



C.M.A(MD)No.122 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.10.2022

Pronounced on : 04.11.2022

CORAM

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

C.M.A(MD)No.122 of 2019

National Insurance Company Ltd.,
Represented by its Branch Manager,
Having Office at Anguvilas Buildings,
North Car Street,
Nagercoil, Kanyakumari District.

...Appellant /Claimant

Vs

1.Shahin

... 1st respondent / petitioner

2.John Jebaraj

3.David

4.Essa

(R4 is exonerated vide Court order
dated 29.08.2022)

... Respondents 2 to 4 / Respondents 1,2 and 4

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow this appeal and set aside the judgment and decree dated 05.09.2017 passed in M.C.O.P.No.103 of 2016 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil.



For Appellant : Mr.A.S.Mathialagan
For Respondents : Mr.G.Aravinthan for R1
No appearance for R2 and R4

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.103 of 2016 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Nagercoil. The appellant is the third respondent, first respondent is the claimant, respondents 2 to 4 are respondents 1,2 and 4 respectively, in the claim petition.

2.Brief substance of the petition is as follows:

On 07.01.2013, when the petitioner was travelling, in a Maruthi Omni Car bearing registration number KL 07 AM 4617, in a careful and cautious manner, a lorry bearing registration number TN 75 4893 driven by its driver in a rash and negligent manner, dashed against the car and the petitioner sustained injuries. He was taken to Marthandam Shalom hospital. He took treatment as inpatient till 19.01.2013, then he took treatment as outpatient. The petitioner was working as a building contractor and was earning Rs. 30,000/- per month and the petitioner claimed Rs.30,00,000/- as compensation.



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

It was the petitioner who drove the omni vehicle in a rash and negligent manner and he dashed against a lorry. On a written complaint filed by the sister of the petitioner by name Mrs. Jamila, a case was registered against the first respondent. The accident took place only due to the rash and negligent driving of the petitioner. The petitioner is liable for contributory negligence. The petitioner was not having valid driving license. The petitioner has to prove the age, income, occupation through documentary evidence. Even after the accident, the petitioner is continuing the same job. There was no loss of income. The claim is excessive.

4. Two(2) witnesses were examined and sixteen (16) documents were marked on the side of the petitioner. No witnesses were examined and no document was marked on the side of the respondent. After considering both sides the Tribunal awarded a sum of Rs.9,19,000/- as compensation.



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5. Against the award, the appellant preferred this appeal on the following grounds:

The Tribunal failed to consider that there was contributory negligence on the part of the claimant. Ex.P3, Rough sketch clearly shows that the petitioner took the wrong side of the road. For 20% disability, the Tribunal wrongly applied multiplier method. The Tribunal wrongly awarded compensation for the injuries and for the disability. Without scrutinizing the medical bills, the Tribunal awarded Rs.3,00,000/- towards medical expenses. The Tribunal awarded Rs.30,000/- towards loss of earning during the treatment period which is excessive. The total award is excessive.

6. On the side of the appellant it is stated that there is no proof with regard to the income of the claimant. Without any documentary evidence, the Tribunal fixed the monthly income as Rs.10,000/- per month. Ex.P.10 was a certificate issued by a private engineer. No supporting document was filed on the side of the claimant to prove the income. The employer was not examined as a witness. On the side of the appellant it is further stated that the disability is only 20%. The Tribunal has adopted multiplier method for calculating compensation for the disability.



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7. On the side of the respondent it is stated that it was the lorry driver who was rash and negligent and dashed against the vehicle of the claimant. The elbow of the claimant got dislocated and he sustained six fractures and other injuries. Some of the injuries are grievous in nature. Though the claimants have claimed a sum of Rs.1 Crore, the Tribunal has awarded only Rs.9,19,000/- which is very low. There was no contradictory evidence regarding the income of the claimant. The income fixed by the Tribunal is less than reasonable. The Tribunal ought to have awarded future medical expenses. The compensation towards loss of income, disability, loss of earning capacity, pain and sufferings, transport expenses are to be enhanced.

8. It is seen that the Tribunal has fixed the monthly income as Rs.10,000/- and the Tribunal has awarded Rs.3,84,000/- by applying multiplier method. The disability is only 20%. Hence, it is decided that the claimant is entitled to Rs.60,000/- towards compensation for the disability. The Tribunal awarded Rs.30,000/- towards loss of earning during the period of medical treatment. For the period of treatment and for the period of rehabilitation, the temporary loss of income is fixed as Rs.60,000/-.



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9.The Tribunal has awarded Rs.3,00,000/- towards medical expenses. Rs.20,000/- towards nutritious food, Rs.25,000/- towards loss of amenities, Rs.10,000/- towards attendant charges which are all reasonable. The award is modified as hereunder:

For Disability	-	Rs. 60,000/-
Nutritious food	-	Rs. 20,000/-
Loss of amenities	-	Rs. 25,000/-
Attendant charges	-	Rs. 10,000/-
Temporary loss	-	Rs. 60,000/-
Medical expenses	-	Rs.3,00,000/-
Grievous injury and surgery	-	Rs.1,50,000/-
Total	-	Rs.6,25,000/-

10.Accordingly, this Civil Miscellaneous Appeal is partly allowed.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.9,19,000/- to Rs.6,25,000/- (Rupees Six Lakhs Twenty Five Thousand 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.6,25,000/- (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 proportionate costs to the credit of M.C.O.P.No.103 of 2016 on



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the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate Court, Nagercoil, 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 appellant/insurance company, the first respondent / claimant is permitted to withdraw the entire award amount of Rs.6,55,000/- (Rupees Six Lakhs Fifty Thousand only) with proportionate interest as apportioned by the Tribunal.

04.11.2022

Index: Yes / No
Internet : Yes / No

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To

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



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