



C.M.A.(MD)No.1032 of 2011

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Dated: 12.03.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.1032 of 2011

and

M.P(MD) No.2 of 2011

The National Insurance Company Ltd.,
Rep. by its Divisional Manager,
37-C, S.N.High road
Tirunelveli

...2nd respondent/ Appellant

Vs.

1. Khaja sheriff
2. Mohamed Hussain
3. Ramesh

..Petitioner/1st Respondent

..Repondents 1&3/ Respondents 2& 3

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 31.08.2006 made in MCOP No.653 of 2005 on the file of the Motor Accident Claims Tribunal/Principal Sub Judge, Tirunelveli

For Appellant : Mr. S.Srinivasa Raghavan

For R1 to R3 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the common order passed in MCOP No.653 of 2005 on the file of the



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Motor Accident Claims Tribunal/Principal Sub Judge, Tirunelveli

Wherein the first respondent herein has filed petition before the Tribunal seeking compensation for the injuries sustained by him in the road accident.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the case before the Tribunal are as follows:

On 12.07.2005 at about 03.00 pm., the petitioner drove the motor cycle vehicle bearing Reg. No. TN 72 H 4309 along with petitioner in MCOP No.653 of 2005 from Tirunelveli to Palayamkottai, at that time the car belonging to the first respondent bearing Reg.No. TN 72 B 4142 came in a rash and negligent manner and dashed against the motor cyclist. Due to which both the petitioner and another person were thrown out from the motor cycle and they sustained grievous injuries. The petitioner sustained permanent disability, thereby he claimed compensation for a sum of Rs.5,00,000/-



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4. The brief facts of the counter filed by the second respondent are as follows:

The petition is not maintainable either in law or facts. The respondents denied the age, income, occupation of the petitioner. The accident did not take place due to the negligence on the part of the driver of the first respondent. Per contra the rider of the motor cycle is responsible for the accident. The petitioner has not sustained permanent disability and the amount claimed by the petitioner is too high, thereby the petition is liable to be dismissed.

5. The brief facts of the counter filed by the third respondent are as follows:

The third respondent drove the vehicle in the slow speed by observing traffic rules . The driver of the first respondent only drove the vehicle in a rash and negligent manner and caused the accident. The accident occurred due to the negligence on the part of the first respondent. The respondents 1 and 2 are alone liable to pay the compensation, hence the petition is liable to be dismissed as against this respondent.

6. Before the Tribunal, on the side of the petitioner he has examined P.W.1 to P.W.3 and marked exhibits Ex.P.1 to P.20 and on



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the side of the respondent no witnesses were examined and no documents were marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs. 1,86,000/- with interest @6% per annum from the date of petition till realization of the amount. Aggrieved over the order passed by the Tribunal, the second respondent/insurance company has filed the present appeal by disputing the quantum.

8. The learned counsel appearing for the appellant would contend that the Tribunal has awarded a sum of Rs.1,86,000/- towards compensation for the injuries sustained and the disability is partial permanent disability. The Tribunal has awarded excess amount on various heads, therefore the order passed by the Tribunal is liable to be set aside by allowing this appeal.

9. Despite notice served to the respondents none appeared and names were printed in the cause list, none appeared on behalf of the respondent.



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10. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal the point for determination in this appeals is :

i)whether the appeal is liable to be allowed or not?

11. In this case there is no dispute in respect of negligence on the part of the driver of the first respondent and the present appeal has been filed as against the quantum of the award passed by the Tribunal. The Tribunal has awarded a sum of Rs.1,86,000/- on various heads. The Tribunal has awarded a sum of Rs.52,000/- towards partial permanent disability. As per medical evidence the petitioner sustained disability of 52% but the Tribunal has only awarded Rs.1000/- per one percent of disability and also awarded a sum of Rs.25,000/- towards medical bills and also Rs.10,000/- towards loss of income and also the Tribunal awarded a sum of Rs.7000/- towards pain and sufferings and Rs.2000/- towards transport expenses and Rs.3000/- towards extra nourishment and again Rs.22,000/- towards injuries.

12. The learned counsel appearing for the appellant brought to the knowledge of this Court that Rs.52,000/- was awarded towards permanent disability and again Rs.22,000/- for the injuries. Though



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the Tribunal has awarded a sum of Rs.52,000/- for 52% disability.

Considering Rs.1000/- for 1 % disability which is too meagre, therefore the award passed for further amount of Rs.22,000/- towards injury can be adjusted under the head of loss of income. In other heads also the Tribunal has awarded reasonable amount, thereby this Court is of the opinion that the award passed by the Tribunal is reasonable one and warrants no interference.

13.In view of the same, this appeal has no merits and deserves to be dismissed.

14. In the result this Civil Miscellaneous Appeal stands dismissed confirming the order passed by the Tribunal. The appellant/second respondent is directed to deposit the entire amount with interest within a period of two months from the date of this order after deducting the amount, if any, already deposited. No costs. Consequently connected miscellaneous petition is closed.

12.03.2024

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

1. The Motor Accident Claims Tribunal
Principal Sub Judge, Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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