



C.M.A.(MD)No.396 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 21.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.396 of 2023

M.Ponmani

...Appellant/Petitioner

Vs.

1.M.Bharathiraja

2.Iffco Tokio General Insurance Company Limited.,
Represented by its Branch Manager,
5/132, BS Sundaram Street,
Avinashi, Coimbatore District.

3.N.Jeevanandham

...Respondents/Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the quantum of compensation award to the tune of Rs.2,00,000/- that apart from the amount of compensation already awarded in M.C.O.P.No.22 of 2016 on the file of the Motor Accidents Claims Tribunal /Principal Subordinate Court, Karur, dated 05.04.2022.

For Appellant : Mr.N.Ramamoorthy

For R2 : Mr.V.Sakthivel



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JUDGMENT

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The present Civil Miscellaneous Appeal is filed seeking enhancement of compensation awarded by the Motor Accidents Claims Tribunal/Principal Subordinate Court, Karur dated 05.04.2022.

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)On 11.08.2015 at about 06.45 p.m., the appellant was travelling in the bus belonging to the first respondent bearing registration No.TN-39-D-9266. The driver of the bus drove the bus in a rash and negligent manner and hence, the bus capsized. As a result, the petitioner sustained multiple grievous injuries. Hence, the injured claimant filed the claim petition seeking compensation.

(ii)The Insurance Company before the tribunal took a stand that the driver of the bus did not have any valid driving license at the relevant point of time and there was no valid permit for the bus at the relevant point of time.



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4. Before the Tribunal, on the side of the claimant P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P22 were marked. On the side of the respondents R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked.

5.The tribunal on appreciation of entire evidence available on record found that only the driver of the offending vehicle drove the bus in a rash and negligent manner and caused the accident and awarded the compensation as follows:

S.No.	Description	Amount
1.	Pain and sufferings	Rs.40,000/-
2.	Extra nourishment	Rs. 5,000/-
3.	Attendant charges	Rs. 5,000/-
4.	Loss of belongings	Rs. 2,000/-
5.	Transportation charges	Rs. 2,000/-
6.	Medical Expenses	
7.	Loss of income at the time of treatment	Rs. 6,000/-
	Total	Rs.60,000/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the claimant.



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6.The learned counsel for the appellant would submit that the Tribunal had infact rejected the compensation for permanent disability, only on the ground that the Medical Board has not assessed the disability of the claimant. He further contented that P.W.3 is the Medical Officer from the reputed Hospital and the petitioner was treated in that hospital. The documents have also been filed to substantiate the same. But the Tribunal had not considered the same.

7.The learned counsel for the respondent fairly submitted that the Tribunal ought to have awarded compensation for the disabilities sustained by the injured claimants.

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

(1) Whether the Tribunal is right in rejecting the compensation for the disability on the ground that the petitioner was not subjected to Medical Board?



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9.Heard the learned counsel appearing on either side and perused the materials placed on record.

10.It is not the case of the Insurance Company that no accident had taken place. Admittedly, the petitioner had sustained injuries in the accident caused by the offending vehicle. The medical records filed on the side of the appellant clearly indicate that she was treated in Ganga Hospital, Coimbatore, which is also one of the reputed hospitals. P.W.3, medical officer was also examined to show that the petitioner had also undergone surgery and suffered 30% disability. When the Medical record from the reputed hospital is filed and the Medical officer is also testified to prove the same, the Tribunal ought not to have disputed the claim on the ground that the petitioner was not subjected to Medical Board. P.W.3, was also an expert. He assessed the nature of the injuries and on seeing the petitioner, he had given his evidence. Therefore, his opinion cannot be simply brushed aside.

11.Further, perusal of Ex.P20, disability certificate, makes it very clear that the petitioner had infact suffered laceration and surgery was also conducted. The disability is apparent and permanent. The wound certificate also substantiated the same.



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12. In such view of the matter, this Court is inclined to award the compensation towards the disability sustained by the claimant. Accordingly, this Court holds that the petitioner had sustained 30% of permanent disability and awards a sum of Rs.5,000/- (Rupees Five Thousand only) to each percentage of disability. This Court also awards a further sum of Rs.5,000/-, each (Rupees Five Thousand only) towards extra nourishment and attendant charges and a sum of Rs.10,000/- (Rupees Ten Thousand only) towards the head of 'Medical Expenses'. In the result, the claimant is entitled to the following compensation:

S.No.	Description	Amount
1.	Pain and sufferings	Rs. 40,000/-
2.	Extra nourishment	Rs. 10,000/-
3.	Attendant charges	Rs. 10,000/-
4.	Loss of belongings	Rs. 2,000/-
5.	Transportation charges	Rs. 2,000/-
6.	Medical Expenses	Rs. 10,000/-
7.	Loss of income at the time of treatment	Rs. 6,000/-
8.	Permanent Disability	Rs.1,50,000/-
	Total	Rs.2,30,000/-



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13. Accordingly, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is enhanced as stated above.

14. The Insurance Company is directed to deposit the compensation amount as modified by this Court i.e., Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand only) with interest at the rate of 7.5% from the date of petition till the date of realization at the first instance to the credit of M.C.O.P.No.22 of 2016, on the file of the Motor Accident Claims Tribunal/Principal Subordinate Court, Karur within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited, thereafter, the Insurance Company is entitled to recover the same from the first and third respondents. On such deposit, the claimant is permitted to withdraw the said amount as apportioned by the Tribunal, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs. Additional Court fee, if any, shall be paid.

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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/
Principal Subordinate Court, Karur.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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