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CMA NO.1090 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 26 / 06 / 2024

JUDGMENT PRONOUNCED ON : 10 / 07 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CMA NO.1090 OF 2022
AND CMP NO.7958 OF 2022

The Branch Manager
United India Insurance Co. Ltd.,
Branch Office
Bombay Stores Buildings
2nd Floor, 23-C, East Care Street,
Tenkasi – 627 811.

... Appellant /
2nd Respondent

Versus

1.Nazeerkhan

... 1st Respondent /
Petitioner

2.M.Arockia Irudayaraj

... 2nd Respondent /
1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 28.04.2015 made in M.C.O.P.No.321 of 2010 on the file of the Motor Accident Claims Tribunal (Additional Special Judge) at Krishnagiri praying to set aside the same.

For Appellant : Mr.I.Malar



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For Respondent-1 : Mr.S.P.Yuaraj

For Respondent-2 : Served – No appearance

J U D G M E N T

Dissatisfied with Award dated April 28, 2015 made in M.C.O.P.No.321 of 2010 on the file of 'Motor Accident Claims Tribunal (Additional Special Judge), Krishnagiri' [henceforth 'Tribunal'], the second respondent / appellant has filed this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties will henceforth be referred to as per their array before the Tribunal.

Petitioner's case

3.The case of the petitioner is that on September 25, 2007 at about 19.30 hours, the petitioner, was riding Suzuki Motorcycle bearing Registration No.KA29-E-5077 along with his friend-Bakash as pillion rider, from Hosur to Pedda Sigarlapalli. While they were nearing Perandapalli Bus



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Stop, the driver of the Cargo Lorry bearing Registration No.TN72-Z-9272 belonging to the first respondent and insured with the second respondent, who was driving the Lorry in a rash and negligent manner without blowing the horn and without observing the rules of the road. He suddenly applied brakes and stopped the Lorry in front of the petitioner's Motorcycle without any signal or indication. The petitioner could not anticipate that the Lorry would be suddenly stopped in the middle of the road. The petitioner's motorcycle collided with the back of the Lorry and the petitioner sustained fracture and multiple injuries. Immediately, the petitioner was taken to Government Hospital, Hosur and then he was referred to NIMHANS Hospital, Bangalore for further treatment. The NIMHANS Hospital, Bangalore referred the petitioner to Victoria Hospital, Bangalore as the injuries were severe in nature. The petitioner was admitted in Victoria Hospital, Bangalore where he underwent a surgery on September 26, 2007. A criminal case was registered against the driver of the first respondent Lorry in Crime No.337 of 2007 under Sections 279 and 337 of the Indian Penal Code, 1860. According to the petitioner, he was engaged in the Mango and Tamarind business and thereby, earned a sum of Rs.9,000/- per month.

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Hence, seeking compensation of a sum of Rs.10,00,000/-, the petitioner had filed the Claim Petition.

First Respondent's Case

4.Despite service of notice, the first respondent – owner of the lorry did not choose to contest the case. Hence, he was set *ex-parte* by the Tribunal.

Second Respondent's case

5.The second respondent – Insurance Company filed counter counter wherein it is averred that the lorry was parked at the extreme end of the road earmarked for parking at Perandapalli with its parking lights on. While the Driver went to have a cup of tea, the petitioner rode his motorcycle in a rash and negligent manner and crashing into the back of the stationed lorry and thereby, caused the accident. The accident happened due to the rash and negligent riding of the petitioner and hence, the petitioner is not entitled



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to any compensation. An First Information Report (FIR) was registered against the Driver of the first respondent's Lorry four days after the date of the accident and the Police, after investigation, the Police concluded that the accident as alleged by the petitioner was false and accordingly, closed the FIR as a 'mistake of fact'. The petitioner had no Driving License, no Registration Certificate (R.C.), no Permit for his motorcycle and not an insurance policy. The injuries sustained by the petitioner are simple in nature. Accordingly, the second respondent–Insurance Company prayed to dismiss the original petition.

