



C.M.A.(MD)No.332 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 03.02.2023

Delivered On : 27.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.332 of 2020

Cholamandalam MS General Insurance,
Company Ltd.,
Regd. & Head Office at 2nd Floor,
Dare House, No.2, NSC Bose Road,
Chennai – 600 001.

.. Appellant

Vs.

1.P.Periyasamy
2.A.Murugesan
3.D.Sam Jebaraj

.. Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the fair and decreetal order dated 24.10.2019 made in M.C.O.P.No.25 of 2017 on the file of the Motor Accidents Claims Tribunal, (II Additional Sub Court), Nagercoil.

For Appellant	: Mr.S.Srinivasa Raghavan
For 1 st Respondent	: Mr.G.Aravinthan
For Respondents 2 and 3	: No Appearance



C.M.A.(MD)No.332 of 2020

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award passed in M.C.O.P.No.25 of 2017 dated 24.10.2019, on the file of the Motor Accident Claims Tribunal (II Additional Sub Court), Nagercoil.

2.The appellant herein is the third respondent, the first respondent herein is the petitioner and the respondents 2 and 3 herein are the respondents 1 and 2 in the claim petition. The first respondent herein has filed a claim petition in M.C.O.P.No. 25 of 2017, claiming compensation for the injuries sustained by the claimant, in an accident that took place on 01.02.2014. The Tribunal has awarded a sum of Rs. 6,66,183/- (Rupees Six Lakhs Sixty Six Thousand One Hundred and Eighty Three only) as compensation. Against which, the appellant has preferred this appeal.

3.A brief substance of the claim petition in M.C.O.P.No.25 of 2017 is as follows:

On 01.02.2014 at about 01.10 p.m., when the petitioner was riding a two wheeler bearing registration No.TN-64-H-8104, a lorry bearing registration No.TN-59-B-4509 came from the opposite direction and dashed against the petitioner. The petitioner was taken to Goripalayam Srinivasa Hospital and he took



C.M.A.(MD)No.332 of 2020

treatment as inpatient for 11 days and he undergone surgery. He was working in Prakash medical shop and was earning Rs.30,000/- (Rupees Thirty Thousand only) per month. He earned Rs.20,000/- (Rupees Twenty Thousand only) by renting vehicles. The petitioner claimed a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) as compensation.

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

The first respondent failed to inform about the accident. After receiving notice from the Court, the third respondent engaged an investigation Officer. It was the petitioner who rode the two wheeler in a rash and negligent manner and dashed against the right portion of the lorry. A false case was foisted against the first respondent. The first respondent was not responsible for the accident. The claim is excessive.

5.The respondents 1 and 2 remained set exparte. On the side of the claimant, one witness was examined and 17 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.6,66,183/- (Rupees Six Lakhs Sixty Six Thousand One Hundred and Eighty Three only) as compensation to be paid by



C.M.A.(MD)No.332 of 2020

the third respondent therein. Against which, the appellant has preferred this Civil Miscellaneous Appeal on the following grounds:

The computation of quantum of compensation is wrong. The Tribunal ought not to have considered the opinion of the Medical Board. The fixation of disability by the Medical Board is not fair. The Tribunal has awarded a sum of Rs. 1,00,000/- (Rupees One Lakh only) towards future medical expenses but there is no proof in support of the same. The interest should not awarded for the amount awarded towards future medical expenses. The quantum is excessive.

6.The copy of the FIR was marked as Ex.P1 and a copy of observation mahazer was marked as Ex.P2. A copies of MV reports were marked as Ex.P4 and Ex.P5. Chargesheet was marked as Ex.P6. The copy of the judgment was marked as Ex.P7.

7.On the basis of the evidence of P.W.1 and on the basis of the documents, the Tribunal fixed the responsibility for the accident on the lorry driver. Considering that there was no rebuttal evidence on the side of the appellant and considering the evidence of P.W.1 and considering Ex.P1, Ex.P2, Ex.P4 to Ex.P7, it is decided that the lorry driver is responsible for the accident. There is no dispute regarding the insurance policy. Hence, it is decided that the insurance policy is valid on the date of



C.M.A.(MD)No.332 of 2020

WEB COPY

8.The copy of the wound certificate was marked as Ex.P9, the copy of the discharge summary was marked as Ex.P8. The medical certificate was marked as Ex.P13. The computation of disability by the Medical Board is wrong. But there was no rebuttal evidence on the side of the appellant.

