



C.M.A(MD)No.1156 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 11.11.2022

CORAM

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

C.M.A(MD)No.1156 of 2017

Murugaiyan

...Appellant /Claimant

Vs

1.Vasanthi

2.The Divisional Manager,
Reliance Insurance Co., Ltd.,
Old No.15, New No.29, 3rd Floor,
North Usman Road, Thiagaraya Nagar,
Chennai-600 017.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to allow the appeal to the effect that so as to Enhance the compensation to the tune of Rs.1,00,000/- in addition to compensation awarded by the Tribunal by modifying the judgment and decreetal order made in M.C.O.P.No.53 of 2013 dated 26.07.2017 by the learned Motor Accident Claims Tribunal / III Additional District and SEssions Judge, Thanjavur at Pattukkottai.



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For Appellant : Mr.S.Deenadhayalan
For R1 : No appearance
For R2 : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.53 of 2013 on the file of the Motor Accident Claims Tribunal / III Additional District Judge, Thanjavur. The appellant herein is the claimant. Respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 12.05.2012, at about 3 pm, when the petitioner was travelling in a bullock cart with kerosene barrels along the Thanjavur to Pattukottai main road, keeping the extreme left of the road, a car bearing registration number TN 10 F 7090 was driven by its driver in a rash and negligent manner dashed against the bullock car. One of the bull died and the cart was heavily damaged. The petitioner sustained injuries. He was taken to the Thanjavur medical college hospital and he took treatment as from 12.05.2012 till 31.07.2012 as inpatient. The petitioner used to transport kerosene barrels to the shops that were run by primary agricultural co-operative bank and was



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earning Rs.10,000/- per month. The petitioner claimed Rs.10,00,000/- as compensation.

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

The first respondent driver was having valid driving licence. The first respondent driver drove the vehicle in a slow and steady manner. It was the petitioner who drove the bullock cart on the middle of the road and he invited the accident. The vehicle was insured with the second respondent and the insurance policy was in force. If at all, the first respondent is liable to pay any compensation, it has to be paid only by the second respondent.

4.Brief substance of the counter filed by the second respondent is as follows:

The petitioner has to prove that the first respondent is the owner of the vehicle and the insurance policy is valid. The petitioner has to prove that the driver of the first respondent was having valid driving licence. The age, nature of injuries are to be proved. The petitioner has to prove the damages caused to the bullock cart and to prove that one of the bulls died and the other



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bull sustained injuries. Separate petitions for the death of a bull and for the injury caused to another bull and for the damage to the cart, has to be filed.

The first respondent driver drove the car in a slow and cautious manner observing the road rules. It was the bullock cart, that crossed the road without observing the traffic, has caused the accident. Suppressing all the facts, the case against the first respondent driver was lodged. The value of the bull fixed in the PMR report is Rs.15,000/-. Injury certificate for the bull was not marked on the side of the petitioner. The claim is excessive.

5.One witness was examined and ten documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent. The Tribunal has awarded a sum of Rs.75,000/- as compensation to be paid by the second respondent.

6.Against the award, the claimant filed this appeal for enhancement of compensation on the following grounds:

The Tribunal failed to consider the fact that the appellant sustained fracture in the right leg femur and he took treatment from 12.05.2012 till 31.07.2012, as inpatient. Apart from the fracture on the right leg, the appellant sustained other injuries all over the body. One of the bull attached



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with the cart, died on the spot and another bull sustained injury and the cart was also completely damaged. The Tribunal fixed the disability at 25% which is un-sustainable. The Tribunal ought to have adopted multiplier method, since the appellant was not in a position to do his earlier job due to the fracture in the leg. The Tribunal awarded Rs.2000/- per percentage of disability which is very meagre. The Tribunal has awarded Rs.15,000/- compensation for the death of the bull which is very meagre. The Tribunal ought not to have awarded a mere sum of Rs.6000/- for pain and sufferings . The Tribunal failed to award any amount towards the damage caused to the bullock cart. The Tribunal failed to award any amount towards future medical expenses, transport expenses, extra nourishment charges and pray the amount to be enhanced.

7.On the side of the appellant it is stated that the petitioner sustained grievous injury but the Tribunal has fixed the disability only at 25%. The Tribunal ought to have awarded atleast Rs.3000/- per percentage of disability. The Tribunal ought to have adopted multiplier method.

