



C.M.A.(MD)No.42 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.02.2023

Delivered On : 14.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.42 of 2020

P.Selvaraj

.. Appellant

Vs.

1.S.Ranjani

2.Tata AIG General Insurance Company Ltd.,

Madurai Road,

Virudhunagar.

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decretal order dated 30.09.2019 and made in M.C.O.P.No.168 of 2018 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Virudhunagar at Srivilliputhur.

For Appellant

: Mr.N.Tamilmani

For 2nd Respondent

: Mr.J.S.Murali

For 1st Respondent

: No Appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.168 of 2018 dated 30.09.2019, on the file of the Motor Accident



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Claims Tribunal, (Chief Judicial Magistrate), Virudhunagar at Srivilliputhur.

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2.The appellant herein is the petitioner and the respondents herein are the respondents in the claim petition. The appellant herein has filed a claim petition in M.C.O.P.No.168 of 2018, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 16.12.2014. The Tribunal has awarded a sum of Rs.2,92,000/- (Rupees Two Lakhs and Ninety Two Thousand only) as compensation. Against which, the appellant has preferred this appeal.

3.Brief substance of the claim petition in M.C.O.P.No.168 of 2018 is as follows:

On 16.12.2014, when the petitioner was travelling in a car bearing registration No.TN-67-AL-1221 along the Tenkasi-Rajapalayam road near Vasudevanallur, the driver of the vehicle drove the vehicle in a rash and negligent manner and dashed against the stray cows and turned the vehicle to right side and dashed against a van bearing registration No.TN-47-V-2391. The petitioner sustained severe injuries, fracture on the spinal cord, shoulder and in the socket of the left eye and head injury. The petitioner was taken to Puliyangudi Government Hospital and after getting first aid, he was taken to Dindigul JCB Hospital and that he took treatment as 'in patient' from 17.12.2014 till 24.12.2014 and that he has



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undergone surgery on 31.12.2014. The petitioner claimed a sum of Rs.25,00,000/-
(Rupees Twenty Five Lakhs only) as compensation.

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

The manner of the accident was wrongly stated in the petition. The time and place of the accident is denied. The car driver drove the vehicle in a slow and cautious manner. It was the opposite vehicle bearing registration No.TN-67-AL-1221 that came in a rash and negligent manner and dashed against the car, in which the petitioner was travelling. The owner and insurance company of the car bearing registration No.TN-47-AV-2391 are necessary parties to the claim petition. The age and income are all denied. The first respondent was not having valid driving licence. There was no permit for the vehicle.

5.On the side of the petitioner, one witness was examined and 19 documents were marked. On the side of the respondents therein, no witness was examined and no document was marked. After trial, the Tribunal has awarded a sum of Rs.2,92,000/- (Rupees Two Lakhs and Ninety Two Thousand only) as compensation to be paid by the second respondent. Against which, the appellant has preferred this Civil Miscellaneous Appeal for enhancement of compensation on the



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following grounds:-

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The Tribunal has awarded a sum of Rs.1,15,500/- (Rupees One Lakh Fifteen Thousand and Five Hundred only) for the disability without considering the serious nature of injury on spinal cord and neck bone. The Tribunal has failed to consider that the injured was a Chartered Accountant and that he was not able to continue his earlier avocation as before. There was dislocation of spinal bone and the amount awarded towards pain and suffering should be enhanced. The Tribunal has awarded Rs.1,06,500/- (Rupees One Lakh Six Thousand and Five Hundred only) towards loss of income, which is very low. The Tribunal ought to have applied multiplier method on the basis of loss of earning capacity. The amount awarded is very low and the same is to be enhanced considering the spine injuries and the disability.

6.On the side of the appellant, it is stated that the claimant has claimed a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) but the Tribunal has awarded Rs.2,92,000/- (Rupees Two Lakhs and Ninety Two Thousand only), which is very low. The appellant is a Chartered Accountant and that due to spinal injuries, the appellant could not sit, walk or ride the vehicle. The nature of work of a Chartered Accountant is to sit throughout the day and that multiplier is to be adopted.



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7.The learned counsel for the appellant would rely upon a judgment of the Hon'ble Supreme Court in the case of ***Raj Kumar v. Ajay kumar and another*** reported in ***2011 ACJ 1***, wherein it is stated as follows:

“The permanent disabilities that may arise from motor accidents injuries, are of a much wider range when compared to the physical disabilities which are enumerated in the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 ('Disabilities Act' for short). But if any of the disabilities enumerated in Section 2(i) of the Disabilities Act are the result of injuries sustained in a motor accident, they can be permanent disabilities for the purpose of claiming compensation.”

8.On the side of the second respondent, it is stated that the Tribunal has awarded reasonable amount and that the award is reasonable.

