



C.M.A.No.2249 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM :

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.M.A.No. 2249 of 2018

Thangavel

... Appellant

Vs.

1. N.Ammasai

2. The Chairman,
Excel Engineering College,
N.H.47, Salem Main Road,
Pallakkapalayam Post,
Kumarapalayam Via,
Tiruchengode Taluk,
Namakkal District.

3.ICICI Lombard General Insurance Co.Ltd.,
Rep.by its Manager,
Cowley Prown Road,
R.S.Puram, Coimbatore -2.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act to set aside the Award and decree dated 30.08.2013 made in M.C.O.P.No.369 of 2011 on the file of the Motor Accidents Claims



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Tribunal cum Subordinate Court, Bhavani, Erode District.

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For Appellant : Mr.C.Kulanthaivel

For Respondents : R1-R2 – Notice dispensed with

Ms.R.Sreevidhya for R3

J U D G M E N T

The Civil Miscellaneous Appeal is filed against the Award and decree dated 30.08.2013 made in M.C.O.P.No.369 of 2011 on the file of the Motor Accidents Claims Tribunal-cum-Subordinate Court, Bhavani, Erode District.

2. For the sake of convenience, the parties are referred to as per their ranking before the Tribunal.

3. The case of the claimant before the Tribunal is that on 19.07.2011 about 4.45 p.m, he was driving a Tractor bearing Registration No.TD-Q-1662 from Salem to Kovai NH 47 Road. When he was nearing Kullankadu, Periasamy Sengal Sulai towards East to West direction, a



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college Bus bearing Registration No.TN-34-L-0416, belonging to the second respondent and insured with the third respondent/Insurance Company, which was driven by its driver/first respondent in a rash and negligent manner, without following the traffic rules and hit behind the Tractor. Due to the said impact, the claimant sustained injuries. Hence, the claimant filed a claim petition seeking compensation of Rs.5,00,000/-.

4. Resisting the claim petition, respondents 2 and 3 filed their counter statements disputing the manner of accident, age, avocation, income of the claimant and their liability to pay the compensation.

5. To substantiate the case, on the side of the claimant, P.W.1 to P.W.3 were examined and Ex.P1 to Ex.P17 were marked. On the side of the respondents, neither oral evidence nor documentary evidence was adduced before the Tribunal.

6. The Tribunal, after considering the entire oral and documentary evidence available on record, had dismissed the claim petition.



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Challenging the same, the claimant has filed the present Civil Miscellaneous Appeal.

7. The learned counsel for the appellant/claimant submitted that actually the claimant sustained ligament tear in his right leg and rib. At the time of giving complaint, the claimant could not realise the pain or injury and hence, he did not specifically mention about the injuries sustained by him in the complaint, as the nature of the injuries sustained by him is internal ailments. After realising the pain, he went to the private hospital and took treatment for seven days as inpatient and also marked wound certificate/Ex.P10 and discharge summary/Ex.P11 and Ex.P12/medical bills. Further, P.W.4/Doctor assessed the permanent disability of the claimant at 30%. The Tribunal has rejected the claim of the appellant on the ground that in the disability certificate, the injuries sustained by the appellant were shown on the right leg, however, in the claim petition it was mentioned on the left side and also the claimant has not mentioned the injuries in the F.I.R. Admittedly, it is only a typographical mistake committed by the lower Court counsel, for which, the claimant ought not to have suffered for it. He further submitted that the occupant of the said Tractor also filed the claim



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petition in M.C.O.P.No.355 of 2011 and the same was allowed by the

Tribunal. The Tribunal failed to consider the medical records and the



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evidence of the Doctor/P.W.4 and dismissed the claim petition, which warrants interference by this Court.

8. The learned counsel for the third respondent/Insurance Company submitted that the claimant himself has given the complaint before the police, but he has not stated anything about the injuries sustained by him, which clearly shows that the claimant never sustained any accidental injuries. She further submitted that in the claim petition and in the proof affidavit, the claimant has stated that he sustained injuries in his left leg, but the medical records and evidence of the Doctor show that the injuries were on the right side. Further, though the claimant has stated that after realising the pain he went to the Government hospital for taking treatment, however, there is no oral or documentary evidence to prove the same. The Tribunal has rightly appreciated the entire materials and dismissed the claim petition and there is no merit in the appeal and the same is liable to be dismissed.

9. Heard the learned counsel for the appellant and the learned



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counsel for the third respondent and perused the materials available on
record.

10. This Court, as an appellate Court, and also being a fact-finding Court, has analysed the issue independently and re-appreciated the evidence to render an independent finding.

11. The accident is admitted. The opposite vehicle i.e Bus bearing Registration No.TN-34-L-0416 was involved in the accident is not in dispute, which was insured with the third respondent/Insurance Company is also not in dispute. Now, the only question that arises for consideration is whether the appellant sustained accidental injuries or not.

12. According to the claimant, there was no external injuries and he cannot realise the pain and hence, at the time of the accident, he has not specifically mentioned about the injuries in the F.I.R. After some time, he realised the pain in his right leg and ribs, and thereafter, he went to the hospital and took treatment as inpatient for seven days and to prove the



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same, he marked Ex.P10/discharge summary, Ex.P11/wound certificate, Ex.P12/medical bills and Ex.P16/disability certificate.

13. On a perusal of the entire oral and documentary evidence and also considering the submission of Doctor/P.W.4 and disability certificate/Ex.P16 and the medical reports, this Court is of the opinion that though the Doctor fixed the disability of the claimant at 30%, but the injuries sustained by the claimant shows only part of a body got affected and therefore, fixing the disability of the appellant/claimant at 10 % would be just and proper. A sum of Rs.3,000/- is fixed for per percentage of disability and thus, a sum of Rs.30,000 [Rs.3000 x 10%] is awarded towards permanent disability. Further, a sum of Rs.10,000/- is awarded towards pain and suffering and a sum of Rs.10,000/- is awarded towards Extra Nourishment and a sum of Rs.5,860/- is awarded towards Medical expenses.

14 The break-up details of the amounts awarded by this Court under various heads are as follows:



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S. No.	Heads under which amounts are awarded	Amounts awarded by the Tribunal in Rs.
1.	10% permanent disability	30,000
2.	Pain and suffering	10,000
3.	Extra nourishment	10,000
4.	Medical Expenses	5,860
	Total	55,860

15. Thus, this Court award a sum of **Rs.55,860/-** as compensation for the injuries sustained by the appellant/claimant in M.C.O.P.No.369 of 2011 on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Bhavani, Erode District, which shall carry interest at 7.5% per annum and costs from the date of claim petition till the date of deposit. The third respondent/Insurance Company is directed to deposit the entire award amount together with interest and costs within a period of six weeks from the date of receipt of a copy of this judgment. The claimant shall pay necessary Court fee, on the compensation now awarded. On such deposit, the claimant is permitted to withdraw the amount together with interest and costs.



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16. With the above directions, this Civil Miscellaneous Appeal

is partly allowed. Therefore, the impugned Award passed by the Tribunal is set aside. There shall be no order as to costs.

13.09.2023

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation Case : Yes/No
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To

1. The Motor Accidents Claims Tribunal-cum-Subordinate Court,
Bhavani, Erode District.

2.The Section Officer,
V.R.Section,
High Court, Madras.



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P.VELMURUGAN, J.

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