respondent, near Chathirapatti diversion, the driver of the bus drove the vehicle in a rash and negligent manner, without considering the bad condition of the road, as a consequence, the rear wheel suddenly burst and the floor of the bus was suddenly broken. The petitioner and a 4 years old child sustained injuries, they were taken to Tirunelveli Medical College Hospital. The petitioner took treatment as inpatient for a period of 15 days. The petitioner was aged about 22 years at the time of accident and he was doing electrical work and was earning Rs.5,000/- per month. The petitioner claimed a sum of Rs.3,00,000/- as compensation.



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3. A brief substance of the counter filed by the second respondent, in M.C.O.P.No. 232 of 2010, is as follows:-

The manner of accident is wrongly stated. The driver of the bus was not responsible for the accident. The petitioner has to prove his age, monthly income and injuries. The first respondent bus bearing Registration No.TN-32-9193 was not having valid fitness certificate. The fitness certificate already expired on 19.02.2010. There is violation of policy condition. The second respondent is not liable to pay compensation. The claim is exorbitant.

4. Another petition in M.C.O.P.No.209 of 2010 was filed by the minor, aged about 4 years. The Tribunal took both the cases for joint trial, and passed a common order. In the common trial, 3 witnesses were examined and 18 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal awarded a sum of Rs.1,54,293/- as compensation in M.C.O.P.No.232 of 2010.

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 ought to have awarded Rs.10,000/- towards transport expenses, Rs.25,000/- towards extra nourishment, Rs.50,000/- towards pain and sufferings, Rs.50,000/- towards loss of amenities, Rs.30,000/- towards loss of income for the period of treatment and Rs.1,00,000/- for permanent disability. The Tribunal ought to have adopted multiplier method in calculating the loss of income.

6. On the side of the appellant, it is stated that the appellant was earning more than Rs.5,000/- per month. He sustained 45% permanent disability. The Tribunal has awarded only Rs.2,000/- per percentage of disability. Right leg of the appellant was shortened. Plates and screws were fixed and then they were removed. The Tribunal ought to have adopted multiplier method.

7. On the side of the respondent, it is stated that P.W.3 - Dr.Thiru Ramaguru has given disability certificate - Ex.P17, wherein, the disability was mentioned only as a partial permanent disability and that there was no functional disability. There is no necessity to adopt multiplier method.

8. On the side of the appellant, it is further stated that even for 29% of disability, the Hon'ble Supreme Court has adopted multiplier method. A judgment of the Hon'ble Supreme Court reported in **2011-1-TNMAC-537 (SC) (Rudra V. National Insurance Co.Ltd)** is cited.



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9. It is seen that the claimant is an electrician, he sustained injury only on the right leg. The appellant failed to prove that there was functional disability. In the above circumstances, it is decided that adopting multiplier method is not at all necessary.

10. On the side of the appellant, it is stated that for the accident that happened in the year 2009, this Court has granted Rs.3,000/- per percentage of disability. A judgment of this Court reported in **2013-2-TNMAC-583 (National Insurance Co. Ltd., V. G.Ramesh)** is cited.

11. On the side of the respondent, it is stated that an award of Rs.2,000/- per percentage of disability was reasonable, during the year 2010. Only after the year 2011, the amount was increased to Rs.3,000/- per percentage of disability.

12. Considering the nature of injury and considering the earlier decision of this Court, it is decided that the appellant is entitled to Rs.3,000/- per percentage of disability. The appellant sustained 45% disability and he is entitled to Rs.1,35,000/- (Rs.3,000/- X 45 = Rs.1,35,000/-) as compensation.

13. It is stated that the appellant was earning Rs.5,000/- per month as a self-employed electrician. The Tribunal has awarded Rs.15,000/- as interim loss of



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income for the period of treatment. Considering the injury, it is decided that the appellant is entitled to Rs.30,000/- towards temporary loss of income, for the period of treatment and for the period of rehabilitation. The Tribunal has awarded Rs.5,000/- towards attender charges and the same is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.11,292.70 towards medical expenses and the same is enhanced to Rs.12,000/-.

14. The Tribunal has awarded Rs.3,000/- towards transport expenses, Rs.5,000/- towards extra nourishment and Rs.25,000/- towards pain and sufferings, which are all reasonable.

15. The total compensation is calculated as follows:-

45% Disability	:	Rs.1,35,000/-
Temporary loss of income	:	Rs. 30,000/-
Transport expenses	:	Rs. 3,000/-
Eextra nourishment	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 25,000/-
Attender charges	:	Rs. 10,000/-
Medical expenses	:	Rs. 12,000/-
Total Compensation	:	 Rs.2,20,000/-



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WEB COPY 16. This appeal is partly allowed. The compensation is enhanced from Rs.1,54,292/- to Rs.2,20,000/-.

(i) The claimant / appellant is entitled to Rs.2,20,000/- as compensation.

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.2,20,000/- (less the amount if any 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.

08.11.2022

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 Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Tirunelveli.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.905 of 2012

08.11.2022