



C.M.A.(MD)No.1963 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved On : 18.10.2022

Delivered On : 07.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1963 of 2013

Hariharan

.. Appellant /claimant

Vs.

1.Muthusekar

2.The Branch Manager,

Reliance General Insurance Company Ltd.,

No.10/4/4, 2nd Floor, Thaga Plaza,

South Bypass Road,

Vannarpettai, Tirunelveli.

.. 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.95 of 2012, on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate),Tirunelveli, dated 31.12.2012.

For Appellant

: Mr.T.Selvakumaran

For Respondent No. 1

: No appearance

For Respondent No.2

: Mr.V.Sakthivel



C.M.A.(MD)No.1963 of 2013

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the award amount in M.C.O.P.No.95 of 2012, on the file of the Motor Accident Claims Tribunal – Chief Judicial Magistrate), Tirunelveli, dated 31.12.2012. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. Brief substance of the petition, in M.C.O.P.No. 95 of 2012, is as follows:-

On 18.11.2011, at about 10.45 pm., when the petitioner was standing with his motorcycle, opposite to Ford Car company, near Vannarapettai South bypass road, an Ambassador car bearing Registration No.TN-69-E-5305 driven by its driver in a rash and negligent manner, dashed against the petitioner and caused him injuries. He was given first aid in Srisakthi Hospital and then he was admitted in Diraviyum Hospital in Nagercoil. The petitioner was doing 3rd year B.E., and he claimed a sum of Rs.10,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent, in M.C.O.P.No.95 of 2012, is as follows:-



C.M.A.(MD)No.1963 of 2013

The manner of accident as narrated in the petition is wrong. The first respondent driver was not responsible for the accident. The accident has happened only due to the negligence of the petitioner. It was the petitioner, who crossed the road, without observing the traffic and he invited the accident. The age, education, manner of accident, injuries, mode of treatment, medical expenses are to be proved. The claim is excessive.

4. On the side of the claimant, 2 witnesses were examined and 8 documents were marked. On the side of the respondents, no witness was examined and no document was marked. After considering both sides, the Tribunal has awarded a sum of Rs.87,169/- as compensation.

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

In a similar case, reported in 2011-1-TNMAC-537, the Hon'ble Supreme Court has awarded a sum of Rs.3,00,000/- as compensation. The Tribunal has failed to consider the injuries sustained by the appellant. The Tribunal failed to award compensation under the head of loss of amenities. The Tribunal ought to have granted Rs.50,000/- for pain and sufferings instead of Rs.20,000/-. The Tribunal ought to have granted Rs.75,000/- for 25% disability, and Rs.20,000/- for extra



C.M.A.(MD)No.1963 of 2013

nourishment. The Tribunal ought to have granted Rs.10,000/- for transport expenses instead of Rs.3,000/- and that the award to be enhanced.

6. On the side of the appellant/claimant, it is stated that the appellant was a College student, he sustained 25% disability. Rs.3,000/- ought to have been awarded for each percentage of disability. A judgment of this Court reported in 2013-2-TNMAC -583 (National Insurance Co.Ltd., V. G.Ramesh) is cited.

7. On the side of the second respondent /Insurance Company, it is stated that the accident has happened in the year 2011 and at that time Rs.2,000/- per percentage of disability was the usual norms. The Doctor has deposed that there is possibility of the disability to reduce on doing proper physiotherapy and there is no necessity to enhance the compensation.

8. No witness was examined and no document was marked on the side of the respondents. No appeal or cross objection was filed on the side of the respondents. Hence, it is decided that there is no dispute regarding the liability. From Ex.P6 and Ex.P7, it is seen that the appellant sustained fracture in the hip joint and there was fracture on the pubic bones. Considering the age of the appellant and considering the nature of injury, it is decided that the appellant is entitled to



C.M.A.(MD)No.1963 of 2013

Rs.3,000/- per percentage of disability and for 25% disability, the appellant is entitled to Rs.75,000/- as compensation.

9. Considering the nature of injuries, it is decided that the appellant is entitled to Rs.50,000/- towards pain and sufferings, Rs.10,000/- towards extra nourishment, Rs.4,000/- towards transport expenses and Rs.6,000/- towards medical expenses.

10. The total compensation is calculated as follows:-

For 25% Disability	:	Rs. 75,000/-
Pain and sufferings	:	Rs. 50,000/-
Extra nourishment	:	Rs. 10,000/-
Transport expenses	:	Rs. 4,000/-
Medical Expenses	:	Rs. 6,000/-
Total compensation	:	Rs.1,45,000/-

11. This Appeal is partly allowed. The compensation is enhanced from Rs.87,169/- to Rs.1,45,000/-.

(i) The claimant / appellant is entitled to Rs.1,45,000/- as compensation.



C.M.A.(MD)No.1963 of 2013

(ii) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.1,45,000/- (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.

07.11.2022

Index : Yes/No

Internet : Yes/No

Ls

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.



C.M.A.(MD)No.1963 of 2013

WEB COPY

- 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.



WEB COPY



C.M.A.(MD)No.1963 of 2013

R. THARANI, J.

Ls

Pre-delivery Judgment made in
C.M.A.(MD)No.1963 of 2013

07.11.2022