



C.M.A.(MD)No.279 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 12.01.2023

Delivered On : 31.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.279 of 2020

R.Selvam

.. Appellant /claimant

Vs.

1.S.Kumaresan

2.D.Manoharan

2.The Regional Manager,

Oriental Insurance Company Limited,

Motor Third Party Claims Hub,

K.J.R.Complex, No.16, North Veli Veethi,

Madurai – 625 001.

.. Respondents /

Respondents

(The claim petition dismissed against R2.

Hence, R2 notice may be dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 03.10.2016, made in M.C.O.P.No. 139 of 2015, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Madurai.



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C.M.A.(MD)No.279 of 2020

For Appellant

: Mr.K.Kumaravel

For Respondents

: Mr.Jawahar Ravindran for R3

: No appearance for R1

: R2- Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award, dated 03.10.2016, made in M.C.O.P.No. 139 of 2015, on the file of the Motor Accident Claims Tribunal - Chief Judicial Magistrate, Madurai. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No. 139 of 2015, is as follows:-

On 10.10.2014, at about 1.30 am, when the petitioner was travelling as an additional Driver in a lorry bearing Registration No.TN-60-T-4873 from Sivakasi to Bangalore, another lorry bearing Registration No.TN-33-6399, that was proceeding in front of the lorry, was suddenly stopped without any signal, thereby, the petitioner's vehicle hit against the back side of the lorry that was proceeding. The petitioner sustained injuries. He was admitted in Dindigul Government Hospital, then he was admitted in Theni Government Hospital and



C.M.A.(MD)No.279 of 2020

then he took treatment in a private hospital. The petitioner was aged about 31 years, he was working as a lorry driver and was earning Rs.12,000/- per month. The lorry bearing Registration No.TN-33-6399 belonged to the first respondent. Another lorry bearing Registration No.TN-60-T-4873 belonged to the second respondent. Both the lorries were insured with the third respondent- Insurance Company. The petitioner claimed a sum of Rs.15,00,000/- as compensation.

3. A Brief substance of the counter filed by the third respondent, in M.C.O.P.No. 139 of 2015, is as follows:

The petitioner has to prove that both the lorries are insured with the third respondent. The policy conditions are violated. The first respondent's vehicle was not having valid permit at the time of accident. The petition to be dismissed.

4. Six witnesses were examined and 28 documents were marked, on the side of the claimant. No witness was examined and no document was marked, on the side of the respondents. 2 Documents were marked as Ex.X1 and Ex.X2. After considering both sides, the Tribunal awarded a sum of Rs.10,22,040/- as compensation.



C.M.A.(MD)No.279 of 2020

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5. Against the order, the claimant / appellant has filed this appeal on the following grounds:-

P.W.4 - Doctor has assessed the disability at 61%, but, the Tribunal fixed the disability at 40%. the Tribunal has awarded Rs.20,000/- towards future medical expenses, whereas, the claimant had incurred a sum of Rs. 62,000/- as subsequent medical expenses and prayed the award amount to be enhanced to Rs.15,00,000/-.

6. On the side of the appellant, it is stated that the claimant was earning Rs.12,000/- per month and that P.W.6 - owner of the lorry was examined as witness and that he has admitted that the claimant was getting a salary of Rs.12,000/- per month, but, the Tribunal fixed the monthly income as Rs.9,800/- per month and the same to be enhanced.

7. On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in **2014-1-TNMAC-459(SC) (Syed Sadiq, etc. V. Divisional Manager)**, is cited.



C.M.A.(MD)No.279 of 2020

8. On the side of the appellant, another judgment of the Hon'ble Supreme Court reported in **2017-1-TNMAC-1 (SC) (Golla Rajanna, etc, V. The Divisional Manager)** and a judgment of this Court, reported in **2017-2-TNMAC-108 (S.Govindaraj V. The Managing Director)** are cited.

9. On the side of the third respondent – Insurance Company, it is stated that P.W.6 is an interested witness and the oral evidence of P.W.6 cannot be taken in to consideration to fix the income.

10. P.W.5, an official from the Labour Department was examined and Ex.P20 was marked. Only based on the evidence of P.W.5 and on the basis of Ex.P20, the Tribunal has fixed the notional monthly income as Rs.9,800/-. The Tribunal failed to consider that the deceased was a Driver. Driving Licence of the claimant was marked as Ex.P16. The accident has happened in the year 2014. Considering the fact that the deceased was a Driver having H.M.V. driving licence, the income of the claimant is fixed as Rs.12,000/- per month.