Exhibits

6.At trial, on the side of the petitioner, the petitioner was examined as P.W.1 and Ex-P.1 to Ex-P.7 were marked. One Dr.K.A.Kandasamy was examined as P.W.2 and Ex-P.8 was marked through him. Dr.M.Devendiran was examined as P.W.3 and Ex-P.9 and Ex-P.10 were marked through him. Neither any witness was examined nor any document was marked on the side of the second respondent.

Findings of the Tribunal



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7.The Tribunal after perusing Ex-P.1 – FIR and the evidence of P.W.1, came to the conclusion that the accident happened due to the negligent driving of the driver of the first respondent's lorry; that at the time of accident, the first respondent's lorry was insured with the second respondent; that the second respondent – Insurance Company is liable to pay compensation to the petitioner. Regarding quantum of compensation, the Tribunal fixed notional income at Rs.6,000/- per month. Considering the nature and severity of the injuries, the Tribunal has applied multiplier method and accordingly, awarded compensation of Rs.7,35,829/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization excluding the default period.

8.Feeing aggrieved with the Award of the Tribunal, the second respondent – Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments

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9.The learned counsel for the appellant – second respondent submits that Ex-P.1 - FIR was registered after four days delay and the same was referred as 'mistake of fact'; that the petitioner rode his motorcycle in a rash and negligent manner and crashed into the back of the first respondent's lorry, which was parked on the extreme left side of the National Highway. According to him, the accident occurred due to the rash and negligent riding of the petitioner. Hence, the appellant – second respondent is not liable to pay any compensation to the petitioner. The Tribunal has not appreciated the fact that the criminal case has been closed as 'mistake of fact'. Further, the injuries sustained by the petitioner are simple in nature and hence, the Tribunal adopting multiplier method is erroneous in law. Accordingly, he prayed to allow the Civil Miscellaneous Appeal and dismiss the original petition.

9.1.In support of his submission, he relied on the following judgments:

(i) Judgment of this Court in United India

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Insurance Co. Ltd., Vs. Veluchamy and Another [2005
(1) CTC 38]

(ii) Judgment of the Hon'ble Supreme Court in
Nishan Singh and Others Vs. Oriental Insurance
Company Ltd. [CDJ 2018 SC 469]

10.The learned counsel for the first respondent – petitioner contends that Ex-P.1–FIR and the evidence of P.W.1 would prove the manner of accident. The respondents did not examine any person to disprove the evidence of P.W.1. Before the accident, the petitioner was engaged in Mango and Tamarind business and thereby, earned more than Rs.9,000/- per month. However, the Tribunal has taken monthly income as Rs.6,000/- which is on the lower side. Hence, there is no warrant to interfere with the Award of the Tribunal and accordingly, he prayed to dismiss the appeal.

10.1.In support of his contention, he relied on the following judgments:

(i) Judgment of this Court in United India



Insurance Co. Ltd., Vs. Asmabi [2012 (1) TN MAC
840 (DB)]

(ii) Judgment of the Hon'ble Supreme Court in
Sandeep Khanuja Vs. Atul Dande and Another [Civil
Appeal No.1329 of 2017 dated 02.02.2017]

Discussion and Decision

11.This Court has heard the submissions made on either side and
perused the materials available on record.

12.The evidence of P.W.1 coupled with Ex-P.1 - FIR, medical
records including hospital reports would clearly show that the accident
occurred only due to the rash and negligent driving of the driver of the first
respondent. Further, the second respondent has not examined the Driver of
the first respondent's lorry to rebut the evidence adduced by the petitioner.
Hence, the petitioner has proved that the accident occurred due to the rash
and negligent driving of the first respondent Driver. Immediately after the
accident, the petitioner was rushed to Government Hospital, Hosur, where he



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was administered first-aid and then, he was referred to NIMHANS Hospital, Bangalore for further treatment. Later, he was referred to Victoria Hospital, Bangalore. The petitioner was taken to Victoria Hospital on September 26, 2017 at 11.00 p.m. On September 27, 2017, he underwent surgery on his abdomen and was treated in the ICU from September 28, 2007 to October 9, 2007. Thereafter from October 9, 2007 to October 12, 2007 he was treated as inpatient and on October 12, 2007 he was discharged from the hospital. Further, the petitioner diagnosed parasymphysis fractures of the mandible. Hence, he was admitted to Oxford Dental Medical College Hospital on October 29, 2007 and discharged on November 1, 2007 for the above fracture. The medical records, indicate that the petitioner was admitted to the Hospital due to a road traffic accident (RTA).

