



C.M.A.(MD)Nos.1567 and 1568 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 30.01.2023

Delivered On : 20.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.1567 and 1568 of 2013

C.M.A.(MD)No.1567 of 2013

United India Insurance Company Limited,
Rep. by its Branch Manager,
3/33-B, P.P.K. Building,
Main Road, Marthandam,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

... Appellant / 2nd respondent

Vs.

1.Sam Sundar Singh ... 1st Respondent /Petitioner
2.Appu ... 2nd Respondent / 1st Respondent
3.The Registrar,
Tamil Nadu Agricultural University,
Horticultural Research Station,
Pechiparai,Kanyakumari District. ... 3rd Respondent / 2nd Respondent



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4.Rejukumar

5.Thankakkon

6.New India Insurance Company Ltd.,
Rep. by its Branch Manager,
Chennai.

... Respondents 4 to 6/ Respondents 4 to 6

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.55 of 2007, dated 16.11.2012, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Padmanabhapuram.

For Appellant

: Mr.N.Murugesaan

For Respondents

: Mr.S.Bharathykannan for R1 , R4 and R5

: No appearance for R2

: Mr.D.Sivaraman for R6

: Mr.A.Thirumurthy for R3

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United India Insurance Company Limited,
Rep. by its Branch Manager,
3/33-B, P.P.K. Building,
Main Road, Marthandam,
Nalloor Village, Vilavancode Taluk,
Kanyakumari District.

... Appellant / 2nd respondent

Vs.

1.Reju Kumar

... 1st Respondent /Petitioner



C.M.A.(MD)Nos.1567 and 1568 of 2013

2.Appu

... 2nd Respondent / 1st Respondent

3.The Registrar,

Tamil Nadu Agricultural University,

Horticultural Research Station,

Pechiparai,Kanyakumari District.

... 3rd Respondent / 2nd Respondent

4.Thankakkon

5.New India Insurance Company Ltd.,

Rep. by its Branch Manager,

Chennai.

... Respondents 4&5/ Respondents 4&5

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.56 of 2007, dated 16.11.2012, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Padmanabhapuram.

For Appellant

: Mr.N.Murugesaan

For Respondents

: Mr.S.Bharathykannan for R1 & R4

: No appearance for R2

: Mr.D.Sivaraman for R5

: Mr.A.Thirumurthy for R3

JUDGMENT

C.M.A.(MD)No.1567 of 2013 has been filed against the award made in M.C.O.P.No.55 of 2007, dated 16.11.2012, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Padmanabhapuram. The appellant herein is the



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third respondent, the first respondent herein is the claimant and respondents 2 and 3 herein are the respondents 1 and 2 and the respondents 4 to 6 herein are the respondents 4 to 6 in the original M.C.O.P. Petition.

2. C.M.A.(MD)No.1568 of 2013 has been filed against the award made in M.C.O.P.No.56 of 2007, dated 16.11.2012, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Padmanabhapuram. The appellant herein is the third respondent, the first respondent herein is the claimant and respondents 2 and 3 herein are the respondents 1 and 2 and the respondents 4 and 5 herein are the respondents 4 and 5 in the original M.C.O.P. Petition.

3. A brief substance of the petition, in M.C.O.P.No.55 of 2007, is as follows:-

On 17.01.2006, at about 12.00 noon, when the petitioner was travelling in a two wheeler bearing Registration No.TN-74-W-1714 as a pillion rider, the first respondent drove a Mahindra Van bearing Registration No.TDZ-8722 in a rash and negligent manner, dashed against the petitioner's vehicle. The petitioner-Samsundar Singh and one Rejukumar sustained injuries. The petitioner claim a sum of Rs. 15,00,000/- as compensation.



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4. A brief substance of the petition, in M.C.O.P.No.56 of 2007, is as

follows:-

In the above said accident, the petitioner-Rejukumar sustained injuries and he claimed a sum of Rs.10,00,000/- as compensation.

5. A brief substance of the counter filed by the second respondent, in both the petitions, in M.C.O.P.Nos.55 & 56 of 2007, is as follows:-

The accident has happened only due to the rash and negligent driving of the rider of the two wheeler. The driver of the vehicle involved in the accident was having valid driving licence and the vehicle was insured with the third respondent. Hence, the second respondent is not liable to pay compensation.

6. A brief substance of the counter filed by the third respondent, in both the petitions, in M.C.O.P.Nos.55 & 56 of 2007, is as follows:-

The accident has happened only due to the negligent driving of the rider of the two wheeler. The respondent is not liable to pay compensation.

