



C.M.A(MD)No.1191 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 05.03.2024

CORAM:

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

C.M.A(MD)No.1191 of 2013

Mano

... Appellant/Petitioner

Vs.

1.Mari

2.Vinayaga Ramadurai

3.United India Insurance Company Limited,
No.1, Post Office Road,
Palayamkottai,
Tirunelveli.

4.Balasubramania Durai

5.Iffco Tokiyo General Insurance Company Limited,
No.335/1A, V.V.Complex,
North Bypass Road,
Vannarpettai, Tirunelveli.

... Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree, dated 29.12.2011 passed in M.C.O.P.No.627 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, F.T.C.No.1, Tirunelveli.



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For Appellant : Mr.T.Selvakumaran
R-1 & R-2 : Batta due
For R-3 : Mr.C.Karthik
R-4 : Dispensed with
For R-5 : Mr.K.R.Shivashankari

JUDGMENT

This Civil Miscellaneous Appeal has been preferred as against the order passed in M.C.O.P.No.627 of 2011 on the file of the Motor Accident Claims Tribunal, Additional District Judge, F.T.C.No.1, Tirunelveli, wherein, the appellant herein has filed a petition for claiming compensation due to the road accident and the Tribunal has only awarded a sum of Rs.35,000/-. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been preferred.

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



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

On 29.03.2011 at about 09.30 P.M., when the petitioner along with one Mano are proceeding in Yamaha Motorcycle bearing Registration No.TN 76 X 5292, at the time, in front of Thachanallur Police Station, the vehicle bearing Registration No.TN 72 K 5686 auto came in a rash and negligent manner and dashed against the petitioner's motorcycle. Due to which, he sustained injuries and the accident took place due to the negligence of the first respondent driver. Thereby, he claimed compensation.

4. The counter filed by the first respondent are as follows:

The petition is not maintainable either in law or on facts. The accident was not occurred due to the negligence on the part of the driver of the first respondent. The vehicle was already sold to one Sudalai. On the date of accident, the first respondent is not the owner. The first respondent denied the age, income and occupation of the petitioner. However, the first respondent auto was insured with the third respondent.



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Therefore, the petition is liable to be dismissed as against the first respondent.

5. The counter averments filed by the second respondent are as follows:

The petition is not maintainable either in law or on facts and the same is liable to be dismissed. The accident took place due to the negligence on the part of the rider of motorcycle and not by the negligence of the auto driver. The second respondent vehicle was insured with the third respondent. Therefore, the petition is liable to be dismissed as against the second respondent.

6. The counter averments filed by the third respondent are as follows:

The petition is not maintainable either in law or on facts and the same is liable to be dismissed. The third respondent denied the age, income and occupation of the petitioner. The accident took place due to the negligence on the part of the rider of the two-wheeler and not on the negligence of auto driver. The driver of auto had no valid license on the



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date of accident and thereby, the third respondent is noway liable to pay compensation to the petitioner.

7. Before the Tribunal, joint trial was ordered along with M.C.O.P.No.628 of 2011 and on the side of the petitioners, they examined P.W.1 to P.W.3 and marked Exhibits P.1 to P.9. On the side of the respondents, D.W.1 to D.W.3 were examined and marked Exhibits R.1 and R.2.

8. After hearing both the sides, the Tribunal has awarded a sum of Rs.35,000/- towards compensation. Aggrieved by the order of the Tribunal, the petitioner has filed this Civil Miscellaneous Appeal for enhancing the award amount.

9. The learned Counsel appearing for the appellant / petitioner would contend that the petitioner sustained grievous injuries and his permanent disability is 20%. In order to prove the same, he had examined the Doctor as P.W.3, who has given disability certificate to the petitioner. The P.W.3 in his evidence stated that the petitioner sustained disability of



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20%. The Tribunal has only awarded a meagre amount of Rs.35,000/-.

Therefore, the award passed by the Tribunal is liable to be enhanced.

10. The learned Counsel appearing for the second respondent would contend that the Tribunal has taken a sum of Rs.25,000/- towards partial permanent disability and in other heads, awarded a reasonable amount and thereby, the present Civil Miscellaneous 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 has to be allowed or not?

12. In this case, there is no dispute that the accident took place due to the negligence on the part of the driver of the first respondent and the Tribunal also fixed the liability as against the driver of the first respondent and no appeal was filed by the Insurance Company as against the findings in respect of the negligence. Therefore, the petitioner has proved the negligence on the part of the driver of first respondent. The present appeal



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is filed only as against the quantum of the amount. The Tribunal has awarded a sum of Rs.25,000/- towards partial permanent disability, Rs. 1,000/- towards transport expenses and extra nourishment, Rs.5,000/- towards pain and sufferings. The amount awarded by the Tribunal is only a meagre amount.

13. This Court considering the date of accident and the nature of injuries, inclined to award a sum of Rs.2,000/- for 1% of disability. There is no dispute that P.W.1 was sustained grievous injuries and his disability is 20%. Therefore, he is entitled to a sum of Rs.40,000/- (i.e.,) Rs.2,000/- for 1%. The Tribunal has awarded a sum of Rs.1,000/- towards transport expenses and extra nourishment. This Court is inclined to award a sum of Rs.5,000/- towards transport expenses and Rs.5,000/- towards extra nourishment. The Tribunal has awarded as sum of Rs.5,000/- towards pain and sufferings. This Court is inclined to award a sum of Rs.20,000/- towards pain and sufferings. The Tribunal has awarded a sum of Rs.3,000/- towards medical expenses. This Court is also inclined to award the same amount. In total, the petitioner is entitled to a sum of Rs.73,000/- rounded off to Rs.75,000/-. Therefore, the petitioner is entitled to a sum of



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Rs.75,000/- towards compensation. In other aspects, the order of the Tribunal is confirmed.

14. In the result, this Civil Miscellaneous Appeal stands partly allowed and the petitioner is entitled to a sum of Rs.75,000/- with interest at the rate of 7.5% per annum for the enhanced amount from the date of petition till the date of realization of the amount. The third respondent is directed to deposit the above said amount with interest within a period of two months from the date of this judgment. In other aspects, the order of the Tribunal is confirmed. After deposit of the amount, the petitioner is at liberty to withdraw the said amount by filing appropriate application. The petitioner is not entitled to interest for the default period, if any. There shall be no order as to costs.

05.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR



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To

- 1.The Motor Accident Claims Tribunal,
Additional District Judge,
F.T.C.No.1,
Tirunelveli.
- 2.The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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