



C.M.A(MD)No.104 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.104 of 2018

and

C.M.P(MD)No.1588 of 2018

M/s.National Insurance Company Limited,
Bharathidasan Salai,
Contonment, Trichirappalli.

... Appellant/2nd Respondent

Vs.

1.T.Aravind

... Respondent/Petitioner

2.C.Pandian

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree of the Claims Tribunal in M.C.O.P.No.3025 of 2013, dated 08.09.2015 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Trichirappalli.

For Appellant : Mr.J.S.Murali

For R1 : Mr.K.P.Narayanakumar

For R2 : No Appearance



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JUDGMENT

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The present appeal has been filed by the insurance company challenging the negligence and quantum in the award passed by the Motor Accident Claims Tribunal, Trichirapalli in M.C.O.P.No.3025 of 2013.

2. According to the claimant, while he was riding a two wheeler on 03.12.2002, at about 08.45 a.m, a van owned by the 1st respondent and insured with the 2nd respondent came from behind and dashed against the rear side of the two wheeler. In the said accident, the claimant is said to have been thrown off and sustained grievous injuries. The claimant was a first year college student and he had prayed for a sum of Rs.20,00,000/- towards compensation.

3. The owner of the van had filed a counter contending that the claimant alone was responsible for the said accident and he had dashed against the rear side of the van. The insurance company has also filed a counter supporting the case of the insured.



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4. The tribunal after considering the oral and documentary evidence, had arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the driver of the van. Thereafter, based upon the disability certificate Exhibit P.9, proceeded to apply multiplier method and has awarded a sum of Rs.3,40,200/- towards future loss of income. The tribunal has further awarded a sum of Rs.85,990/- towards medical bills, a sum of Rs.10,000/- towards transportation charges, a sum of Rs.10,000/- towards extra nourishment, a sum of Rs.5,000/- towards attender charges and a sum of Rs.50,000/- towards pain and suffering. In total, a sum of Rs.5,01,190/- has been awarded. The said award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant/insurance company, only the claimant was driving his two wheeler in a rash and negligent manner and he had dashed against the rear side of the van. Therefore, the entire negligence is on the part of the claimant and the insurance company is not liable to pay any compensation whatsoever. He further contended that except the interested witness of P.W.1, no other person has been examined in order to prove the manner of accident. He had further contended that as per the disability certificate, the claimant is said to have sustained disability of



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54%. The tribunal has arrived at a specific finding that there is no functional disability for the claimant. However, the tribunal has proceeded to apply the multiplier method and has awarded a sum of Rs.3,40,200/- towards future loss of income. Therefore, according to the appellant, the multiplier method ought not to have been applied and the quantum of compensation awarded under the said head has to be set aside. He further contended that there was negligence on the part of the claimant also and therefore, some percentage of negligence should be fixed upon the claimant.

6. Per contra, the learned counsel appearing for the respondent/claimant pointed out that the claimant has sustained grievous injuries in his vertebral coloumn and he was bed ridden and therefore, the multiplier method adopted by the tribunal is correct. He further contended that they have proved the manner of accident by examining the claimant and the grievousness of the injuries have been brought out through P.W.2 and P.W.3 and also through various medical records filed on the side of the claimant. Hence, he prayed for confirming the order passed by the tribunal.



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7. I have carefully considered the submissions made on either side.

8. It is the specific case of the claimant that the van came from behind and dashed against the rear side of the two wheeler. However, the owner of the van and the insurance company have contended that the two wheeler alone dashed against the rear side of the van. Both the parties have not filed the Motor Vehicle Inspector's report in order to prove the damage to the respective vehicles. The owner of the offending vehicle has been examined as R.W.3. During his cross-examination, he has stated that he is not aware how the accident has taken place. While cross examining the claimant, a suggestion has been put to him to the effect that the tyre of the two wheeler had dashed against the front portion of the van. Therefore, it is clear that only the front portion of the van had dashed against the rear side of the vehicle. In view of the deliberations, this Court does not find any reason to interfere in the findings of the tribunal with regard to the negligence.

9. As rightly pointed out by the learned counsel appearing for the appellant, the discharge summary as well as the findings of the tribunal will clearly indicate that the claimant has not sustained any functional



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disability. In fact, the discharge summary marked as Exhibit P.3 clearly indicates that the health of the claimant has been restored to normal.

Therefore, the tribunal was not right in adopting the multiplier method. This Court is inclined to award Rs.3,000/- per percentage. Therefore, under the head of partial permanent disability, a sum of Rs.1,62,000/- could be awarded treating the disability at 54%. The award of the tribunal under the other heads stand confirmed.

10. In view of the above said deliberations, the award of the tribunal is modified from Rs.5,01,190/ to Rs.3,22,990/-. In other respects, the award of the tribunal stands confirmed. The Civil Miscellaneous Appeal is allowed to the extent as stated above. The excess amount that is deposited by the insurance company shall be refunded along with accrued interest. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

13.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.104 of 2018

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