



C.M.A.(MD)No.884 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 16.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.884 of 2021

and

C.M.P.(MD)No.8346 of 2021

National Insurance Company Ltd.,
No.40, Peraira Street,
Thoothukudi.

...Appellant/2nd Respondent

Vs.

1.S.Ashokkumar
2.P.Jarafson Samuvel Raj

...1st Respondent/Petitioner
...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and order dated 18.10.2019 made in M.C.O.P.No.67 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Thoothukudi.

For Appellant : Mr.A.S.Mathialagan

For R1 : Mr.L.Prabhakaran

For R2 : No Appearance



C.M.A.(MD)No.884 of 2021

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been file challenging the award passed by the Motor Accident Claims Tribunal/Sub Court, Thoothukudi in M.C.O.P.No.67 of 2015 dated 18.10.2019.

2.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i) For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

(ii) on 11.04.2015 when the injured claimant was proceeding in a motorcycle bearing Registration No.TN-69-AL-5333 as a pillion rider in Thoothukudi to Thiruchendur main road, the lorry bearing registration No.TN-59-C-9609, which was proceeding in front of the motorcycle, applied a sudden break. As a result, the motorcycle hit the bumper of the lorry and the claimant has sustained fracture at his right leg. The injured is a fisherman by profession and he was earning a sum of Rs.9,000/- per month at the relevant point of time. Hence, the compensation of Rs.15,00,000/- was claimed by the claimant.



C.M.A.(MD)No.884 of 2021

(iii) The Insurance Company before the Tribunal has denied the income of the claimant. Further, it has been submitted that the lorry did not have a valid fitness certificate at the relevant point of time. Hence, the Insurance Company is not liable to pay the compensation.

3. Before the Tribunal, the claimant was examined himself as P.W.1 and Ex.P1 and Ex.P12 were marked. On the side of the respondents, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R2 were marked and Ex.C1 was also marked.

4.The Tribunal on appreciation of the evidence of P.W.1 has found that the driver of the Lorry was negligent in driving and awarded the compensation as follows:

S.No.	Description	Amount
1.	Loss of permanent disability	Rs.1,36,080/-
2.	Loss of income while he was in treatment	Rs. 45,000/-
3.	Nutritious food	Rs. 5,000/-
4.	Attendant charges	Rs. 5,000/-
5.	Pain and sufferings	Rs.1,00,000/-
6.	Loss of belongings	Rs. 1,000/-
7.	Loss of comfort	Rs. 50,000/-



C.M.A.(MD)No.884 of 2021

8.	Future Medical expenses	Rs. 50,000/-
9.	Medical Bills	Rs. 59,391/-
	Total	Rs.4,51,471/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

5.I have heard the learned counsel appearing on either side and also perused the materials available on record.

6.The learned counsel appearing for the appellant would submit that the the Tribunal has erred in adopting the multiplier 18 for 7% disability sustained by the claimant. The injured has sustained only fracture in his leg, that too was set right after some treatment. Hence, the multiplier adopted by the Tribunal is not proper.

7.In view of the above submission, now the point arises for consideration in this appeal is:

(1) *Whether the quantum fixed by the Tribunal is proper?*



C.M.A.(MD)No.884 of 2021

8. Admittedly, the negligence is not disputed before this Court as well as before the trial Court. As per the disability certificate under Ex.P12, the medical board has stated that the claimant has sustained only 7% disability. The injuries sustained by the claimant is only fractures. The fractures are normally reunited within a period of certain months. Therefore, it cannot be construed as permanent disability, which prevents one from doing any work. The claimant is a fisherman. Once the fractures are reunited, it will not affect his day-to-day activities. Such view of the matter, the Tribunal adopting the multiplier for awarding compensation under the head of permanent disability is not proper and the same is set aside. Accordingly, a sum of Rs.5,000/- per percentage is granted to the 7% disability sustained by the claimant.

9. It is to be noted that the claimant was in the hospital from 11.04.2015 to 15.04.2015. The medical bills towards the said treatment are also filed and the same are not disputed by other side. In view of the same, this Court is of the view that the compensation awarded under the other heads does not require any interference. Accordingly, the compensation awarded by the Tribunal under the other heads are hereby confirmed. In fine, the compensation awarded by the Tribunal is modified as follows:



C.M.A.(MD)No.884 of 2021

WEB COPY

S.No.	Description	Amount
1.	Loss of 7% disability	Rs. 35,000/-
2.	Loss of income while he was in treatment	Rs. 45,000/-
3.	Nutritious food	Rs. 5,000/-
4.	Attendant charges	Rs. 5,000/-
5.	Pain and sufferings	Rs.1,00,000/-
6.	Loss of belongings	Rs. 1,000/-
7.	Loss of confort	Rs. 50,000/-
8.	Future Medical expenses	Rs. 50,000/-
9.	Medical Bills	Rs. 59,391/-
	Total	Rs.3,50,391/-

10.In fine, this Civil Miscellaneous Appeal is allowed and the award of granting compensation of Rs.4,51,471/- made by the Tribunal is modified as stated above.

11.The appellant is directed to deposit the compensation amount i.e., Rs.3,50,391/- (Rupees Three Lakhs, Fifty Thousand Three Hundred and Ninety One only) as modified by this Court with interest at the rate of 7.5% per annum at the first instance to the credit of M.C.O.P.No.67 of 2015, on the file of the Motor Accident Claims Tribunal /Sub Court, Thoothukudi within a period of



C.M.A.(MD)No.884 of 2021

one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited and thereafter, the appellant / Insurance Company is entitled to recover the same from the seventh respondent. On such deposit, the claimant is permitted to withdraw said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

16.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
ta

To

1.The Motor Accident Claims Tribunal/
Sub Court, Thoothukudi.

2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.884 of 2021

N.SATHISH KUMAR, J.

ta

C.M.A.(MD)No.884 of 2021

16.03.2023