



C.M.A(MD)No.899 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.08.2022

Pronounced on : 26.09.2022

CORAM

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

C.M.A(MD)No.899 of 2013

J.Kishore Tarique

... Appellant

Vs

1.P.Kumaraselvan

2.S.Selvamani

3.The Manager,
Cholamandalam,
M.S.General Insurance Co.Ltd.,
Kalavasal,
Dindigul High Road, Madurai.

...Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to allow this appeal and enhance the award amount in M.C.O.P.No.49 of 2011 on the file of the Motor Accident Claims Tribunal(Special Judge), Nagercoil dated 30.04.2012.

For Appellant : Mr.T.Selvakumar

For R1 : Mr.A.Haja Mohideen



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For R3

:Mr.S.Srinivasa Raghavan

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JUDGMENT

This appeal is filed against the order in M.C.O.P.No.49 of 2011 on the file of the Motor Accident Claims Tribunal (Special Judge), Nagercoil. The appellant herein is the claimant and the respondents herein are the respondents in the claim petition. On the side of the appellant a petition in M.P.(MD)No.1 of 2013 is filed along with this appeal.

2.Brief substance of the claim petition in M.C.O.P.No.49 of 2011 is as follows:

On 03.10.2008 at about 3 p.m., when the petitioner was driving a Maruti van bearing registration number TN 74 L 2273 along the Tirunelveli - Kanniyakumari road, a mini lorry bearing registration number TN 31 F 5088 was driven by its driver in a rash and negligent manner, dashed against the Maruti van. The petitioner sustained injuries. He was taken to Usha Hospital, Aralvaimozhi. After getting first aid, he was admitted in Thiraviyam Ortho Hospital, Nagercoil. He has undergone two surgeries in the right leg and in the left hand. He was admitted in the hospital as inpatient for one week.



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Then he took treatment as out patient. The petitioner was working as a driver and was earning Rs.4,500/- per month. He is having a wife and two children.

The petitioner cannot do his previous work after the accident. He was not able to even walk without stick. The petitioner has to undergo another surgery to remove the plate fixed in the leg. The petitioner claims a sum of Rs.50,00,000/- as compensation.

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

The manner of the accident has to be proved. It was the claimant who drove the vehicle in a rash and negligent manner. To avoid hitting on a motorcycle, he turned the vehicle to the right side and dashed against the lorry. Both the vehicle were damaged in the accident. The First Information Report was registered only against the claimant. A charge sheet was also filed against the claimant. Since the accident took place due to the negligence of the claimant, the respondent is not liable to pay compensation. The age, income, avocation of the petitioner are to be proved. Validity of the insurance policy is also to be proved.



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4.Three witnesses were examined and sixteen documents were marked on the side of the petitioner. One witness was examined and two documents were marked on the side of the respondent. The Tribunal fixed 50% liability on the lorry driver and 50% liability on the claimant. The Tribunal has awarded Rs.1,09,000/- as compensation, after deducting 50% towards contributory negligence.

5.Against the award, the claimant filed this appeal on the following grounds:

The Tribunal ought to have fixed the entire liability on the lorry driver. The Tribunal failed to consider Ex.A5-rough sketch. The mini lorry crossed the track and dashed against the Maruti Omni van. The Tribunal failed to consider that the claimant has undergone two surgeries and he is not able to work as a driver. The Tribunal ought to have granted Rs.3,00,000/- towards loss of income, Rs.60,000/- towards temporary loss of income. Rs.10,000/- towards transport expenses. Rs.15,000/- towards extra nourishment and Rs.50,000/- towards pain and sufferings.



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6. Brief substance of the petition in M.P.(MD)No.1 of 2013 is as follows:

(i) At the time of trial, the petitioner was under the impression that the wound certificate alone is sufficient to prove the case and since the petitioner was having financial crises to mobilize the fund, he was not able to obtain the disability certificate. Now the petitioner filed the disability certificate to prove his disability. Unless, the disability certificate and the X-ray are received as additional evidence, the petitioner will be put into irreparable loss and hardship and pray the document to be received as evidence.

