



C.M.A.(MD)No.1159 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 04.07.2022

Delivered On : 26.07.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1159 of 2018

The Branch Manager,
United India Insurance Co. Ltd.,
Micro Office, Sankaralinganar Theru,
N.G.R.Road, Palladam,
Tiruppur District.

.. Appellant /2nd Respondent

Vs.

1.P.Sivakumar
2.Mr.Prop. Of R & R Textiles,
No.10, Senkutharpuram,
Mangalam Road,
Thiruppur.

.. 1st Respondent / Petitioner

(2nd respondent given up)

.. 2nd Respondent / 1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award, dated 19.12.2017, made in M.C.O.P.No.152 of 2015, on the file of the Motor Accidents Claims Tribunal cum Special Court for E.C. & NDPS Act Case, Pudukottai.



C.M.A.(MD)No.1159 of 2018

WEB COPY

For Appellant	: Mr.C.Jawahar Ravindran
For Respondent No. 1	: Mr.D.Ramesh Kumar
For Respondent No.2	: Mr.N.Tamil Mani

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 19.12.2017, made in M.C.O.P.No.152 of 2015, on the file of the Motor Accidents Claims Tribunal cum Special Court for E.C. & NDPS Act Cases, Pudukottai. The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.152 of 2015, is as follows:

On 29.09.2015, at about 2.30 pm, when the petitioner was riding his bi-cycle along the extreme left side of the road, a TATA sumo car, bearing Registration No.TN-42-9245 was driven by its driver in a rash and negligent manner, hit against the petitioner. He was admitted in the Government Hospital, Pudukkottai and then, he was admitted in Kannan private hospital and he took treatment as



C.M.A.(MD)No.1159 of 2018

inpatient, from 29.09.2014 till 10.10.2014. The petitioner claimed a sum of Rs.

10,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent in M.C.O.P.No.152 of 2015, is as follows:

The manner of accident as narrated in the petition is wrong. The first respondent drove the vehicle in a careful and cautious manner. It was the petitioner, who drove the bi-cycle in a zig-zag manner and dashed against the car. The petitioner is responsible for the accident and hence, the second respondent is not liable to pay compensation. The injuries are simple in nature. The amount claimed under various heads, are excessive. The age, occupation, monthly income of the petitioner are all denied. The interest claimed is excessive.

4. On the side of the claimant, 2 witnesses were examined and 14 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.10,00,000/- as compensation.

5. Against the order, the appellant / Insurance company has filed this appeal on the following grounds:-



C.M.A.(MD)No.1159 of 2018

The Tribunal has wrongly applied the multiplier method. For 40% disability, applying multiplier method is not reasonable. The claimant has not suffered any permanent disability. The Tribunal awarded Rs.50,000/- towards pain and suffering and Rs.25,000/- towards inconvenience, which are all excessive.

6. On the side of the appellant, it is stated that the claimant sustained fracture in the left leg. The claimant was working only as an Advocate and that the injuries won't affect the carrier of the claimant and that there is no necessity to adopt multiplier method. There is no functional disability. Only because of the claimant is a practicing advocate, the Tribunal had adopted multiplier method. No proof of income was filed on the side of the claimant. The claimant is still continuing the practice. The award is excessive.

7. On the side of the first respondent / claimant, it is stated that the claimant sustained grievous injury, he was referred to medical board. P.W.2 examined the claimant and issued Ex.P3, P5 and P12. The evidence of P.W.2 is credible. X-Ray was marked as Ex.P11. He sustained 40% disability, there is no contra evidence, on the side of the respondent, questioning the disability or to prove that the claimant is still continuing his practice. Due to the injuries, the claimant was not in a position to travel to the District Court and to the Taluk Courts.



C.M.A.(MD)No.1159 of 2018

8. On the side of the second respondent, it is stated that the vehicle was insured. The driver of the vehicle was having valid driving licence. The appellant is liable to pay compensation on behalf of the second respondent.

9. The appellant has not questioned the liability. The appeal is only regarding the quantum. From Ex.P3, P5, P11, P12 and P13, it is clear that the claimant sustained injury and disability is calculated as 40%. The Tribunal has referred the matter to the medical board. It was P.W.2, who issued disability certificate-Ex.P12 and hence, the disability is fixed at 40%.

10. It is seen that the claimant is a practicing advocate. I.D. Card was marked as Ex.P1. It is stated that the claimant is an Insurance Company advocate, but, no document to that effect was marked on the side of the claimant. It is stated that the monthly income of the claimant is Rs.40,000/-. No document was filed to prove that the claimant was earning Rs.40,000/- per month. The Enrollment certificate was not marked. I.D card alone is not an authenticated proof. It is stated that the claimant is still practicing. The Tribunal adopted multiplier method and fixed the monthly income at Rs.12,000/-. As per Ex.P2, the age of the claimant was fixed at 39 years. . In view of the above points, the loss of partial monthly income is fixed at Rs.10,000/- per month, after applying multiplier '15', the loss of income is calculated as Rs.7,20,000/- ($\text{Rs.10,000/-} \times 15 \times 12 \times 40/100 = \text{Rs.7,20,000/-}$). The Tribunal has awarded Rs.25,000/- for pain and sufferings, Rs.5,000/- for extra



C.M.A.(MD)No.1159 of 2018

nourishment, Rs.5,000/- for attender charges, Rs.5,000/- for transport expenses, Rs.65,600/- for medical expenses and Rs.5,000/- for loss of inconvenience, which are all reasonable.

11. The Tribunal has awarded a sum of Rs.36,000/- as interim loss of income for a period of three months. Since a sum of Rs.7,20,000/- was already awarded towards the loss of income, granting a further sum of Rs.36,000/- towards temporary loss of income is not reasonable.

12. Considering the above points, it is decided that the claimant is entitled for Rs.8,30,600/-, as compensation. The calculation is as follows:-

For Loss of income	:	Rs.7,20,000/-
For pain and sufferings	:	Rs. 25,000/-
For extra nourishment	:	Rs. 5,000/-
For medical expenses	:	Rs. 65,600/-
For transport expenses	:	Rs. 5,000/-
For attender charges	:	Rs. 5,000/
For loss of inconvenience	:	Rs. 5,000/-,
Total compensation	:	 Rs. 8,30,600/-



C.M.A.(MD)No.1159 of 2018

WEB COPY 13. This Appeal is partly allowed. The compensation amount is reduced from Rs.10,00,000/- to **Rs.8,30,600/-**

(i) The appellant - Insurance Company, is directed to deposit the entire compensation of **Rs.8,30,600/-** (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, within a period of eight weeks from the date of receipt of a copy of this order.

(ii) On such deposit being made by the appellant – Insurance Company, the first respondent / major claimant is permitted to withdraw the entire award amount with proportionate interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. Excess amount, if any, shall be refunded to the appellant. The claimant is not entitled for interest for the default period, if there is any. No costs.

26.07.2022

Index : Yes/No

Internet : Yes/No

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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.



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C.M.A.(MD)No.1159 of 2018

R. THARANI, J.

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To

1.The Motor Accidents Claims Tribunal -
cum Special Court for E.C. & NDPS Act Case,
Pudukottai.

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery Judgment made in
C.M.A.(MD)No.1159 of 2018

26.07.2022