7. A brief substance of the counter filed by the sixth respondent, in M.C.O.P.No.55 of 2007 and fifth respondent in M.C.O.P.No.56 of 2007 is as follows:-



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The accident has happened only due to the rash and negligent driving of the first respondent. The driver of the Van drove the vehicle in a rash and negligent manner and dashed against the motorcycle. The respondent is not liable to pay compensation.

8. In M.C.O.P.No.55 of 2007, Two (2) witnesses were examined and 16 documents were marked on the side of the petitioner. One (1) witness was examined and 1 document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs. 2,32,925/- as compensation to be paid by the third respondent.

9. Against the award, the third respondent – Insurance Company has filed an Appeal in C.M.A.(MD)No.1567 of 2013, on the following grounds:-

The Tribunal has awarded Rs.30,000/- towards disability and that the Tribunal has awarded another sum of Rs.30,000/- for 3 grievous injuries and the Tribunal has awarded Rs.2,800/- towards loss of income and again awarded Rs.36,000/- for loss of income for a period of 6 months, which are all excessive. The Tribunal has failed to consider that the claimant has not proved the medical bills. The award is excessive.



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10. On the side of the appellant, it is stated that the claimant has not proved the medical bills, but, the Tribunal has awarded Rs.94,325/- for medical expenses, which is not reasonable.

11. P.W.1 has deposed that the accident has happened due to the rash and negligent driving of the first respondent. Copy of the F.I.R was marked as Ex.P1. Copy of observation mahazer was marked as Ex.P4. Copy of rough sketch was marked as Ex.P3. Copy of M.V.I. reports were marked as Ex.P5 and Ex.P6. Considering the evidence of P.W.1 and Ex.P1 to Ex.P6 and considering that there is no dispute regarding the liability in the appeal, it is decided that the accident has happened due to the rash and negligent driving of the second respondent herein - first respondent in the claim petition.

12. On the side of the claimant, it is stated that the claimant sustained injuries in the accident. Discharge summary was marked as Ex.P13. P.W.2 has deposed that the claimant sustained 15% disability and the disability certificate was marked as Ex.P16. The Tribunal has awarded Rs.2,000/- per percentage of disability. Wound certificate was marked as Ex.P2. Apart from this, for 3 grievous injuries, the Tribunal has awarded Rs.30,000/-.



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13. On the side of the appellant, it is stated that for the very same injuries, disability certificate was issued and an award of Rs.2,000/- for each percentage of disability was awarded and the Tribunal is wrong in granting compensation twice for the same injuries.

14. On the side of the respondent, it is stated that the Tribunal ought to have awarded Rs.3,000/- per percentage of disability. Considering the date of accident, it is decided that an award of Rs.2,000/- per percentage of disability is reasonable. Since compensation was awarded for disability, there is no need for awarding separate compensation for the injuries.

15. The Tribunal had awarded Rs.20,000/- towards pain and sufferings, Rs.10,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.2,000/- towards damage for cloth and articles.

16. On the side of the appellant, it is stated that the award is excessive. On the side of the respondent, it is stated that the award is reasonable. After considering both sides, it is decided that the award of compensation fixed by the Tribunal for pain and sufferings, extra nourishment, transport expenses and damage to articles are all reasonable.



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17. On the side of the appellant, it is stated that the Tribunal has awarded Rs.94,325/- towards medical expenses, which is excessive. Hospital Bills were marked as Ex.P12, P14 and P15. Considering Ex.P13, it is decided that the compensation for the medical expenses as awarded by the Tribunal is reasonable.

18. On the side of the appellant, it is stated that the Tribunal has fixed the monthly income as Rs.3,000/- and the Tribunal has awarded a sum of Rs.36,000/- towards temporary loss of income. Moreover, the Tribunal has awarded Rs.2,800/- as temporary Loss of income for a period of treatment. When interim compensation is awarded for a period of 6 months there is no necessity for separate compensation for loss of income for the period of treatment. Hence, it is decided that the claimant is entitled to Rs.36,000/- towards interim loss of income for the period of treatment and for the period of rehabilitation. The Tribunal has awarded Rs.2,800/- towards attender charges, which is reasonable.