9.A copy of the FIR was marked as Ex.P1, copy of rough sketch was marked as Ex.P2, copy of the Observation Mahazer was marked as Ex.P3, copy of the MV report was marked as Ex.P4. The copy of the chargesheet was marked as Ex.P6. In Ex.P1 and Ex.P6, the driver of the car was mentioned as negligent. There is no rebuttal evidence on the side of the insurance company. Considering the oral evidence of P.W.1 and considering Ex.P1 to Ex.P4, the Tribunal fixed the liability of



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the accident on the car driver. There is no dispute regarding the validity of the policy.

Hence, it is decided that the insurance policy is in force at the time of accident.

10.On the side of the appellant, it is stated that the appellant was a Chartered Accountant and that he was earning Rs.4,25,000/- (Rupees Four Lakhs and Twenty Five Thousand only) per year. The income tax receipt was marked as Ex.P16. Membership cards issued by the Institute of Chartered Accountant of India were marked as Ex.P12 and Ex.P13. The cadre of fellowship was marked as Ex.P14 and Ex.P15. In Ex.P12 to Ex.P15, it is stated that the claimant is an qualified Chartered Accountant.

11.On the side of the appellant, it is stated that the claimant was an tax assessee and that the income tax payment receipt was marked as Ex.P16. On the side of the appellant, it is further stated that no amount was awarded towards medical expenses.

12.On the side of the second respondent, it is stated that P.W.1 has admitted that he got reimbursement of medical expenses through Med Claim Policy. Since the claimant has received compensation from the Med Claim Department and since no other document was filed on the side of the appellant to prove the medical



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expenses, the appellant is not entitled to claim compensation towards medical expenses.

13.On the side of the appellant, it is stated that the Tribunal has awarded Rs.1,06,500/- (Rupees One Lakh Six Thousand and Five Hundred only) towards temporary loss of income and it is prayed that the loss of income is to be calculated by applying multiplier formula. The Tribunal has fixed the monthly income as Rs. 35,500/- (Rupees Thirty Five Thousand and Five Hundred only) and a sum of Rs. 1,06,500/- (Rupees One Lakh Six Thousand and Five Hundred only) for the loss of income for the period of three months. There is no rebuttal evidence on the side of the respondents and that the rate of interest is to be enhanced.

14.Considering the nature of injuries, it is decided that the claimant is entitled to Rs.32,500/- (Rupees Thirty Two Thousand and Five Hundred only) per month towards temporary loss of income. For the period of treatment and for the period of rehabilitation, a sum of Rs.2,92,500/- (Rupees Two Lakhs Ninety Two Thousand and Five Hundred only) is awarded towards temporary loss of income for the period of nine months.

15.On the side of the appellant, it is stated that the Tribunal has awarded



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Rs.1,15,500/- (Rupees One Lakh Fifteen Thousand and Five Hundred only) towards 33% of partial permanent disability and that considering the nature of injuries, multiplier method has to be adopted in calculating the disability.

16.AR copy was marked as Ex.P7, discharge summary was marked as Ex.P8. The treatment particulars given by Physiotherapy Clinic was marked as Ex.P9. X ray were marked as Ex.P10 and Ex.P11. Wound Certificate was marked as Ex.C1. Considering the nature of injuries and considering that the disability certificate was issued by the Medical Board, it is decided that the claimant is entitled to Rs.5,000/- (Rupees Five Thousand only) for each percentage of disability. For 33% disability, the claimant is entitled to Rs.1,65,000/- (Rupees One Lakh and Sixty Five Thousand only).

17.The Tribunal has awarded 50,000/- (Rupees Fifty Thousand only) towards pain and suffering, Rs.10,000/- (Rupees Ten Thousand only) towards transportation charges, Rs.10,000/- (Rupees Ten Thousand only) towards extra nourishment, which are reasonable. In total, a sum of Rs.5,27,500/- (Rupees Five Lakhs Twenty Seven Thousand and Five Hundred only) is awarded as compensation.



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18.In the result, this Civil Miscellaneous Appeal is **partly allowed**.

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(i)The compensation is enhanced from **Rs.2,92,000/- to Rs.5,27,500/-**.

(ii)The appellant herein is entitled to a sum of Rs.5,27,500/- (Rupees Five Lakhs Twenty Seven Thousand and Five Hundred only) as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of deposit.

(iii)The respondents herein are directed to deposit Rs.5,27,500/- (Rupees Five Lakhs Twenty Seven Thousand and Five Hundred only) with 7.5% interest from date of the claim petition till the date of deposit and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the appellant herein is permitted to withdraw the award amount with proportionate interest and cost after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. The appellant herein is directed to pay the additional Court fee for the enhanced amount. No Costs.

14.03.2023

NCC : Yes/No
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R. THARANI, J.

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To

- 1.The Motor Accidents Claims Tribunal,
Chief Judicial Magistrate,
Virudhunagar at Srivilliputhur.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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