



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2022

CORAM:

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.700 of 2020

and

C.M.P (MD)No.7099 of 2020

WEB COPY

The Manager,
Cholamandalam M.S.General Insurance
Company Ltd.,
Chennai -1.

...Appellant/2nd Respondent

Vs.

1.K.Uthaman@Prem

...1st Respondent/Petitioner

2.Shanthi Gears Limited,
No.304 A, Trichy Salai,
Singanallur,
Coimbatore Town & District

...2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree passed in M.C.O.P.No.720 of 2016 on the file of the Motor Accident Claims Tribunal, Additional District & Special Judge, Pudukkottai, dated 12.09.2019.

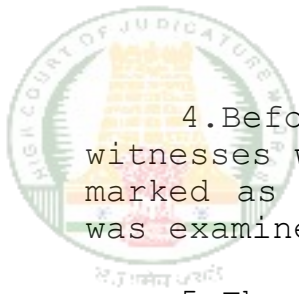
For Appellant :M/s.K.R.Shivashankari
For R1 :Mr.Prasanna Rajadurai
for Mr.Na.Palaniyandi
For R2 :No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed to set aside the judgment and decree passed in M.C.O.P.No.720 of 2016 on the file of the Motor Accidents Claims Tribunal, Additional District & Special Judge, Pudukkottai, dated 12.09.2019.

2.It is a case of accident, which took place on 19.05.2016, when the claimant travelled as a pillion rider in his friend's two wheeler bearing Registration No.TN-37-CJ-0039, at about 01.00 a.m. they came near opposite to Singanallur Jaishanthi Theatre at Trichy - Singanallur Main Road, a bus bearing Registration No.TN-37-AP-1122 came behind the two wheeler in a rash and negligent manner dashed against the two wheeler. Due to the said accident, the first respondent/petitioner sustained fracture on the left leg and also sustained multiple injuries all over his body.

3.The claimant has filed the claim petition in M.C.O.P.No.720 of 2016 on the file of the Motor Accidents Claims Tribunal/Additional District and Special Judge, Pudukkottai, seeking compensation of Rs.25,00,000/-.



4.Before the Tribunal, on the side of the claimant, three witnesses were examined as P.W.1 to P.W.3 and seven documents were marked as Exs.P.1 to P.7. On the side of the respondents, no one was examined and no document was marked.

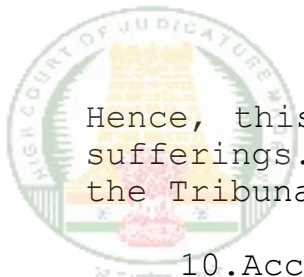
5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the claimant and the respondent and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the first respondent and directed the appellant herein to pay a sum of Rs.7,18,950/- as compensation. Aggrieved over the orders passed by the Tribunal, the appellant has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

6.Heard Ms.K.R.Shivashankari, learned counsel appearing for the appellant and Mr.Prasana Rajadurai, learned counsel appearing for the first respondent. No representation on behalf of the second respondent.

7.The learned counsel for the appellant contended that though there is no functional disability, the Tribunal has wrongly adopted multiplier method and awarded Rs.6,12,000/- towards permanent disability. He further contended that the claimant has not produced any document to prove his income, the Tribunal has wrongly fixed Rs.10,000/- as monthly income. Hence, the award passed by the Motor Accidents Claims Tribunal is liable to be modified.

8.Per contra, the learned counsel appearing for the first respondent/petitioner contended that the petitioner has sustained fracture and injuries all over the body and suffered 30% of partial permanent disability and the Tribunal, after considering all the circumstances has rightly awarded Rs.6,12,000/- towards permanent disability and therefore, the award passed by the Tribunal is perfectly correct and the same needs no interference.

9.A perusal of the records shows that the claimant was admitted in Geethanjali Hospital, Trichy and took treatment as inpatient from 24.05.2016 to 28.05.2016 for injuries sustained by him. It is seen from the case summary (Ex.P3) that he had suffered fracture on bones in his leg and also steel plate was fixed. Dr.Gopalakrishnan (PW3) had assessed the partial permanent disability as 30% and in his evidence, he stated that the claimant cannot do any work as done prior to the accident. But without any document to prove his income, the Tribunal has wrongly fixed as Rs.10,000/- as monthly income. Hence, this Court fixed Rs.8,000/- as monthly income of the claimant. As per evidence of PW3, the claimant suffered functional disability, hence multiplier method has to be adopted. Therefore, loss of income arrived at $\text{Rs.8,000/-} \times 12 \times 30\% \times 17 = \text{Rs.4,89,600/-}$. Since the claimant had suffered fracture only in leg, Rs.50,000/- awarded towards pain and sufferings by the tribunal is very high.



Hence, this Court awarded Rs.30,000/- towards pain and sufferings. Except the above, all other terms of the award passed by the Tribunal is confirmed.

10. Accordingly, the claimant is entitled for compensation as follows:

S.No.	Head	Amount granted by this Court
1.	Loss of income	Rs.4,89,600/-
2.	Pain and sufferings	Rs. 30,000/-
3.	Loss of amenities	Rs. 10,000/-
4.	Medical Bills	Rs. 16,950/-
5.	Extra nourishment	Rs. 10,000/-
6.	Transportation	Rs. 10,000/-
7.	Attendant charge	Rs. 10,000/-
Total		Rs.5,76,550/-

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

11. In the result,

(i) The Civil Miscellaneous Appeal is partly allowed.

(ii) The quantum of compensation awarded by the Tribunal is reduced from Rs.7,18,950/- to Rs.5,76,550/- which would carry interest at the rate of 7.5% per annum.

(iii) It is submitted that the appellant/ Insurance Company had already deposited the entire award amount with accrued interest and therefore, the appellant is permitted to withdraw the excess amount with proportionate interest.

(iv) The claimant is also permitted to withdraw the entire award amount with proportionate interests and costs, by filing necessary application. No costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

vsd

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.



To

1.The Motor Accident Claims Tribunal,
Additional District & Special Judge,
Pudukkottai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.NA.PALANIYANDI, Advocate (SR-712[F] dated 07/01/2022)

+1 CC to M/s.K.R.SHIVA SHANKARI, Advocate (SR-408[F] dated
05/01/2022)

C.M.A.(MD)No.700 of 2020
and
C.M.P(MD)No.7099 of 2020
05.01.2022

SE(CO)
KB(16.02.2022) 4P 6C