



C.M.A.(MD)No.219 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.219 of 2023

and

C.M.P.(MD)No.2431 of 2023

M/s.The New India Assurance Company Ltd.,
Throught is Divisional Manager,
CMTS Bhavan, 70, Feet Road,
Ellis Nagar, Madurai.

...Appellant/2nd Respondent

Vs.

1.N.Tamilarasi

2.P.Ravi

...Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 14.11.2022 passed in M.C.O.P.No.924 of 2017 on the file of MACT/Special Sub Court, Madurai.

For Appellant	: Mr.P.Malini
For R1	: Mr.S.Manikandan
For R2	: Mr.P.Thennavan

JUDGMENT

Challenge has been made to the award passed by the Motor Accident Claims Tribunal/Special Sub Court, Madurai in M.C.O.P.No.924 of 2017 dated 14.11.2022.



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

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

(i)The injured claimant on 16.07.2017 at about 07.00 p.m., was travelling in the car bearing Registration No.TN-18-C-8805 belonging to the first respondent. At that time, since the driver of the car drove the car in a rash and negligent manner, the car hit against the motorcycle coming in an opposite direction. As a result, the claimant sustained several injuries all over his body including oblique fracture proximal, third left humerus fracture and left pubic ramus. For the said injuries, he had taken treatment from 17.07.2017 to 23.07.2017 as an inpatient. He had also underwent surgery. Hence, he filed the petition claiming compensation of a sum of Rs.15,00,000/-.

(ii)Before the Tribunal, the Insurance Company denying the manner accident took a stand that the accident was occurred only due to the rash and negligent riding of the rider of the motorcycle. Whereas, the claim has been made



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only against the insurer of the car, in which the claimant had travelled. Hence, he opposed the claim petition.

4.Before the Tribunal, on the side of the claimant P.W.1 and P.W.2 were examined and Ex.P1 to Ex.P6 were marked and on the side of the respondents R.W.1 was examined and Ex.R1 was marked and Ex.C1 was also marked.

5.Based on the evidence and materials, the Tribunal had found that the driver of the offending car was not negligent and only the rider of the motorcycle was negligent in riding the motorcycle resulting accident. The Tribunal having arrived at such a conclusion, considering the fact that the claim petition was filed under Section 163-A of the Motor Vehicles Act (hereinafter referred to as 'the Act' for the sake of brevity), had awarded the compensation as follows:

S.No.	Description	Amount
1.	Partial disability	Rs.50,000/-
2.	Pain and sufferings	Rs.10,000/-
3.	Medical expenses	Rs.63,300/-
4.	Nutritious food	Rs. 3,000/-
5.	Transportation expenses	Rs. 2,000/-
	Total	Rs.1,28,300/-



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6.The main contention of the learned counsel for the appellant is that when the claim application is filed under Section 166 of the Act, the Tribunal ought not to have converted the same as it was filed under Section 163-A of the Act. That apart having converted the application under Section 163-A of the Act, the Tribunal could have followed structural formality, whereas the Tribunal has awarded Rs.63,300/- towards medical expenses, which is against the structural formality and hence, the compensation awarded by the Tribunal is not valid in the eye of law.

7.The learned counsel for the respondents submitted that the Tribunal had awarded the compensation by following the structural formality and the same does not warrant any interference.

8.In the light of the above submission, now the point arise for consideration in this appeal is:

(1) Whether the award passed by the Tribunal is just and reasonable and requires any interference??



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9.The fact that the petitioner sustained many injuries all over his body in the accident is not disputed. Though FIR was originally filed against the rider of the motorcycle, the Tribunal had swayed away from FIR and held that the driver of the offending car was negligent. By holding so, the Tribunal had converted application under Section 163-A of the Act and held that the negligence need not be strictly proved.

10.It is relevant to note that the accident and the nature of injuries sustained by the claimant are not disputed. The only allegation is that having converted the petition under Section 163-A of the Act, the Tribunal ought to have followed the structural formality in the case of injury. On perusal of the second schedule of the Act, particularly with regard to the general damage and in case of disabilities, for every percentage of disability a sum of Rs.5,000/- has been provided. The Tribunal considering the medical report of the petitioner had found that the petitioner had sustained 10% disability and awarded a sum of Rs.50,000/- towards disability and a sum of Rs.10,000/- towards pain and sufferings. The compensation awarded by the Tribunal is just and reasonable and the same does not warrant any interference.



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11. Further, the Tribunal had also awarded a sum of Rs.63,300/- towards medical expenses. It is the contention of the learned counsel for the appellant that under the head of medical expenditure a sum of Rs.15,000/- ought to have been awarded as per the II schedule of the Act. The second Schedule of Section 163-A of the Act clause 4(ii) deals with medical expenses wherein it has been mentioned that the medical expenses incurred by the bills/vouchers but not exceeding as one time payment. From the bare perusal of the said provisio, it is revealed that amount of Rs. 15,000/- as one time payment. Therefore, this Court is of the view that merely one time payment of Rs.15,000/- has been mentioned, it shall not be construed that only Rs.15,000/- alone is payable to the claimants. If that amount of Rs.15,000/- is restricted, the very words such as actual expenses supported by bills and vouchers could not have been included in the second Schedule.

12.In such view of the matter, this Court is of the view that the amount awarded by the Tribunal under the head of 'medical expenses' and also other heads is just and reasonable and does not require any interference.

13.Accordingly, the Civil Miscellaneous Appeal is dismissed and the



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award passed by the Tribunal is hereby confirmed.

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14.The Insurance company is directed to deposit the entire compensation amount as awarded by the Tribunal with interest at the rate of 7.5% from the date of petition till the date of realization to the credit of M.C.O.P.No.924 of 2017, on the file of the Motor Accident Claims Tribunal/Special Sub Court, Madurai within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the same, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
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N.SATHISH KUMAR, J.

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To

- 1.The Motor Accident Claims Tribunal/
Special Sub Court, Madurai.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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