



C.M.A.(MD).No.446 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 01.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.446 of 2012

P.Sakthivel

.....Appellant/Petitioner

-vs-

1.B.Sekar

2. M/s.IFFCO – TOKIO

General Insurance Company Limited,
10-C, T.B.Road,
Mehaboobpalayam,
Madurai.

.... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 1917 of 2007, dated 11.08.2011 on the file of the Motor Accident Claims Tribunal-cum-IV Additional Sub Court, Madurai for enhancement of compensation.

For Appellant : Mr.V.Muthukamatchi

For Respondents : Mr.S.Srinivasa Raghavan – for R2



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This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.1917 of 2007 on the file of the Motor Accidents Claims Tribunal-cum-IV Additional Sub Court, Madurai, wherein, the appellant/petitioner had filed petition for enhancement of compensation.

2. The Tribunal has awarded a sum of Rs.59,494/- (Rupees Fifty Nine Thousand Four Hundred and Ninety Four only only) towards compensation. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/petitioner for enhancement of compensation.

3. The learned counsel appearing for the second respondent fairly conceded that there is no dispute on the liability and only dispute is the quantum. Therefore, they have no objection and requested this Court to pass orders, on merits.

4. According to the petitioner, on 22.02.2007 at about 22.30 hours, when the petitioner was riding motor cycle bearing Registration No.TN-30-



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T-8511 along with one Anbalagan as pillion rider from Melur to Alagar Kovil road, the Auto bearing Registration No.TN-59-T-7978 came in a opposite direction in a rash and negligent manner and dashed against the petitioner's Motor cycle, due to which, the petitioner and the pillion rider were thrown away from the motor cycle and the pillion rider died on the spot itself. The petitioner sustained multiple grievous injuries and fracture on the metacarpus bone. The accident took place due to the negligence on the part of the driver of the first respondent vehicle. The first respondent vehicle was insured with the second respondent. The petitioner claimed a sum of Rs.2,00,000/- (Rupees Two Lakhs only) towards compensation.

5. The second respondent denied the age, income and occupation of the petitioner and the driver of the first respondent is not liable for the accident and rider of the Motor Cycle without following Rules, dashed against the Auto and thereby, the second respondent is not liable to pay any compensation to the appellant/petitioner. Hence, the petition is liable to be dismissed.



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6. Before the Tribunal, in order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.3 and marked Exs.P.1 to P.10. On the side of the respondents, no witnesses were examined and no documents were marked.

7. After evaluating the oral and documentary evidence adduced on the side of the petitioner, the Tribunal has awarded a sum of Rs.59,594/- (Rupees Fifty Nine Thousand Five Hundred and Ninety Four only) towards compensation along with interest at the rate of 7.5% per annum from the date of the petition till the date of realization. Aggrieved over the order of the Tribunal, the appellant /petitioner has filed present appeal for enhancement of compensation.

8. The learned counsel appearing for the appellant would contend that the petitioner sustained grievous injuries and disability of 15%. In order to prove the disability, the Doctor who assessed the disability of the petitioner has been examined as P.W.3 and he deposed about the percentage of the disability. But the Trial Court has awarded only a meager amount of a sum of Rs.59,494/- (Rupees Fifty Nine Thousand Four Hundred and Ninety Four



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only) on various heads. The award amount awarded by the Tribunal is meager. Hence, the award passed by the Tribunal is liable to be enhanced.

9. The learned counsel appearing for the second respondent would contend that already the Trial Court has awarded the reasonable compensation by considering the nature of injuries and the appellant/petitioner's disability is not permanent disability and his disability is only 15% . Thereby, the petition is liable to be dismissed.

10. This Court after hearing learned counsel appearing on either side and perusing the documents including the order of the Tribunal frames the following point for determination in this appeal:

i. Whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute with regard to the negligence on the part of the driver of the first respondent. The Tribunal after considering the evidences adduced by the parties fixed the negligence on the part of the driver of the 1st respondent, but no appeal was filed by the respondents and the



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present appeal is only as against the quantum of the amount. The accident took place due to the negligence on the first respondent's driver. There is no dispute that the first respondent vehicle was insured with the second respondent on the date of accident. Therefore, the second respondent/ Insurance Company is liable to pay the compensation. Notice was not served to the first respondent in this appeal. The second respondent has not disputed liability and only objected to enhance the award amount. Therefore, this Court has proceeded further in the absence of the first respondent without notice.

