



C.M.A.(MD)No.306 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.02.2023

Delivered On : 24.04.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.306 of 2020

Muthukaruppan

... Appellant /claimant

Vs.

1.Shiek Mohammed

2.The Manager,

United Insurance Company Ltd,

Sundaram Masila Maligai,

T.S.No.5476.79,

Pudukkottai.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the Judgment and Decree, dated 13.11.2019 passed in M.C.O.P No.162 of 2015 on the file of the Motor Accident Claim Tribunal, (Chief Judicial Magistrate), Pudukkottai.

For Appellant

: Mr.P.Ganapathi Subramanian

For Respondents

: No appearance for R1

: Mr.C.Karthik for R2



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JUDGMENT

This Civil Miscellaneous Appeal has been filed to enhance the compensation amount, dated 13.11.2019, passed in M.C.O.P No.162 of 2015 on the file of the Motor Accident Claim Tribunal - Chief Judicial Magistrate, Pudukkottai. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P No.162 of 2015, is as follows:-

On 09.02.2015, when the petitioner was travelling in a Star City two wheeler, bearing Registration No.TN-55-L-2129 along the Annavasal - Pudukkottai main road, near Kalaiman Tobacoo Company, a Bajaj Pulsar two wheeler bearing Registration No.TN-55-AK-8017 came from the opposite direction in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries and he claim a sum of Rs. 10,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.C.O.P No.162 of 2015, is as follows:-



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The age, profession and income of the petitioner are all denied.

It is wrong to state that the petitioner was doing Tomato business and was earning Rs.10,000/- per month. In the accident register copy, it was mentioned that the petitioner was only a Coolie and his monthly income was Rs.900/-. In the medical report issued by the Kaveri Hospital, Trichy, the profession of the petitioner was mentioned as Agriculturist. The petitioner has to prove his profession and income. The rider of the Bajaj Pulsar vehicle rode the two wheeler in a careful and cautious manner, it was the petitioner, who drove the two wheeler in a rash and negligent manner, without having driving licence. Due to his age, he could not control the vehicle and he fell down and sustained injuries. A false complaint was lodged against the rider of the first respondent vehicle. The nature of injuries, period of treatment are all denied. The rider of the Bajaj Pulsar was not having driving licence. The second respondent is not liable to pay compensation.

4. One (1) witness was examined and 9 documents were marked on the side of the petitioner. One (1) witness was examined and 2 documents were marked on the side of the respondents. One (1) document



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was marked as Court document. After considering both sides, the Tribunal has awarded a sum of Rs.5,56,982/- as compensation to be paid by the owner of the vehicle.

5. Against the award, the appellant-claimant has filed this Appeal, for enhancement of compensation, on the following grounds:-

5.1. The Tribunal is wrong in fixing the monthly income as Rs.4,000/- instead of Rs.10,000/-. The claimant has not only lost his income for three months, but, he is unable to do his work as before. The Tribunal ought to have awarded compensation for future prospects. The Tribunal ought to have taken into account future medical expenses. The Tribunal is wrong in calculating compensation at the rate of Rs.3,000/- per percentage of disability. The Tribunal ought to have adopted multiplier method. The Tribunal has awarded Rs.15,000/- towards extra nourishment, Rs.10,000/- towards transport expenses and the same has to be enhanced.

5.2. The Tribunal ought to have awarded Rs.50,000/- towards attender charges. The Tribunal failed to consider that even in a case of failure to prove the factum of licence of the driver of the vehicle, an



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award of pay and recover has to be ordered. The Tribunal ought to have fixed the liability on the second respondent and not on the first respondent.

6. On the side of the appellant, it is stated that the claimant is a Retail Vegetable Vendor and he sustained 70% disability in the accident. It is stated that claimant was earning Rs.10,000/- per month, but, the Tribunal has fixed the monthly income as Rs.4,000/- which is very low.