8.On the side of the respondent it is stated that the petitioner sustained only a fracture on the right thigh bone. The Doctor who treated the petitioner



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was not examined. Disability certificate was not marked. Even then, the Tribunal has fixed the disability at 25% without any records. The Tribunal has awarded a sum of Rs.50,000/- by calculating the loss, as Rs.2000/- per percentage of disability which is excessive. The copy of the Accident Register was marked as Ex.P2, Doctor's prescription was marked as Ex.P3, discharge summary was marked as Ex.P5. Considering Ex.P2, Ex.P3 and Ex.P8, the Tribunal has fixed the disability as 25% which is reasonable. The accident has happened during the year 2012.

9.As per the judgment of this Court reported in **2017(2) TN MAC 829** in the case of **Sathiyakala Vs C.Kulandaisamy**, it is decided that the petitioner is entitled to Rs.3000/- per percentage of disability. Hence, the compensation for 25% disability is calculated as Rs.75,000/- (25 x 3000). The Receipts for purchase of medicine were marked as Ex.P10. The Tribunal has awarded a sum of Rs.4000/- towards medical expenses which is reasonable.

10.On the side of the appellant it is stated that the value mentioned in the post mortem report is not correct and the value of the bull is more than Rs.50,000/- The post mortem report of the dead bull was marked as Ex.P8.



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The value of the bull was mentioned as Rs.15,000/-. The Tribunal has awarded Rs.15,000/- towards death of the bull and pray the compensation to be enhanced.

11.Considering the value of a bull at the time of accident, this Court is inclined to award a sum of Rs.25,000/- for the death of the bull. The appellant failed to produce any document to show that another bull also sustained injuries. The petitioner is entitled to Rs.5000/- towards the injury caused to the bull.

12.The appellant claimed that the vehicle was damaged. No document was filed on the side of the appellant to prove that the vehicle was damaged and the petitioner has to spend for the repair work. No document was filed on the side of the appellant to prove the expenses sustained by the petitioner to set right the repair, Hence, it is decided that the appellant is entitled to Rs.6000/- towards damages to the vehicle.

13.The Tribunal has awarded Rs.6000/ towards pain and sufferings and it is decided that the same has to be enhanced to Rs.10,000/-. It is seen that the petitioner has undergone treatment from 12.05.2012 to 31.07.2012 as



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inpatient. Hence, it is decided that the petitioner is entitled to Rs.50,000/- towards loss of income for the period of treatment and for the period of rehabilitation. The petitioner is entitled to Rs.10,000/- for attendant charges. It is decided that the petitioner is entitled to Rs.1,75,000/- as compensation and the appeal is allowed.

For 25% Disability	-	Rs. 75,000/-
Medical expenses	-	Rs. 4,000/-
Loss of Income	-	Rs. 50,000/-
For the loss of a bull	-	Rs. 25,000/-
For the injuries caused to the bull	-	Rs. 5,000/-
Damage to Bullock cart	-	Rs. 6,000/-
Pain and sufferings	-	Rs. 10,000/-
Attendant charges	-	Rs. 10,000/-

Total	-	Rs.1,85,000/-

14. Accordingly, this Civil Miscellaneous Appeal is allowed.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.75,000/- to Rs.1,85,000/- (Rupees One Lakh Eighty Five Thousand only) which shall carry interest at the rate of 7.5% per annum.



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(ii) The second respondent /Insurance company, is directed to deposit the entire compensation of Rs.1,85,000/- (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.53 of 2013, on the file of the learned Motor Accident Claims Tribunal / III Additional District and Sessions Judge, Thanjavur at Pattukkottai, within a period of eight weeks from the date of receipt of a copy of this order. The appellant/claimant is not entitled for any interest for the default period.

(iii) The claimant is directed to pay the court fee for the enhanced amount.

(iv) On such deposit being made by the second respondent /insurance company, the appellant / claimant is permitted to withdraw a sum of Rs.1,85,000/- (Rupees One Lakh Eighty Five Thousand only), along with proportionate interest as apportioned by the Tribunal.

11.11.2022

Index: Yes / No
Internet : Yes / No

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R. THARANI, J

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To

- 1.The Motor Accident Claims Tribunal /
III Additional District and Sessions Judge,
Thanjavur at Pattukkottai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

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