



WEB COPY



C.M.A(MD)No.1603 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 16.11.2022

Pronounced on : 19.01.2023

CORAM

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

C.M.A(MD)No.1603 of 2013

M.Sharuk Suraj

(sole appellant declared as major vide
Court order dated 11.10.2017)

...Appellant/ Petitioner

Vs

1.S.Suresh

2.The United India Insurance Company Ltd.,
represented by the Divisional Manager,
No.52, South Masi Street,
Madurai.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to allow the appeal and modify the judgment and decree in M.C.O.P.No.999 of 2010 dated 20.09.2012 on the file of the Motor Accident Claims Tribunal, IV Additional Sub-Court, Madurai.

For Appellant : Mr.C.Godwin

For R2 : Mr.C.Jawahar Ravindran



WEB COPY



C.M.A(MD)No.1603 of 2013

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order M.C.O.P.No. 999 of 2010 on the file of the Motor Accident Claims Tribunal/ IV Additional Sub-Court, Madurai. The appellant is the claimant. Respondents are the respondents in the claim petition.

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

On 19.11.2009, at about 8 am, when the petitioner was travelling in a two wheeler bearing registration number TN 61 P 4182 as a pillion rider, the rider of the motorcycle drove the vehicle in a careful and cautious manner in a moderate speed and that a car bearing registration number TN 57 B 8899, came from the opposite direction, in a rash and negligent manner, keeping the wrong side of the road has dashed against the motorcycle. The petitioner in the claim petition by name Sharuk Suraj and another person by name Shajith Moshig sustained injuries. They were taken to Madurai Rajaji Government Hospital, then the petitioner was admitted in Vadamalaiyan Hospital, Madurai. The petitioner sustained permanent disability and he claimed a sum of Rs.3 Lakhs as compensation.



C.M.A(MD)No.1603 of 2013

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

The driver of the car drove the vehicle in a slow and moderate speed adhering the road rules, keeping the left side of the road. It was the driver of the motorcycle who came in a rash and negligent manner, along the wrong side of the road and dashed against the car. The driver of the car was not having valid driving licence. The owner of the car failed to intimate the occurrence to the respondent company. The policy conditions are violated and the petition to be dismissed.

4. A joint trial in M.C.O.P.Nos.998 and 999 of 2010, was conducted and a common judgment was pronounced. In the joint trial, two witnesses were examined, 25 documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondent.

5. In M.C.O.P.No.999 of 2010, the Tribunal awarded Rs.1,50,408/- as compensation. Against that order, the appellant filed this appeal for enhancement of compensation on the following grounds:



C.M.A(MD)No.1603 of 2013

The tribunal failed to consider that the claimants sustained 47% disability and he is entitled to compensation towards loss of amenities. The Tribunal failed to consider the evidence of P.W.2, the Doctor who has deposed that the appellant required a sum of Rs.1,00,000/- for future medical expenses. The compensation awarded towards pain and sufferings, transport expenses and extra nourishment, are to be enhanced. The injured boy was a minor, who was aged about 12 years and he took treatment as inpatient for a period of four days and if the disability is above 30% up to 60%, Rs. 4,00,000/- has to be awarded as compensation. On the side of the appellant a judgment of this Court reported in **2013 (2) TN MAC 2445(SC)** in the case of **Master Mallikarjun vs Divisional Manager, National Insurance Co.Ltd. and another**, is cited, wherein it is held that,

“Quantum – Injury – Principles of assessment – Assessment of compensation in case of children suffering disability – Apex Court observed that appropriate compensation on all other heads in addition to the actual expenditure for treatment, attendant, etc., should be, if the disability is above 10 per cent and up to 30 per cent to the whole body, Rs.3,00,000; up to 60 per cent, Rs.4,00,000; up to 90 per cent, Rs.5,00,000 and above 90 per cent, it should be Rs. 6,00,000; for permanent disability up to 10 per cent, it should be Rs. 1,00,000, unless there are exceptional circumstances to take a



C.M.A(MD)No.1603 of 2013

different yardstick.”

Further Rs.25,000/- to be awarded for discomfort, Rs.25,000/- to be awarded for hospitalization, Rs.25,000/- to be awarded towards future medical expenses.

6. On the side of the appellant it is stated that when the disability is above 30%, a minimum compensation of Rs.4,00,000/- has to be awarded.

7. On the side of the respondent it is stated that the injured was a minor boy who was not earning anything and even in the case cited on the side of the appellant, the Hon'ble Supreme Court has enhanced the award only to Rs.3,75,000/-. On the side of the respondent it is stated that the age of the injured was 12 years at the time of accident and the judgment cited on the side of the appellant is a later judgment.

8. The accident has happened in the year 2009 and the judgment referred is not applicable to the facts of the present case. On 47% disability, the Tribunal has awarded Rs.94,000/-(47 x 2000). Considering the date of accident, the amount awarded by the Tribunal is reasonable. As per the



C.M.A(MD)No.1603 of 2013

judgment of the Hon'ble Supreme Court cited on the side of the appellant, Rs. 3,00,000/- is fixed as compensation for pain and sufferings, mental agony, partial permanent disability, loss of amenities in life, for disability and for the inconvenience.

9.The Tribunal has awarded Rs.1000/- towards transport to hospital, Rs.20,408/- towards medical expenses, Rs.1,000/- towards extra nourishment, which are all reasonable. For pain and sufferings, loss of amenities, partial permanent disability the appellant is entitled to Rs,3,00,000/-. Hence, the compensation is modified as under:

Pain and sufferings	-	Rs.3,00,000/-
Loss of amenities		
Partial permanent disability		
Medical expenses	-	Rs. 20,408/-
Extra nourishment	-	Rs. 1,000/-
Transport expenses	-	Rs. 1,000/-

Total	-	Rs.3,22,408/-

10.Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,50,408/- to Rs.3,22,408/- (Rupees Three Lakhs Twenty Two



C.M.A(MD)No.1603 of 2013

Thousand Four Hundred and Eight only) which shall carry interest at the rate of 7.5% per annum.

(ii) The second respondent / Insurance company is directed to deposit the entire compensation of Rs.3,22,408/- (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.999 of 2010 dated 20.09.2012 on the file of the Motor Accident Claims Tribunal, IV Additional Sub-Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) The appellant is directed to pay the additional Court fee for the enhanced amount; The appellant is not entitled for any interest for the default period.

(iv) On such deposit being made by the second respondent / Insurance company, the appellant herein/ claimant is permitted to withdraw the entire award amount of Rs.3,22,408/- (Rupees Three Lakhs Twenty Two Thousand Four Hundred and Eight only) with proportionate interest and costs.

19.01.2023

Index: Yes / No

Internet : Yes / No

pnn



WEB COPY



C.M.A(MD)No.1603 of 2013

R. THARANI, J

pnn

To

- 1.The Motor Accident Claims Tribunal, IV Additional Sub-Court, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.

C.M.A(MD)No.1603 of 2013

19.01.2023