



C.M.A(MD)No.643 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.10.2022

Pronounced on : 12.12.2022

CORAM

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

C.M.A(MD)No.643 of 2019

The Branch Manger,
The Oriental Insurance Company Ltd.,
No.2851/235, Kamala Subramanian Arcade,
First Floor, Trichy Main Road,
Thanjavur Town,
Thanjavur District.

... Appellant / 2nd respondent

Vs

1.Sundaramoorthy

...1st respondent / Claimant

2.Venkatesh

... 2nd Respondent / 1st Respondent

PRAYER :-

These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act 1988, to set aside the order of the Tribunal of MACT cum Special Sub Court, Thanjavur, made in M.C.O.P.No.1515 of 2017 dated 26.06.2018 and allow the appeal.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.G.Karnan

For R2 : No appearance



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JUDGMENT

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The Civil Miscellaneous Appeal is filed against the order in MCOP No. 1515 of 2017 on the file of the MACT cum Special Sub Court, Thanjavur. The appellant herein is the second respondent, first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

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

On 15.06.2017, at about 12.15 p.m., while the petitioner was travelling as a pillion rider in a two wheeler bearing registration number TN 68 J 8013, along the Vaalasery main road, a Tractor bearing registration number TN 50 X 4137 was driven by its driver in a rash and negligent manner, dashed against the petitioner. The petitioner sustained severe injuries. He was given first aid in Thiruvarur Government Hospital. Then he was admitted in a private hospital and took treatment from 15.06.2017 till 07.10.2017 as inpatient. The petitioner was working as a construction labourer and was earning Rs.15,000/- per month and he claims a sum of Rs.8 Lakhs as compensation.



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

The petitioner has to prove that the respondent vehicle was having fitness certificate and the vehicle was insured with the second respondent. The driver of the vehicle was having valid driving licence. The petitioner has to prove the injuries and the permit particulars. The injuries are simple in nature. The petitioner has not sustained any disability. There is no loss of income. The claim is excessive.

4. The first respondent was set as ex parte. Three witnesses were examined and eleven(11) documents were marked on the side of the petitioner. No witness was examined and two documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.6,20,000/- as compensation to be paid by the second respondent and the second respondent was permitted to recover the same from the first respondent/ owner of the vehicle.

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



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The Tribunal is wrong in applying multiplier method in an injury case.

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6.On the side of the appellant it is stated that the injuries caused only partial permanent disability. The disability is not permanent. The Doctor has fixed the disability at 45%. Multiplier method can be adopted only in case of amputation of body parts and not for ordinary fracture. After getting treatment, the claimant was continuing the same job. The Doctor fixed 25% disability for epilepsy. But the claimant has not deposed that he is having any such physical problem. There is no medical record to support that the claimant is having epilepsy and fixing 25% disability for the same is wrong.

7.On the side of the first respondent it is stated that the claimant sustained multiple injuries both in the leg and the head. P.W.2-Doctor has given a wound certificate Ex.P8, fixing the disability at 49%. P.W.3 is a



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Neuro Surgeon. He gave a wound certificate - Ex.P10, fixing the disability as 25%. Initially the claimant took treatment as inpatient for a period of 115 days. Subsequently, he took treatment as inpatient from 25.01.2018 till 07.02.2018 that is for a period of 24 days.

8. Ex.P2 is the discharge summary. The petitioner was admitted as inpatient on 15.06.2017 and he took treatment up to 07.10.2017. He undergone surgery on 16.06.2017. He took treatment as out patient on 20.09.2017, 02.11.2017 and 04.01.2018. Subsequently, he was admitted again as inpatient and he took treatment from 25.01.2018 till 17.02.2018. Ex.P6 is the discharge summary. P.W.2 fixed the disability at 45%. Ex.P9 is the X-ray, Ex.P8 is the wound certificate. P.W.3 has deposed that there was a parietal fracture on the head and the skull. A surgery was done in the parietal portion of the head. He fixed the disability at 45% for the head and 40% as total disability. The X-ray was marked as Ex.P11, wound certificate was marked as Ex.P10. The Tribunal has held that there was a possibility of the petitioner to have 50% loss of earning capacity due to the disability.



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9. There is no possibility for the claimants to took treatment as out patient on 20.09.2017, when he was supposed to be a inpatient from 15.06.2017 till 07.10.2017. P.W.3 has fixed the disability at 40% as a side effects for the head injury. P.W.1 did not deposed anything regarding epilepsy. From the evidence of P.W.2 and from Ex.P8, it is clear that the injury is only partial permanent disability. In the above circumstances, it is decided that the disability fixed by the Tribunal is reasonable.

10. P.W.2 and P.W.3 have not stated anything that the petitioner could not attend any work. There is no evidence for any functional disability without functional disability, the tribunal is not wrong in adopting multiplier method. Hence ti is decided that for 50% disability, the claimant is entitled to Rs.1,50,000/- as compensation.

11. The accident has taken place on 15.06.2017 and the notional income of the claimant is taken as Rs.10,000/- per month. For the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.1,20,000/- as loss of income.



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12.The Tribunal has awarded Rs.75,000/- towards pain and sufferings.

Rs.45,000/- towards loss of amenities, Rs.50,000/- towards loss of expectations of life which are all excessive. Hence it is decided that the petitioner is entitled to Rs.50,000/- towards pain and sufferings, Rs.25,000/- towards loss of amenities, Rs.30,000/- towards loss of expectations of life.

13.The Tribunal awarded Rs.40,000/- towards attendant charges, and the same is reduced to Rs.25,000/-. The Tribunal has awarded Rs.10,000/- towards extra nourishment, Rs.10,000/- towards transport expenses which are all reasonable. The compensation is calculated as follows:-

Loss of income	-	Rs. 1,20,000/-
For disability	-	Rs. 1,50,000/-
Pain and sufferings	-	Rs. 50,000/-
Loss of amenities	-	Rs. 25,000/-
Loss of expectations	-	Rs. 30,000/-
Attendant charges	-	Rs. 25,000/-
Extra Nourishment	-	Rs. 10,000/-
Transport expenses	-	Rs. 10,000/-

Total	-	Rs. 4,20,000/-



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14. Accordingly, this Civil Miscellaneous appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.6,20,000/- to Rs.4,20,000/- (Rupees Four Lakhs Twenty Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant is directed to deposit the entire compensation of Rs.4,20,000/- (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.1515 of 2017 on the file of the Motor Accidents Claims Authority cum Special Sub Court, Thanjavur. 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 claimant is permitted to withdraw the entire award with interest and costs.

12.12.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Authority cum Special Sub Court, Thanjavur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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