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C.M.A. (MD) No.138 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.01.2024

CORAM:

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

C.M.A.(MD)No.138 of 2012

and

C.M.P(MD) No.1 of 2012

ICICI Lambard General Insurance Co.,Ltd.,
Rep. by its Branch Manager,
1st Floor, Sakthi Road,
Erode

... Appellant/
2nd Respondent

Vs.

1. K.Senthil Kumar

... Respondent/
Petitioner

2.V.P.Shanmuga Sundaram

... Respondent/
Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 22.11.2010 made in M.C.O.P.No.53 of 2010 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate, Karur) and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.D.Nallathambi

For R2 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.53 of 2010 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate, Karur), wherein the first respondent herein filed a petition for granting compensation as against the second respondent and the petitioner herein.

2. The Tribunal has awarded a sum of Rs.12,17,500/- towards compensation @7.5% interest . As against the award passed by the Tribunal, the present appeal has been preferred by the second respondent/Insurance company.

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

4. The brief facts of the petition averments are:

The petitioner was working as contract labour and was earning a sum of Rs.8000/- per month. On 15.02.2008 the petitioner along with his owner and co-worker while returning near Karur- Erode main road in a two wheeler bearing Reg. No. TN 47 H 7468 at about 10.45 pm., near Veluchampuram Bazar at that time one Tata Indica car bearing Reg.No. TN 33 AF 0301 came in



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the opposite direction driven by the driver in a rash and negligent manner and dashed against the two-wheeler of the petitioner. Due to that accident the petitioner sustained injuries all over the body and got fracture. The petitioner incurred expenses to the tune of Rs.70,000/- towards medical expenses and he suffered permanent disability, thereby claimed a sum of Rs.15 lakhs towards compensation. Hence she filed this petition for awarding compensation.

5. The brief facts and counter filed by the second respondent:

The driver of the first respondent has no valid driving licence and badge at the time of alleged accident. The age of the petitioner and income of the petitioner are all denied. The accident occurred only due to the negligence on the part of the petitioner and the petitioner is not entitled to get compensation of Rs.15,00,000/- as claimed in the petition and hence the petition is liable to be dismissed.

6. In order to prove the case of the petitioner, the petitioner has examined P.W.1 and P.W.2 and marked exhibits Exs.P.1 to Ex.P.19 and on the side of the respondent R.W.1 and R.W.2 were examined and Exs.R.1 to Ex.R.7 were marked.



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7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.12,17,500/- towards compensation with interest of 7.5 % per annum with a cost of Rs.30,895/-.

8. As against the award passed by the Tribunal the second respondent/Insurance company has preferred this present appeal on various grounds.

9. The learned counsel appearing for appellant/second respondent would contend that the Tribunal has not followed the procedure and erroneously applied multiplier theory and there is no functional disability. As per the medical records the petitioner sustained injuries and fracture injuries and thereby the petitioner is entitled to Rs.3000/- per 1 % disability and not entitled to the amount of Rs.12,17,500/- There is no amputation on leg to the petitioner. The partial permanent disability of 70% was not calculated according to law. Therefore the order passed by the Tribunal are liable to be set aside by allowing this appeal.

10. The learned counsel appearing for the first respondent/petitioner would contend that the petitioner sustained only fracture injuries on his leg and below the knee was completely damaged and also sustained multiple



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fracture injuries all over the body and also severe injury in the head. The petitioner is unable to do his regular day to day work and thereby his disability is functional disability. The Tribunal after taking into consideration all the facts and circumstances correctly awarded multiplier and awarded reasonable compensation. Therefore, the appeal is liable to be dismissed.

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

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

12. In this case there is no dispute with regard to the negligence on the part of the driver of the first respondent and the petition has been filed only on the ground of quantum of amount. According to the appellant there is no functional disability. In spite of that the Tribunal has adopted multiplier method and awarded a sum of Rs. 12,17,500/- towards compensation. According to the respondent/claimant he sustained fracture injuries and his left leg below the knee was crushed and fixed artificial leg. In order to prove the disability, the petitioner has examined P.W.2/Doctor who treated him and he categorically deposed about the injuries sustained by the petitioner and also issued Disability Certificate/Ex.P.9.



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13. On perusal of Ex.P.9 it is revealed that the petitioner sustained injuries and his disability is 70 %. The Tribunal in the order categorically discussed about the disability and fairly came to conclusion that the petitioner sustained injuries on his left leg and without any support he is unable to walk and also fixed artificial leg in the knee, due to that surgery the petitioner is unable to do routine work and thereby adopted multiplied method and by following Rs.3000/- as notional income awarded compensation. The above said Rs.3000/- of notional income is reasonable. Tribunal has awarded the compensation as follows:

1.	Loss of Income	Rs.6,48,000/-
2.	Transport Expenses	Rs.5,000/-
3.	Extra Nourishment	Rs.2,500/-
4.	Future Medical Expenses	Rs.1,00,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Medical Expenses	Rs.3,12,000/-
7.	Attendar	Rs.1,00,000/-
	Total	Rs.12,17,500/-

14. The learned counsel appearing for the appellant relied on the judgment of the Hon'ble Apex Court in the case of **Rajkumar .vs. Ajay Kumar and another** reported in **(2011) 1Supreme Court Cases 343**. On



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careful perusal of the above said judgement it will not be applicable to the present facts of the case. In this case the petitioner sustained functional disability. Therefore the said case law is no way applicable to the present facts of the case.

15. Considering the nature of injuries sustained by the petitioner and also considering the disability the award passed by the Tribunal is a reasonable one and there is no infirmity or perverse in the order passed by the Tribunal. Therefore this Court find no warrant to interfere with the order passed by the Tribunal

16. In view of the above discussions this Court finds no merits in the appeal and it deserves to be dismissed. Accordingly this Civil Miscellaneous Appeal is dismissed and the impugned award dated 22.11.2010 passed in M.C.O.P.No.53 of 2010 on the file of the Motor Accident Claims Tribunal(Chief Judicial Magistrate, Karur), is confirmed. As per the order of this Court 50% of the amount was already deposited by the second respondent/Insurance Company. The appellant/insurance company is directed to deposit the entire award amount after deducting the amount already deposited with interest and costs, within period of two months from the date of receipt of this judgment. On such deposit being made, the first respondent/claimant is permitted to



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withdraw the amount together with interest and costs by filing application before the Tribunal. Consequently connected miscellaneous petition is closed.

03.01.2024

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

1. The Motor Accident Claims Tribunal
Chief Judicial Magistrate, Karur .
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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