



C.M.A.(MD)Nos.69 and 70 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On :01.03.2023

Delivered On : 24.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.69 and 70 of 2019

C.M.A.(MD)No.69 of 2019

K.Selvarasu

... Appellant / Petitioner

Vs.

1.P.Senthilkumar

2.M/s.The National Insurance Co. Ltd.,

Divisional office, K.R.T.Building,

Contonment, Trichy – 620 001.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.1 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Kulithalai.

For Appellant

: Mr.RM.Sivakumar

For Respondents

: Mr.M.Suresh for R1

: Ms.P.Malini for R2



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P.Karuppan @ Karuppannan

... Appellant / Petitioner

Vs.

1.P.Senthilkumar

2.M/s.The National Insurance Co. Ltd.,

Divisional office, K.R.T.Building,

Contonment, Trichy – 620 001.

... Respondents / Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.C.O.P.No.2 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal – Subordinate Judge, Kulithalai.

For Appellant : Mr.RM.Sivakumar

For Respondents : Mr.M.Suresh for R1

: Ms.P.Malini for R2

COMMON JUDGMENT

C.M.A.(MD)No.69 of 2019 has been filed against the award made in M.C.O.P.No.1 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal - Subordinate Judge, Kulithalai. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.



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WEB COPY 2. C.M.A.(MD)No.70 of 2019 has been filed against the award made in M.C.O.P.No.2 of 2017, dated 25.09.2018, on the file of the Motor Accidents Claims Tribunal - Subordinate Judge, Kulithalai. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

3.A brief substance of the petition, in M.C.O.P.No.1 of 2017, is as follows:-

On 29.10.2016, at about 7.00 pm., when the petitioner was riding a two wheeler, bearing Registration No.37-B-8834, along with his father - Karuppan as a pillion rider, along the Vaiyampatti - Tharagampatti main Road, keeping the left side of the road, an unregistered motorcycle bearing Engine No. JF- 33AAG4F13005, Chasis No.MBLIF33AAG413113 came in a rash and negligent manner from the opposite direction dashed against the petitioner's two wheeler. The petitioner sustained injuries, he was admitted in Mayilampatti Government Hospital, then he was sent to Karur Government Hospital and he took treatment as inpatient for a period of 20 days. The petitioner was working as a lorry driver and was earning Rs. 25,000/- per month. The petitioner claimed a sum of Rs.10,00,000/- as compensation.



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4. A brief substance of petition in M.C.O.P No.2 of 2017 is as follows:-

In the very same accident, the petitioner travelled as a pillion rider and he sustained injury. The petitioner was doing agriculture work and was earning Rs.10,000/- per month. The petitioner sustained injury and he claimed a sum of Rs.10,00,000/- as compensation.

5. A Brief substance of the counter filed by the second respondent in both the petitions in M.C.O.P.Nos.1 and 2 of 2017 is as follows:-

The respondent driver was not having valid driving licence. The age, income profession, place of accident, date of accident, time of accident, nature of injuries, medical expenses, disability, future medical expenses are all denied. The nature of accident as narrated in the petition is denied. The amount claimed is excessive.

6. Since both the claim petitions arose out of the same accident, both the petitions were taken up for joint trial. In the joint trial, 3 witnesses were examined, 13 documents were marked on the side of the petitioners. No witness was examined and no document was marked on the side of the respondents. After considering both sides, the Tribunal has awarded a sum of Rs.1,18,500/- as compensation in



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M.C.O.P.No.1 of 2017 and the Tribunal has awarded Rs.1,33,500/- as compensation in M.C.O.P.No.2 of 2017.

7. Against the award, the claimant in M.C.O.P.No.1 of 2017 has preferred the appeal in C.M.A.(MD)No.69 of 2017, for enhancement of compensation, on the following grounds:-

The Tribunal has failed to appreciate the oral and documentary evidence on the side of the claimant. The Tribunal has failed to consider that the claimant sustained fracture in the spinal cord and on the right thigh and has failed to accept the percentage of disability, assessed by P.W.3 - Doctor. The Tribunal has failed to consider that the claimant is unable to continue his profession as a Driver. The claimant is 37 years old, the Tribunal is wrong in reducing the percentage of disability from 42% to 20%. The Tribunal ought to have adopted multiplier method in assessing the loss of income.

8. Against the award, the claimant in M.C.O.P.No.2 of 2017 has preferred the appeal in CMA(MD)No.70 of 2017, for enhancement of compensation, on the following grounds:-

The Tribunal has failed to appreciate the oral and documentary evidence. The Tribunal has failed to consider that the claimant sustained fracture in the hip and



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knee and the Tribunal ought to have admitted the disability, assessed by P.W.3-Doctor. The Tribunal is wrong in reducing the disability from 68% to 25%. The Tribunal ought to have adopted multiplier method.

9. Copy of the F.I.R was marked as Ex.P1. Copy of the rough sketch was marked as Ex.P6. Copy of the charge sheet was marked as Ex.P7. P.W.1 and P.W.2 have deposed that the accident has happened due to the rash and negligent driving of the first respondent's driver. In Ex.P1 and Ex.P6, the name of the first respondent driver was mentioned as the accused. There is no rebuttal evidence on the side of the respondents. Hence, it is decided that the accident has happened due to the rash and negligent driving of the first respondent driver.