12. According to the appellant/petitioner, he sustained injuries due to the accident and he permanently disabled and the percentage of the disability is 15%. To prove the disability P.W.3 was examined and he deposed about the disability of the petitioner and fixed the disability as 15%, on the side of the respondents no contra evidence adduced on medical side. Therefore, the evidence of P.W.3 is reliable and acceptable. The Trial Court has awarded a sum of Rs.1,800/- (Rupees One Thousand and Eight Hundred only) for 1% disability and awarded a sum of Rs.27,000/- (Rupees Twenty Seven Thousand only) towards disability. Further, the Tribunal has awarded a sum of



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Rs.9,000/- (Rupees Nine Thousand only) for loss of income, a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) towards Transport Charges, a sum of Rs.5,000/- (Rupees Five Thousand only) for extra nourishment, a sum of Rs.11,994/- (Rupees Eleven Thousand Nine Hundred and Ninety Four only) for Medical Bills including nursing assistance, and a sum of Rs.5,000/- (Rupees Five Thousand only) for pain and sufferings and total award amount of Rs.59,494/-(Rupees Fifty Nine Thousand Four Hundred and Ninety Four only) towards compensation. The award amount fixed by the Tribunal under the head of disability is on lesser side.

13. There is no dispute with regard to the percentage of the disability and the Doctor who assessed the disability of the petitioner has been examined as P.W.3. The Disability Certificate given by him was marked as Ex.P.9, as per Ex.P.9 the petitioner has sustained 15% disability.

(i) There is no dispute with regard to the percentage of the disability and there is no contra evidence. Therefore, this Court also accepted the disability as 15%. Considering the nature of the injuries, this Court is inclined to award a sum of Rs.3,000/- (Rupees Three Thousand only) per one



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percentage of the disability and thereby, award would come to a sum of Rs. 45,000/- (Rupees Forty Five Thousand only).

(ii) The Tribunal has awarded a sum of Rs.9,000/- towards loss of income and the same is reasonable.

(iii) The Tribunal has awarded a sum of Rs.1,500/- towards transport charges and it is a meager amount. Hence, this Court is inclined to award a sum of Rs.5,000/- towards transport charges.

(iv) The Tribunal has awarded a sum of Rs.5,000/- towards extra nourishment and this Court is inclined to award a sum of Rs.10,000/- towards extra nourishment.

(v) Further, the Tribunal has awarded a sum of Rs.11,994/- towards medical expenses. This Court is also inclined to award the same amount.

(vi) The Tribunal has awarded a sum of Rs.5,000/- towards pain and sufferings. This Court is inclined to award a sum of Rs.10,000/- towards pain sufferings.



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14. In view of the above said discussion, the appellant/petitioner is entitled to the amount as follows:

Permanent Disability	-	Rs. 45,000/-
Loss of Income	-	Rs. 9,000/-
Transport Expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 10,000/-
Pain and sufferings	-	Rs. 10,000/-
Medical Expenses	-	Rs. 11,994/-

Total	-	Rs. 90,994/-

In total, the petitioner is entitled for Rs.90,994/- (Rupees Ninety Thousand Nine Hundred and Ninety Four only) rounded off to **Rs.90,000/- (Rupees Ninety Thousand only)** towards compensation.

15. Accordingly, this Civil Miscellaneous Appeal stands partly allowed with costs. The order passed by the Motor Accident Claims Tribunal-cum-IV Additional Sub Court, Madurai, in M.C.O.PNo.1917 of 2007, dated 11.08.2011, is modified to the effect that the petitioner is entitled to a sum of



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Rs.90,000/- (Rupees Ninety Thousand only) towards compensation along with interest at the rate of 7.5% p.a from the date of filing petition till the date of realization of payment. The second respondent is directed to deposit the entire award amount within a period of two months from the date of this order. If any deposit is made by the second respondent, the petitioner is at liberty to withdraw the same.

01.02.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To
1. The Motor Accident Claims Tribunal Cum
IV Additional Sub Court, Madurai.

2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

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P.DHANABAL,J.

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