(ii) On the side of the appellant it is further stated that the Tribunal failed to award any amount towards the permanent disability. Now the appellant has attached the disability certificate issued by the competent Doctor disability has to be fixed at 49%. The matter was referred to the Lok Adalat and before the Lok Adalat, the Doctor who attended the Lok Adalat, verified the records and tested the claimant and gave a certificate that the claimant is having 45% permanent disability. But the trial Court failed to award any amount towards permanent disability and pray the disability certificate to be received as an evidence.



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(iii) On the side of the respondent it is stated that to prove the disability certificate, the matter has to be remanded back to the trial Court. But remanding the matter to the Trial Court, will cause further delay in the disposal of the case and pray the matter to be decided before this Court itself.

7. The perusal of the records reveals that the Tribunal has not awarded any amount towards permanent disability. It is seen that the claimant has not produced any document regarding disability before the Tribunal. To avoid further delay in disposal of the case, the disability certificate and the X-ray are received as evidence and they are marked as Ex.P.17 and Ex.P.18.

8. Considering that the FIR and charge sheet were filed against the claimant, the Tribunal has fixed 50% contributory negligence on the claimant which is reasonable.

9. On the side of the appellant, it is stated that the Tribunal failed to award any amount towards permanent disability and the appellant has now produced the disability certificate. Earlier the matter was referred to the Lok Adalat and the Doctor who attended the Lok Adalat, has examined the



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claimant and certified that the claimant is having 45% disability and pray the award to be made towards permanent disability.

10.On the side of the respondent it is stated that the disability fixed in Ex.P17 is 49%. The Doctor was not examined and hence the disability certificate cannot be relied upon.

11.A perusal of the records reveals that the matter was placed before the Lok Adalat and the Doctor who visited the Lok Adalat has examined the claimant and he issued a certificate that the claimant is having 45% disability. In view of the same, the disability is fixed at 45%. The accident took place in the year 2013 and hence Rs.90,000/- is awarded towards 45% of disability.

12.On the side of the appellant it is stated that the award under various other heads are to be enhanced. Compensation for the temporary loss of income is to be enhanced to Rs.60,000/- and the transport charges to be enhanced to Rs.10,000/-, the amount towards extra nourishment is to be enhanced to Rs.15,000/-, the amount towards pain and sufferings to be enhanced to Rs.50,000/-.



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13.Considering the date of accident and considering the evidence on record, it is decided that the award amount fixed by the Tribunal under various heads are reasonable and the compensation is fixed as follows:

Temporary loss of income (for the period of treatment and for the period of rehabilitation)	-	Rs. 27,000/-
Transport charges	-	Rs. 3,000/-
Extra nourishment	-	Rs. 5,000/-
Damage to articles	-	Rs. 1,000/-
Medical expenses	-	Rs.1,52,000/-
For pain and sufferings	-	Rs. 30,000/-
For permanent disability	-	Rs. 90,000/-

Total	-	Rs.3,08,000/-

The Tribunal has fixed 50% contributory negligence on the part of the claimant. Hence, after deducting 50% towards contributory negligence, the claimant is entitled to **Rs.1,54,000/-** as compensation.

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

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,09,000/- to **Rs.1,54,000/-(Rupees One Lakh Fifty Four**



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Thousand only) which shall carry interest at the rate of 7.5% per annum.

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(ii) The appellant/claimant is directed to pay the court fee for the enhanced compensation, if any.

(iii) The third respondent - Insurance company, is directed to deposit the entire compensation of Rs.1,54,000/- (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 M.C.O.P.No.49 of 2011 on the file of the Motor Accident Claims Tribunal(Special Judge), Nagercoil, 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 Insurance Company, the appellant / claimant is permitted to withdraw the award amount of Rs.1,49,000/-, along with proportionate interest.

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Index: Yes / No

Internet : Yes / No

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To

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

Pre-Delivery Judgment made in
C.M.A(MD)No.899 of 2013

26.09.2022