19. The total compensation is calculated as follows:-

Interim loss of income	:	Rs. 36,000/-
15% disability	:	Rs. 30,000/-
Pain and sufferings	:	Rs. 20,000/-
Transport expenses	:	Rs. 5,000/-



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Extra nourishment	:	Rs. 10,000/-
Attender charges	:	Rs. 2,800/-
Medical expenses	:	Rs. 94,325/-
damage for cloth and articles :		Rs. 2,000/-
		
Total compensation	:	Rs. 2,00,125/-
		

20. In M.C.O.P.No. 56 of 2007, Two (2) witnesses were examined and 14 documents were marked on the side of the petitioner. One (1) witness was examined and 1 document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.2,00,864/-/- as compensation to be paid by the third respondent.

21. Against the award, the third respondent has filed an Appeal in C.M.A. (MD)No.1568 of 2013, on the following grounds:-

The Tribunal has awarded Rs.30,000/- towards disability, Rs.10,000/- towards for one grievous injury and Rs.1,000/- towards one simple injury and that the Tribunal has awarded Rs.2,200/- towards loss of income for the period of treatment and again Rs.36,000/- as loss of income for a period of six months, which are all unreasonable. The Tribunal has failed to consider that the medical bills were not proved. The Tribunal is wrong in awarding Rs.2,000/- towards damages to cloths.



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22. On the side of the appellant, it is stated that the Tribunal has awarded separate amount for grievous injury and again for disability, which is unreasonable. P.W.2 has deposed that the claimant sustained 15% disability. Disability certificate was marked as Ex.P14. Discharge summary was marked as Ex.P12. Considering the evidence of P.W.2 and Ex.P12 and P14, it is decided that the claimant has sustained 15% disability. The Tribunal has awarded Rs.2,000/- towards each percentage of disability, which is reasonable. Hence, it is decided that the claimant is entitled to Rs.30,000/- towards permanent disability.

23. The Tribunal has awarded Rs.10,000/- for one grievous injury and Rs.1,000/- for one simple injury. When compensation was awarded for disability, there is no necessity to award separate compensation for the injuries.

24. The Tribunal has awarded Rs.15,000/- towards pain and sufferings, Rs.10,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.2,000/- towards damages to articles, Rs.2,200/- towards attender charges, which are all reasonable.



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25. On the side of the appellant, it is stated that the Tribunal is wrong in awarding temporary loss of income for the period of treatment for 6 months. It is seen that the Tribunal has awarded Rs.2,200/- as compensation, for the period of treatment and the Tribunal again awarded Rs.36,000/- towards loss of income for a period of six months. When loss of income for a period of 6 months is granted, there is no necessity to give separate compensation for loss of income for the period of treatment. Hence, it is decided that for the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.36,000/- as compensation.

26. On the side of the appellant, it is stated that the Tribunal has awarded Rs.87,464/- towards medical expenses, which is excessive. Medical Bills were marked as Ex.P11 and P13. On the basis of the Hospital bills, discharge summary and medical bills, the Tribunal has awarded Rs.87,464/- towards medical expenses, which is reasonable.

27. The total compensation is calculated as follows:-

15% disability	:	Rs. 30,000/-
Pain and sufferings	:	Rs. 15,000/-
Extra nourishment	:	Rs. 10,000/-
Transport expenses	:	Rs. 5,000/-



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Damage to articles	:	Rs. 2,000/-
Medical Expenses	:	Rs. 87,464/-
Attender charges	:	Rs. 2,200/-
Interim loss of income	:	Rs. 36,000/-
Total compensation		 Rs.1,87,664/-

28. These Appeals are partly allowed. In C.M.A.(MD)No.1567 of 2013 the compensation is reduced from Rs. 2,32,925/- to Rs. 2,00,125/-.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs. 2,00,125/- (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 Insurance Company, the claimant is permitted to withdraw the entire award amount with accrued 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 – Insurance Company. The claimant is not entitled for interest for the default period, if there is any. No costs.



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WEB COPY 29. In C.M.A.(MD)No.1568 of 2013 the compensation is reduced from Rs.2,00,864/- to Rs.1,87,664/-.

(i) The appellant herein - Insurance Company, is directed to deposit the entire compensation of Rs.1,87,664/- (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 Insurance Company, the claimant is permitted to withdraw the entire award amount with accrued 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 – Insurance Company. The claimant is not entitled for interest for the default period, if there is any. No costs.

20.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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1.The Motor Accidents Claims Tribunal –
Subordinate Judge,
Padmanabhapuram.

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



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)Nos.1567 and 1568 of 2013

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