9.From the evidence of P.W.1 and Ex.P3, Ex.P8, Ex.P9, Ex.P13, it is decided that the claimant has sustained injuries and the disability is 30%. For 30% disability, the Tribunal has awarded Rs.1,35,000/- (Rupees One Lakh and Thirty Five Thousand only), which is reasonable. The Tribunal has awarded a sum of Rs. 75,000/- (Rupees Seventy Five Thousand only) towards pain and suffering, Rs. 25,000/- (Rupees Twenty Five Thousand only) towards extra nourishment, Rs. 2,000/- (Rupees Two Thousand only) towards loss of articles and Rs.5,000/- (Rupees Five Thousand only) towards transportation expenses, which are all reasonable.

10.The medical bills were marked as Ex.P10 and based on which, the Tribunal has awarded Rs.86,093/- (Rupees Eighty Six Thousand and Ninety Three only) and Rs.1,24,290/- (Rupees One Lakh Twenty Four Thousand Two Hundred and Ninety only) towards medical expenses. No objection was raised by the appellant



C.M.A.(MD)No.332 of 2020

before the trial Court regarding the medical bills and hence, the same was accepted by this Court.

11.On the side of the claimant, it is stated that the claimant was running a medical shop and was earning Rs.30,000/- (Rupees Thirty Thousand only) per month and by renting vehicles, he was earning Rs.20,000/- (Rupees Twenty Thousand only) per month. RC form was marked as Ex.P11. RC book of the travel vehicles were marked as Ex.P12. But the Tribunal has fixed the monthly notional income as Rs. 15,000/- (Rupees Fifteen Thousand only). For the period of seven months, the Tribunal has awarded Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) towards temporary loss of income.

12.Considering Ex.P11, Ex.P12, it is decided that for loss of income, the Tribunal has further awarded Rs.5,500/- (Rupees Five Thousand and Five Hundred only) as compensation for the period of treatment, which is unnecessary and hence, it is decided that the claimant is entitled only to Rs.1,05,000/- (Rupees One Lakh and Five Thousand only) for the period of treatment and period of rehabilitation. The Tribunal has awarded a sum of Rs.3,300/- (Rupees Three Thousand and Three Hundred only) towards attendant charges, which is reasonable.



C.M.A.(MD)No.332 of 2020

13. On the side of the appellant, it is stated that the Tribunal has awarded Rs.1,00,000/- (Rupees One Lakh only) towards future medical expenses and the interest should not be awarded for future medical expenses. P.W.1 has deposed that the Doctor has advised him to remove the plates and implants and the same will require Rs.1,00,000/- (Rupees One Lakh only) as medical expenses. Ex.P14 was a medical certificate. From Ex.P14, it is clear that the petitioner has to remove plates and implants and hence, it is decided that the petitioner is entitled to Rs.1,00,000/- (Rupees One Lakh only) towards future medical expenses. Since the amount was not yet spent by the claimant, it is decided that the claimant is not entitled to interest for Rs.1,00,000/- (Rupees One Lakh only) for the future medical expenses.

14. For the reason stated above, it is decided that the compensation awarded by the Tribunal is reasonable and that the claimant is not entitled to avail interest for the amount of Rs.1,00,000/- (Rupees One Lakh only), which is awarded towards future medical expenses.

15. In the result, this Civil Miscellaneous Appeal is **partly allowed**. The 1st respondent herein is entitled to a sum of Rs.6,66,183/- (Rupees Six Lakhs Sixty Six Thousand One Hundred and Eighty Three only) as compensation with interest for Rs.5,66,183/- at the rate of 7.5% from the date of the claim petition till the date of realization.



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C.M.A.(MD)No.332 of 2020

R. THARANI, J.

MRN

16.The appellant herein is directed to deposit the award amount of Rs.6,66,133/- with 7.5% interest for Rs.5,66,133/- from date of the claim petition till the date of deposit and costs and the amount less any amount deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On deposit, the first respondent is permitted to withdraw the award amount, after deducting any amount received by him earlier. The claimant is not entitled for interest for the default period, if there is any. No Costs.

27.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
MRN

To

- 1.The Motor Accidents Claims Tribunal,
II Additional Sub Judge,
Nagercoil.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

C.M.A.(MD)No.332 of 2020