



C.M.A.(MD).No.336 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 08.12.2023

PRONOUNCED ON : 23.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.336 of 2011

The Divisional Manager,
New India Assurance Company Limited,
248, Kamarajar Salai, Madurai.

... Appellant

Vs.

1.N.Subramani
2.J.Kesavan

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and award passed in M.A.C.O.P.No.342 of 2005 dated 15.09.2010, on the file of the Motor Accidents Claims Tribunal (IV Additional Sub Judge), Madurai.

For Appellant	: Mr.G.Prabhu Rajadurai
For R1	: Mr.J.Jeya Kumar
For R2	: Dispensed With

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award on certain counts passed by the learned Motor Accident Claims



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Tribunal (IV Additional Sub Judge), at Madurai, in M.A.C.O.P.No.342 of 2005 dated 15.09.2010 by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.A.C.O.P.No.342 of 2005.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a case of injury. The petitioner was working as an agriculture coolie in a bricks chamber. On 06.06.2004, at about 08.00 p.m., when the petitioner was riding a bicycle on the extreme left side of the road at Usilampatti to Periyur Main Road, Near Pannaipatti Burial Ground Opposite, a Tata Sumo bearing registration No.TN-60-K-007 dashed the petitioner from front. As the result of which, the petitioner sustained grievous injuries and he was taken to the Government Hospital, at Usilampatti from where he was taken to Preethi hospital, Madurai for further treatment. He was admitted at Preethi hospital, Madurai as in patient from 06.06.2004 to 30.06.2004 and surgery was conducted on



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07.06.2004. On account of accident, the petitioner had sustained grievous injuries and fractures. One of the grievous injury necessitated insertion of an artificial rod in the right leg below his knee to bottom. That apart his right leg thigh bone was fractured, right leg heels bone was fractured, injury sustained on the right side of the head and left upper arm, left leg calf muscle was reshaped, right hand writ was injured, right side of the face was defaced and multiple injuries were sustained all over the body. A criminal case was registered as against the driver of the first respondent by Usilampatti Town Police in Crime No.549 of 2004. Seeking to compensate the said injuries restricting the claim to a tune of Rs.5,00,000/-, the petitioner has filed the claim petition.

4.The first respondent is the owner of the Tata sumo and the second respondent is the insurance company with which the vehicle was insured. The second respondent insurance company filed a counter refuting each and every allegations set forth in the claim petition.

5.The learned Tribunal had framed four issues. Three witnesses P.W.1 to P.W.3 were examined on the side of the petitioners and six



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documents Ex.P1 to Ex.P6 were marked and on the side of the respondents, no witness was examined and five documents Ex.R1 to Ex.R5 were marked. The 1st respondent was called absent and set exparte. On the basis of the oral and documentary evidence and arguments put forth by respective parties, the learned Tribunal has proceeded to conclude that the accident had happened only due to rash and negligent driving of the first respondent's driver. One Dr.Mohandas Gandhi, who treated the petitioner was examined as P.W.3 and he had given a partial permanent disability certificate at 61%, which was marked as Ex.P11. Ex.P3 wound certificate would reveal that the petitioner was 45 years old at the time of accident. The learned Tribunal proceeded to fix a monthly notional income of Rs.3,000/- per month and fixed partial permanent disability at 55% and awarded Rs.1,200/- per percentage and proceeded to pass the following award:-

Head	Compensation awarded
(I)Partial Loss of earning :	Rs.15,000/- (3,000x5)
(ii)Transportation expenses:	Rs.1,000/-
(iii)Extra nourishment:	Rs.7,000/-
(iv)Medical Expenses:	Rs.1,28,238/-
(v)Pain and suffering:	Rs.9,000/-



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(vi) Partial Disability:	Permanent	Rs.66,000/-(55x1,200)
Total compensation awarded:		Rs.2,26,238/- with interest @ 7.5 % from the date of the claim until the realization and costs.

6.Challenging the same, the appellant/second respondent insurance company has filed this Civil Miscellaneous Appeal.

7.In the instant case, a critical perusal of the materials available on record would prove that though the petitioner had suffered grievous injuries and was hospitalized for 24 days and had undergone difficult medical treatment, I do not find any infirmity in the award passed by the learned Tribunal.

8.The second respondent/insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting



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any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

9. Accordingly, the Civil Miscellaneous Appeal stands dismissed.

There shall be no order as to costs.

23.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. The Motor Accidents Claims Tribunal,
(IV Additional Sub Judge), Madurai.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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