7. On the side of the respondent, it is stated that no document was filed on the side of the appellant, to prove that the claimant was a Tomato merchant. In the F.I.R, it was mentioned that the appellant was a Cooli. In the medical reports issued by the Kaveri Hospital, Trichy, it was mentioned that the claimant was an Agriculturist. There is contradiction in the documents and the claimant failed to prove his profession and his income.

8. Copy of the F.I.R was marked as Ex.P1. M.V.I. report was marked as Ex.P3. On the basis of the evidence of P.W.1 and on the basis of Ex.P1 and P3. There is no rebuttal evidence on the side of the



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respondents. Hence, it is decided that the rider of the Bajaj Pulsar vehicle was responsible for the accident.

9. Insurance Policy was marked as Ex.P4. R.W.1 was examined and Ex.R2 issued by the R.T.O office was marked, wherein, it was stated that on 09.02.2015, the rider of the Pulsar bike was not having valid driving licence. Since the rider of the two wheeler was not having valid driving licence, the Tribunal exonerated the Insurance Company. Since the respondents proved that the rider of the Pulsar was not having valid driving licence, the Tribunal fixed the liability on the owner of the vehicle, which is reasonable.

10. On the side of the appellant, it is stated that the claimant was earning Rs.10,000/- as a Vegetable vendor. In Ex.P6-A.I.R. Report, it was mentioned that the claimant was working as Coolie and was earning Rs.900/- per month. In Ex.P2, it was mentioned that the claimant was doing Agriculture. It is seen that there is contradiction in the evidence of P.W.1 and the wording in Ex.P2 and P6, regarding the profession and income of the claimant. There is absolutely no proof as to the monthly



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income of the claimant. The Tribunal fixed the notional income as Rs.4,000/-, which is very low and the same is enhanced to Rs.9,000/- per month.

11. It is seen from the records reveals that the claimant is having 70% disability. Discharge summary issued by the Kaveri Hospital was marked as Ex.P2. Discharge summary issued by the Pudukkottai Government Hospital was marked as Ex.P5. Disability certificate was marked as Ex.C1. On the side of the appellant, it is stated that the multiplier method ought to have been adopted in assessing the loss of income. Doctor was not examined on the side of the appellant. There is no evidence as to the functional disability, hence, it is decided that there is no necessity to apply multiplier method. The amount awarded by the Tribunal for 70% disability at the ratio of Rs.3,000/- per percentage is reasonable. The claimant is entitled to Rs.2,10,000/- (Rs.3,000/- X 70) towards 70% disability.

12. The Tribunal has awarded Rs.12,000/- as interim loss of income. For the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.36,000/- towards interim loss of income.



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13. The Tribunal has awarded Rs.1,99,982/- towards medical expenses, Rs.10,000/- towards transport expenses, Rs.15,000/- towards extra nourishment and Rs.10,000/- for loss of earning capacity and Rs. 1,00,000/- towards pain and sufferings, which are all reasonable.

14. The total compensation is calculated as follows:-

70% Disability	:	Rs. 2,10,000/-
Earning capacity	:	Rs. 10,000/-
Transport expenses	:	Rs. 10,000/-
Extra nourishment	:	Rs. 15,000/-
Medical expenses	:	Rs. 1,99,982/--
Temporary loss of income	:	Rs. 36,000/-
Pain and sufferings	:	Rs. 1,00,000/-
Total compensation	:	 Rs. 5,80,982/-

15. This appeal is partly allowed. The compensation is enhanced from Rs.5,56,982/- to **Rs. 5,80,982/-**.



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(i) The claimant is entitled to a sum of **Rs.5,80,982/-** with

accrued interest and costs.

(ii) The first respondent herein - owner of the vehicle, is directed to deposit the entire compensation of **Rs.5,80,982/-**(less the amount if any 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.

(iii) On such deposit being made, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

24.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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R. THARANI, J.

Ls

To

1.The Motor Accident Claim Tribunal -
Chief Judicial Magistrate,
Pudukkottai.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.306 of 2020

24.04.2023