



C.M.A. (MD)No.982 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.982 of 2022

Jenovas

...Appellant/ Petitioner

Vs.

1.P.Nagalsamy

2.The National Insurance Company Ltd.,

TP Hub, First Floor,
Aruvi Block,
St.Pauls Complex,
Bharathidasan Road,
Trichy-1.

... Respondents/ Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to modify the order dated 04.06.2020 in M.C.O.P.No. 155 of 2018 on the file of the Motor Accidents Claims Tribunal/III Additional Subordinate Court, Trichirappalli, and enhance the compensation to a sum of Rs.10,00,000/-.

For Appellant : Mr. N.Sudhagar Nagaraj
For Respondents : Mr.J.K.Jeyasekar (for R1)
Mr.V.Sakthivel (for R2)



C.M.A. (MD)No.982 of 2022

JUDGMENT

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This Civil Miscellaneous Appeal has been filed seeking to set aside the judgment and decree made in M.C.O.P.No.155 of 2018 dated 04.06.2020 on the file of the Motor Accidents Claims Tribunal/III Additional Subordinate Court, Trichirappalli.

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 claimant while traveling in a motor cycle bearing Registration No.TN 49 AQ 4722, the first respondent car bearing Registration No.TN 28 AC 9364 came in a rash and negligent manner and dashed against the motor cycle. As a result, the claimant sustained injuries. Therefore, compensation has been claimed.

4. To substantiate the case before the tribunal, on the side of the petitioner/claimant, two witnesses were examined as P.W.1 and P.W.2 and 14



C.M.A. (MD)No.982 of 2022

documents were marked as Ex.P.1 to Ex.P.14. On the side of the respondents, no witnesses were examined and no documents were marked. The Court document was marked as Ex.C.1.

5. The stand of the second respondent before the tribunal is that the accident occurred only due to the negligence driving of the driver of motor cycle and hence, he prayed for dismissal.

6. The tribunal, after appreciating the oral and documentary evidence, has awarded compensation as follows:

Partial permanent disability	Rs.60,000/-
Pain and suffering	Rs.1,00,000/-
Loss of amenities	Rs.50,000/-
Medical expenses	Rs.1,73,791/-
Extra nourishment	Rs.10,000/-
Attendant charges	Rs.10,000/-
Transport charges	Rs.10,000/-
Loss of estate	Rs.5,000/-
Loss of income	Rs.24,000/-
	Rs.4,42,791/-
Total	Rs.4,42,800/-

Not satisfied with the above, the present appeal came to be filed.



C.M.A. (MD)No.982 of 2022

WEB COPY

7. The tribunal has held that the driver of the car was negligent and oral appreciation of evidence, fixed compensation as stated above. The only grievance of the claimant is that he was aged about 21 years at the time of accident and the tribunal ought to have applied multiplier method and fixed higher amount as compensation. He further submitted that the claimant suffered permanent disability, but the tribunal fixed only Rs.60,000/- towards partial permanent disability. According to him, that amount fixed by the tribunal has to be enhanced.

8. The learned counsel appearing for the respondents submitted that the petitioner was admitted in a hospital only for 9 days and he suffered some fractures. The Medical Board has also assessed his partial permanent disability as 20% and no way, it is affected his earning capacity. The tribunal has awarded Rs.1,00,000/-towards pain and suffering. Besides, another Rs.50,000/- was awarded towards amenities charges. The compensation awarded by the tribunal is excessive. Hence, he opposes the appeal and prayed for dismissal.

9. I perused the entire materials. The evidence and document produced by the petitioner reveal that petitioner was admitted in the hospital only for 9 days



C.M.A. (MD)No.982 of 2022

from 10.07.2018 to 18.07.2018. P.W.2 evidence clearly indicates that the claimant was in the hospital and surgery was also conducted with regard to segmental fracture left femur with 4th and 5th toe proximal phalangeal fracture. The medical bills have also filed to substantiate the medical expenses. The tribunal has awarded that amount fully Rs.1,73,791/-. Taking note of the disability certificate issued by the Medical Board that the disability only 20% partial permanent disability, the tribunal has awarded Rs.60,000/- and besides, Rs.1 lakh towards pain and suffering and Rs.50,000/- towards loss and amenities and total compensation as Rs.4,42,800/- was awarded. When the disability itself is only 20% and there was no other evidence has been produced before the tribunal to show that the petitioner's earning capacity was totally affected and he is immobilised, the compensation awarded by the tribunal towards disability does not suffer from any infirmity. Infact, the tribunal has awarded excessive compensation under the heads of pain and suffering and amenities charges. In this view of the matter, I do not find any merit in the appeal. Accordingly, this Civil Miscellaneous Appeal is dismissed. No costs.

10. The second respondent/insurance company is directed to deposit the compensation amount of Rs.4,42,800/- (Rupees Four Lakhs Forty Two Thousand



C.M.A. (MD)No.982 of 2022

and Eight Hundred only) awarded by the tribunal with accrued interest and costs at the first instance to the credit of M.C.O.P.No.155 of 2018, on the file of the Motor Accident Claims Tribunal / III Additional Subordinate Court, Tiruchinrappalli, within a period of one month from the date of receipt of copy of this judgment, less the amount, if any already deposited. On such deposit, the petitioner/claimant is permitted to withdraw the award amount, less the amount, if any already withdrawn, by making necessary application before the Tribunal. No costs.

15.03.2023

Index : Yes/No

Internet : Yes/No

Rmk

To

- 1.The Motor Accidents Claims Tribunal/
III Additional Subordinate Court, Trichirappalli.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD)No.982 of 2022

N.SATHISH KUMAR, J.

Rmk

C.M.A.(MD)No.982 of 2022

15.03.2023