



C.M.A.(MD).No.1167 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1167 of 2016

John Victor

... Appellant/Claimant

-VS-

1. Arul Muruges

2. The Branch Manager,
Bajaj Alliance General Insurance Company Ltd.,
D.No.24, Palmore Road,
Opposite to Rajesh Theatre,
Vadasery, Nagercoil.

... Respondents/
Respondents

(R-1 was set ex-parte before the Tribunal
Hence, notice may be given up against R-1)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decretal order, made in M.C.O.P.No.202 of 2011, dated 17.09.2014, on the file of the Motor Accidents Claims Tribunal/III Additional District and Sessions Judge, Thanjavur at Pattukkottai.

For Appellant : Mr.S.Deenadhayalan



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For Respondents : Mr.N.Shyllappa Kalyan - For R2
: R1 - Ex-parte

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the claimant challenging the award passed by the Motor Accidents Claims Tribunal/III Additional District and Sessions Judge, Thanjavur at Pattukkottai made in M.C.O.P.No.202 of 2011 seeking enhancement of the compensation.

2. When the injured claimant was riding a two wheeler on 08.09.2010, a Tata Ace Mini Dore vehicle coming from the opposite direction dashed against the two wheeler, in which, he had sustained grievous injuries. The said vehicle was owned by the first respondent and insured with the second respondent. The claimant claimed a sum of Rs.20,00,000/- (Rupees Twenty Lakhs only) towards compensation.

3. The Insurance Company had filed a counter contending that the accident has taken place only due to the rash and negligent driving on the part of the injured claimant and they are not responsible for the payment of any compensation.



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4. The Tribunal, after considering the oral and documentary evidence, 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 Tata Ace vehicle. The disability certificate has been marked as Ex.P-14, which discloses that the injured claimant has sustained 60% partial permanent disability. The Tribunal, however, had reduced the said disability to 40% and awarded a sum of Rs.1,20,000/- (Rupees One Lakh Twenty Thousand only). The Tribunal has further awarded a sum of Rs.13,500/- (Rupees Thirteen Thousand and Five Hundred only) towards medical expenses, a sum of Rs.5,000/- (Rupees Five Thousand only) towards pain and sufferings, a sum of Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment, a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) towards transport expenses and totally, a sum of Rs.1,45,000/- (Rupees One Lakh and Forty Five Thousand only) was awarded. Challenging the said award, the present appeal has been filed by the claimant.

5. Pending appeal, the claimant was referred to the Regional Medical Board of Thanjavur Medical College Hospital, Thanjavur, for assessment of



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his disability. A certificate has been issued on 08.06.2023 by the Regional Medical Board to the effect that the claimant has sustained 67% disability. Therefore, this Court is inclined to accept the said certificate and proceeds to award a sum of Rs.3,000/- (Rupees Three Thousand only) per percentage of the disability. Totally a sum of Rs.2,01,000/- (Rupees Two Lakhs and One Thousand only) is awarded towards permanent partial disability.

6. Considering the fact that he was in hospital for 55 days, the amount awarded under the head of pain and sufferings, is enhanced to a sum of Rs.25,000/- (Rupees Twenty Five Thousand only), a sum of Rs.5,000/- (Rupees Five Thousand only) is awarded towards extra nourishment, a sum of Rs.10,000/- (Rupees Ten Thousand only) is awarded towards transport expenses. Since he was in hospital of 55 days, a sum of Rs.10,000/- (Rupees Ten Thousand only) is awarded towards attendar charges. Considering the fact that he had sustained fracture in the hip bone, towards loss of amenities, a further sum of Rs.15,000/- (Rupees Fifteen Thousand only) is hereby awarded. A sum of Rs.13,500/- (Rupees Thirteen Thousand and Five Hundred only) awarded towards Medical Expenses, is confirmed.



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7. In view of the above said deliberations, the award of the Tribunal is modified as follows:

Partial Permanent Disability	: Rs.2,01,000/-
Pain and sufferings	: Rs. 25,000/-
Extra Nourishment	: Rs. 5,000/-
Attendar Charges	: Rs. 10,000/-
Transport Charges	: Rs. 10,000/-
Loss of Amenities	: Rs. 15,000/-
Medical Expenses	: <u>Rs. 13,500/-</u>
Total	: Rs.2,79,500/-

8. Therefore, the award amount of the Tribunal is enhanced from Rs.1,45,000/- (Rupees One Lakh Forty Five Thousand only) to Rs.2,79,500/- (Rupees Two Lakhs Seventy Nine Thousand and Five Hundred only). The award amount will carry interest at the rate of 7.5% per annum from the date of filing of the claim petition. The Insurance Company is directed to deposit the award amount within a period of twelve weeks from the date of receipt of a copy of this order.



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9. Accordingly, this Civil Miscellaneous Appeal is partly allowed to the extent as stated above. There shall be no order as to costs.

21.06.2023

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

1. The Motor Accidents Claims Tribunal/
III Additional District and Sessions Judge,
Thanjavur at Pattukkottai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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