



C.M.A.No.1953 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

C.M.A.No.1953 of 2021

Sabarish

... Appellant

Vs.

1. Kaliyaperumal
2. The Branch Manager,
The New India Assurance Company Ltd.,
No.99/C-3, 1st Floor, North Street,
Near New Bus Stand,
Perambalur – 621 212.

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 14.11.2019 made in MACTOP.No.155 of 2017 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.

For Appellant : Ms.L.Manisha

For Respondents : M/s.J.Chandran for R2
No Appearance for R1

JUDGMENT

Assailing the award passed in MACTOP.No.155 of 2017 vide judgment dated 14.11.2019 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur, the present civil



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miscellaneous appeal has been filed by the appellant / claimant.

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2. Mr.J.Chandran, accepts notice on behalf of the second respondent. Though the notice was served on the first respondent, no one appeared on his behalf. In view of the consent expressed by learned counsel appearing on behalf of the appellant and the second respondent, this Civil Miscellaneous Appeal is taken up for final disposal.

3. The brief facts necessary to dispose of the above appeals are as follows :-

(i) On 27.02.2017 at about 4.00 p.m when the claimant was driving his two wheeler bearing Regn.No.TN 46 Q 9446, at that time a Tipper lorry bearing Regn.No.TN 46 U 2491 driven by its driver which came in the opposite direction in a rash an negligent manner dashed the vehicle driven by the appellant / claimant. As a result of which, the claimant sustained grievous injuries all over the body. Thereby the claimant has filed a claim petition, claiming a compensation of Rs.20,00,000/- under various heads.



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4. Before the Tribunal, the petitioner examined himself as P.W.1 and Doctor as P.W.2 and marked sixteen documents viz., Ex.P1 to Ex.P.16. On the side of the respondents, neither any documents nor any witnesses were examined. After adjudication, the Tribunal awarded a sum of Rs.1,64,549/- as compensation in favour of the claimant payable by the second respondent after fixing 10%:90% contributory negligence on the part of the appellant and the driver of the tipper lorry respectively.

5. The learned counsel appearing for the appellant submitted that, admittedly the appellant had examined P.W.2 Doctor. He further submits that though the said Doctor has not assessed the disability of the claimant, however, he deposed the nature of injuries sustained by the appellant before the Tribunal. He further submits that without considering the nature of injuries sustained by the claimant, the Tribunal has fixed only a sum of Rs.75,000/- under the head “disability” which is *per se* unsustainable. The other heads awarded by the Tribunal are also on the lower side, which requires interference of this Court. Accordingly, he prayed for passing appropriate orders.



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6. The learned counsel appearing for the second respondent submits that admittedly, P.W.2 Doctor has not assessed the disability sustained by the claimant. In the absence of any certificate to prove the injury sustained by the claimant, the Tribunal has awarded a sum of Rs.75,000/- under the head disability which is *per se* unsustainable and the other heads awarded by the Tribunal are also highly excessive. Accordingly, the award passed by the Tribunal, does not require any interference.

7. Heard the learned counsel appearing for the appellant and the learned counsel for the second respondent and perused the materials available on record.

8. The factum and manner of the accident is not disputed by the parties. Aggrieved over the award passed by the Tribunal, the appellant / claimant has filed the above appeal in respect of quantum of compensation before this Court

9. Admittedly, there is no dispute with regard to the negligence.



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However, the issue involved in the present appeal is with regard to quantum of compensation awarded by the Tribunal. Moreso, the medical certificate has not been marked before the Tribunal. In the absence of any medical certificate assessing the percentage of disability suffered by the claimant by a valid Doctor / Medical Board, the Tribunal has awarded a sum of Rs.75,000/- considering the age and nature of the injury suffered by the claimant on the basis of the deposition of P.W.2, Doctor under the head disability which is just and reasonable and the other heads awarded by the Tribunal also does not require any interference. Upon considering the oral and documentary evidence, the Tribunal has rightly awarded a sum of Rs.1,64,549/- after deducting 10% contributory negligence on the part of the appellant for not having valid driving license is perfectly in order, which does not warrant any interference of this Court.

10. With the above observation, this civil miscellaneous appeal is dismissed and the award passed by the Tribunal in M.C.O.P.No.155 of 2017 dated 14.11.2019 is hereby confirmed and the second respondent / insurance company is directed to deposit the award amount to the credit of M.C.O.P.No.155 of 2017 along with interest at the rate of 7.5% per



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annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of four (4) weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the said amount to the bank account of the appellant through RTGS within a period of two (2) weeks thereafter. There shall be no order as to costs in the present appeal.

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Index : Yes / No
Speaking order / Non-speaking order
Netrual Citation Case : Yes / No
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- 1.Motor Accident Claims Tribunal, Chief Judicial Magistrate, Perambalur.
- 2.The Section Officer, V.R.Section, High Court, Madras.



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M.DHANDAPANI, J.

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