11. On the side of the appellant, it is stated that the Doctor-P.W.4 has assessed the disability at 61%, but, the Tribunal has taken only 40% disability and the same is to be enhanced.



C.M.A.(MD)No.279 of 2020

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12. On the side of the third respondent – Insurance Company, it is stated that based on the evidence of P.W.1, P.W.2, P.W.4, P.W.5 and based on the Doctor's report, the Tribunal has fixed the disability at 40%, which is reasonable.

13. Discharge summaries were marked as Ex.P2, P5, P9 and P21. Case sheet was marked as Ex.P4. Photograph showing the injuries were marked as Ex.P3, P15 and P24. X-Rays were marked as Ex.P18 and Ex.P19. Wound certificate was marked as Ex.P17. Case sheet from Theni Government Hospital was marked as Ex.X1. Case sheet from Theni NTR Hospital, was marked as Ex.X2.

14. P.W.4 has deposed that the claimant sustained injuries and he undergone three surgeries. Considering the fact that the claimant has undergone three surgeries and considering the period of treatment, it is decided that the disability is to be fixed as 50%. The age of the claimant as mentioned in the claim petition is 31 years. The Tribunal fixed the age at 33 years, for the age slap 30-35 years, multiplier '16', is applicable. For 50% disability, the



C.M.A.(MD)No.279 of 2020

claimant is entitled to Rs.11,52,000/- (50% of Rs.12,000/- = Rs.6,000/- X 12 X

16) as compensation towards loss of income. Ex.P6 to P8, 10 to 14, 22 and 23 are documents regarding the medical expenses. The Tribunal has awarded Rs.1,69,000/- towards medical expenses, which is reasonable.

15. The Tribunal has awarded Rs.29,400/- towards future medical expenses. In the appeal, the claimant has filed a petition to receive additional documents-Ex.P29 and Ex.P30, wherein, a sum of Rs.62,000/- was mentioned as the subsequent medical expenditure spent by the appellant and that petition was allowed by this Court. Hence, it is decided that the appellant is entitled to Rs.62,000/- towards subsequent medical expenses.

16. The Tribunal has awarded Rs.30,000/- towards pain and sufferings, Rs.5,000/- towards attender charges, Rs.5,000/- towards extra nourishment, Rs.10,000/- transport expenses, Rs.1,000/- damages to cloth articles, which are all reasonable.

17. The Tribunal has awarded Rs.29,400/- towards loss of income for the period of treatment. Since multiplier method is adopted for calculating the loss of income, there is no necessity to award any separate amount for temporary loss of income.



C.M.A.(MD)No.279 of 2020

18. The total compensation is calculated as follows:-

50% disability (Loss of income)	:	Rs.11,52,000/-
Medical expenses	:	Rs. 1,69,000/-
Future medical expenses	:	Rs. 62,000/-
Pain and sufferings	:	Rs. 30,000/-
Extra nourishment	:	Rs. 5,000/-
Attender charges	:	Rs. 5,000/-
Transport expenses	:	Rs. 10,000/-.
Damages to cloths	:	Rs. 1,000/-
Total compensation	:	Rs.14,34,000/-

19. This Appeal is partly allowed. The compensation is enhanced from Rs.10,22,040/- to Rs.14,34,000/-.

(i) The claimant is entitled to Rs.14,34,000/- as compensation.

(ii) The third respondent herein - Insurance Company, is directed to deposit the entire compensation of Rs.14,34,000/- (less the amount if any already deposited) 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.



C.M.A.(MD)No.279 of 2020

(iii) On such deposit being made by the Insurance Company, the appellant / claimant is permitted to withdraw the entire award amount with interest and costs, on filing proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

(iv) The appellant/claimant is **directed to pay the court fee** for the enhanced compensation, and the Registry is directed to draft the decree only after the payment of Court fee.

31.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

To

1.The Motor Accident Claims Tribunal -

Chief Judicial Magistrate,

Madurai.

2.The Section Officer,

V.R. Section,

Madurai Bench of Madras High Court,

Madurai.



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C.M.A.(MD)No.279 of 2020

R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.279 of 2020

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