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C.M.A(MD)No.956 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.10.2022

Pronounced on : 30.11.2022

CORAM

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

C.M.A(MD)No.956 of 2012

ICICI Lombard General Insurance Co.Ltd.,
D-1, A.R.Plaza No.15, North Veli Street,
Madurai Town,
Madurai District.

...Appellant/ 2nd respondent

Vs

1.Devakumar

... 1st respondent / petitioner

2.K.Natarajan

... 2nd Respondent / 1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the order passed in M.C.O.P.No.72 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai and to allow this appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For Respondent : Mr.A.Sivasubramanian for R.1

Mr.S.Louis for R.2



C.M.A(MD)No.956 of 2012

JUDGMENT

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This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.72 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai. The appellant herein is the second respondent, first respondent is the claimant, second respondent is the first respondent in the claim petition.

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

On 18.05.2008, at about 4 p.m., when the petitioner was travelling as a pillion rider in a two wheeler bearing registration number TN 31 H 4946 along the Rajakambiram Mill Gate NH, a tipper lorry bearing registration number TN 65 H 2084, which was driven by its driver in a rash and negligent manner, came from the opposite direction and dashed against the motorcycle. The petitioner sustained injuries and fracture. He took first aid in Manamadurai government Hospital and then he was admitted in Preethi Hospital, Madurai and he took treatment as inpatient from 18.05.2009 till 30.06.2009, and again from 09.10.2009 till 16.10.2009. The petitioner is not able to walk, sit or do his day to day works. The petitioner claimed a sum of Rs.6 Lakhs as compensation.



C.M.A(MD)No.956 of 2012

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

If there is policy violation, the second respondent is not liable to pay compensation. The age, profession and income of the petitioner are all denied. The accident has happened due to the rash and negligent driving of the rider of the motorcycle. The rider of the motorcycle was not having valid driving licence. The injuries are simple in nature. The claim is excessive.

4. Two(2) witnesses were examined and fifteen(15) documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. Three material objects were marked. The Tribunal awarded a sum of Rs.5,84,000/- as compensation to be paid by the first and second respondents.

5. Against the award, the second respondent in the claim petition has preferred this appeal on the following grounds:

The Tribunal fixed the disability at 46% and granted Rs.3000/- per percentage of disability. In total, Rs.1,38,000/- was granted towards disability, which is excessive. The Tribunal is wrong in fixing a sum of Rs.1,00,000/- towards pain and sufferings, Rs.1,00,000/- towards loss of amenities and happiness. The award is excessive.



C.M.A(MD)No.956 of 2012

6. On the side of the first respondent it is stated that the claimant is suffering till today. The Tribunal failed to award compensation for future medical expenses. The claimant is still continuing treatment. Due to surgeries and the injuries, the claimant is not in a position to work as before.

7. There is no rebuttal evidence on the side of the respondent. From evidence of P.W.1 and the Ex.P1 - First Information Register, Ex.P3 - Accident Register, Ex.P9 - charge sheet and Ex.P.13, a judgment of the criminal Court, it is decided that the accident has happened only due to the rash and negligent driving of the driver of the tipper lorry and hence the appellant is liable to pay the compensation.

8. P.W.2 has deposed that the claimant was disabled. Wound certificate issued by the Hospital was marked as Ex.P4 and discharge summary was marked as Ex.P5. The Disability certificate was marked as Ex.P15. The Tribunal has fixed the disability at 46%. Considering the date of accident, it is decided that for 46% of disability the claimant is entitled to Rs.1,38,000/- that is Rs.3000/- per percentage of disability. The Tribunal has granted Rs. 1,00,000/- towards pain and sufferings and the same is reduced to Rs. 25,000/-. The Tribunal has granted Rs.1,00,000/- towards loss of amenities



C.M.A(MD)No.956 of 2012

and the same is reduced to Rs.10,000/-. The Tribunal has awarded Rs.5000/- towards extra nourishment, Rs.5000/- towards transport expenses, Rs.2,36,281/- towards medical expenses which all are reasonable. The award is modified as follows:

For disability	-	Rs.1,38,000/-
Pain and sufferings	-	Rs. 25,000/-
Loss of amenities	-	Rs. 10,000/-
Medical expenses	-	Rs.2,36,281/-
Transport expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 5,000/-

Total	-	Rs.4,19,281/-
Rounded off	-	<u>Rs.4,19,280/-</u>

9.In the above circumstances, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.5,84,000/- to **Rs.4,19,280/- (Four Lakhs Nineteen Thousand Two Hundred and Eighty 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.4,19,280/- (if not already deposited) together with interest at



C.M.A(MD)No.956 of 2012

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 in M.C.O.P.No.72 of 2010 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Sivagangai, within a 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.4,19,280/- (Four Lakhs Nineteen Thousand Two Hundred and Eighty only) with proportionate interest.

30.11.2022

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C.M.A(MD)No.956 of 2012

To

- 1.The Motor Accident Claims Tribunal (Chief Judicial Magistrate),
Sivagangai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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C.M.A(MD)No.956 of 2012

R. THARANI, J

pnn

C.M.A(MD)No.956 of 2012

30.11.2022