13.To prove the disability, Dr.K.A.Kandasamy was examined as P.W.2. The Doctor, in his evidence as P.W.2, has deposed that the petitioner suffered 40% permanent disability. In support, he marked the USG Abdomen and Pelvis Report as Ex-P.8.

14.Dr.M.Devendran, an Orthopaedic Surgeon, Krishnagiri was



examined as P.W.3. In his evidence, he deposed that the petitioner suffered 45% permanent disability and the petitioner is not able to perform his work as he did before the accident.

15. According to the petitioner, he was engaged in Mango and Tamarind business. Due to the accident, the petitioner would have definitely lost his income. At the time of accident, the petitioner was 42 years old. Hence, the Tribunal was right in applying multiplier method. However, the Tribunal failed to add future prospects. Though the petitioner has not produced any document to show his monthly income, in the year 2007, the petitioner could have easily earned a sum of Rs.6,000/- per month. Hence, the petitioner is entitled to 25% future prospects as per para 59.4 of the judgment of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Others [(2017) 16 SCC 680]*. If we calculate the loss of income (disability), it would come around Rs.5,04,000/- [Rs.7,500 X 12 X 14 X 40/100].

16. The accident occurred near Hosur. The petitioner was taken



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from Government Hospital, Hosur to NIMHANS Hospital and thereafter to Victoria Hospital and then to Oxford Dental Medical College Hospital in Bangalore. Petitioner spent a sum of Rs.92,629/- under Ex-P.7. Hence, the petitioner is entitled to the said amount. The petitioner would have spent more than Rs.25,000/- on transport charges. Considering the nature of the injuries sustained and the surgery the petitioner underwent, this Court is of the view that a sum of Rs.50,000/- can be awarded under the head 'pain and suffering'; Rs.20,000/- towards 'extra nourishment'; and Rs.15,000/- as attender charges and a sum of Rs.50,000/- as loss of amenities and discomfort which are just and reasonable. Since the Tribunal adopted the multiplier method, the petitioner is not entitled to the sum of Rs.30,000/- awarded under the head 'partial loss of earning' and future medical expenses. Accordingly, if we calculate the compensation, it would be more than the amount awarded by the Tribunal. To sum up, this Court concludes that the petitioners are entitled to compensation in the following manner:



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S.No.	Heads	Amount awarded by the Tribunal Rs.	Re-quantified by this Court Rs.	Status
1	Loss of earning capacity	4,03,200.00	5,04,000.00	Enhanced
2	Medical expenses (Vide Ex-P.7)	92,629.00	92,629.00	Confirmed
3	Pain and Suffering	50,000.00	50,000.00	Confirmed
4	Future medical expenses	50,000.00	Nil	Set aside
5	Extra Nourishment	20,000.00	15,000.00	Reduced
6	Attender charges	15,000.00	15,000.00	Confirmed
7	Transport expenses	25,000.00	25,000.00	Confirmed
8	Loss of Amenities & Discomfort	50,000.00	50,000.00	Confirmed
9	Partial loss of earning	30,000.00	Nil	Set aside
	Total	7,35,829.00	7,51,629.00	Enhanced

Hence, this Court does not find any reason to interfere with the Award passed by the Tribunal.

Conclusion

17.The Civil Miscellaneous Appeal does not have any merits and accordingly deserves to be dismissed and stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK



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To
The Motor Accident Claims Tribunal
(Additional Special Judge)
Krishnagiri.



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R.SAKTHIVEL, J.

TK

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