CMA(MD)No.69 of 2019 :

10. On the side of the appellant, it is stated that the claimant in C.M.A. (MD)No.69 of 2019 sustained spinal cord injury. C.T.Scan reports were marked as Ex.P2 and P3. Discharge summary was marked Ex.P4. Wound certificate was marked as Ex.P5. Disability certificate was marked as Ex.P10. X-Ray was marked as Ex.P11. P.W.3 has deposed that the claimant sustained 42% disability. Disability certificate was issued by P.W.3. From Ex.P2, P3 and P5, it is clear that the claimant suffered fracture in the spinal cord, right side chest bone and the Doctor has assessed



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the disability as 42%. P.W.3 did not give treatment to the claimant, he has not attached the calculation chart along with the disability certificate. P.W.3 has admitted that considering the whole body, there is possibility for the disability to be reduced. It is seen that the disability was assessed for carrying weight and for driving a vehicle for a long time and for not able to properly breathe in a polluted environment. So considering the manner of the calculation, the Tribunal reduced the disability from 42% to 20%.

11. On the side of the appellant, it is stated that the appellant was getting a salary of Rs.25,000/- as a driver. Driving licence was not marked as a document, there is no other evidence regarding the salary received by the claimant. Hence, the notional monthly income is fixed as Rs.9,000/-. Considering the disability and nature of injury, the claimant is entitled to get compensation by adopting multiplier method. For 20% functional disability, the claimant is entitled to Rs.1,800/- per month (Rs.9,000/- X 20/100). The age of the claimant at the time of accident is 37 years, hence, multiplier 15 is applicable. After applying multiplier 15, the claimant is entitled to Rs.3,24,000/- (Rs.1,800/- X 12 X 15).

12. The Tribunal has awarded Rs.5,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.35,000/- towards pain and sufferings,



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which are all reasonable. Since the multiplier method is adopted, it is decided that the claimant is not entitled to temporary loss of income.

13. The total compensation is calculated as follows:-

Loss of income	:	Rs.3,24,000/-
Extra nourishment	:	Rs. 5,000/-
Transport expenses	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 35,0000/-
		
total compensation	:	Rs.3,69,000/-
		

14. C.M.A.(MD)No.69 of 2019 is partly allowed. The compensation is enhanced from Rs. 1,18,500/- to Rs.3,69,000/-

CMA (MD)No.70 of 2019 :

15. On the side of the appellant, it is stated that the claimant took treatment as inpatient for a period of one month. The injuries are grievous in nature. Doctor has fixed the disability at 62%. Without any reason, the Tribunal reduced the disability to 25%. The claimant was referred to the Medical Board for examination. The claimant went to the hospital, but, there was no response. The claimant was 64 years old, he has to undergo surgery in the spinal cord the claimant has failed to



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approach the medical board and prayed the disability assessed by the Doctor to be taken into consideration.

16. The Doctor, who assessed the disability, did not give any treatment to the appellant. Hence, the Tribunal reduced the disability. The Doctor has admitted that the disability was not calculated for the entire body and that if the entire body is taken into account, the assessment of disability may be lesser.

17. Scan report for the claimant was marked as Ex.P8. Wound certificate was marked as Ex.P9. Disability certificate was marked as Ex.P12. X-ray was marked as Ex.P13. P.W.3 has deposed that the claimant sustained 62% disability. It is seen that P.W.3 has deposed that the disability was not assessed for the entire body and if it was so assessed, there is possibility of a reduction in percentage. Considering the age and the nature of injuries, the Tribunal has fixed the functional disability as 25%, which is reasonable.

18. Considering the fact that the fracture was on the hip portion of the claimant, it is decided that the disability is functional and multiplier method is to be adopted.



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19. On the side of the appellant, it is stated that the claimant was an agriculturist, getting an income of Rs.10,000/- per month. No document was marked on the side of the claimant and no witness was examined, to prove that the claimant was getting an income of Rs.10,000/- per month. Considering the date of accident, and considering the age of the claimant, it is decided that the claimant might have earned Rs.6,000/- per month. For 25% disability, the claimant is entitled to Rs. 1,500/- (Rs.6,000/- X 25/100) per month. Considering the age of the claimant, multiplier 5 is applicable. After applying multiplier 5, the claimant is entitled to Rs. 90,000/- (Rs.1,500/- X 12 X 5) towards loss of income.

20. The Tribunal has awarded Rs.5,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.35,000/- towards pain and sufferings, which are all reasonable. Since multiplier method is adopted, it is decided that the claimant is not entitled to temporary loss of income.

21. The total compensation is calculated as follows:-

Loss of income	:	Rs. 90,000/-
Extra nourishment	:	Rs. 5,000/-
Transport expenses	:	Rs. 5,000/-
Pain and sufferings	:	Rs. 35,000/-
Total compensation:		 Rs.1,35,000/-



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22. These Appeals are partly allowed. In C.M.A.(MD)No.69 of 2017 the compensation is enhanced from Rs. 1,18,500/- to Rs.3,69,000/-. In C.M.A.(MD)No. 70 of 2017 the compensation is enhanced from Rs.1,33,500/- to Rs.1,35,000/-.

(i) The second respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.3,69,000/- (if not already deposited) in M.C.O.P.No.1 of 2017 and Rs.1,35,000/- (if not already deposited) in M.C.O.P.No.2 of 2017 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.

(ii) On such deposit being made, the claimant in both the appeals is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by them. The claimant in both the appeal is not entitled for interest for the default period, if there is any. No costs.

24.03.2023

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

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To

1.The Motor Accidents Claims Tribunal –
Subordinate Judge, Kulithalai.

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

Pre-delivery Judgment made in
C.M.A.(MD)Nos.69 and 70 of 2019

24.03.2023