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C.M.A. (MD) No. 832 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.832 of 2012

and

C.M.P(MD) No.2 of 2012

Oriental Insurance Company Ltd.,
City Branch Office- II,
5th Floor Lakshmi Complex,
73B/1, Salai Road,
Thillai Nagar, Trichy- 18

... Appellant/
2nd Respondent

Vs.

1. Anthuvan Lourthuraj

... 1st Respondent/
Petitioner

2.Jeyatharan

... 2nd Respondent/
1st Respondent

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award made in M.C.O.P.No. 171 of 2009 dated 28.02.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.S.Sarvagan Prabhu
for Mr.T.Senthil Kumar

For R2 :Exparte



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No. 171 of 2009 dated 28.02.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai, 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.5,65,000/- towards compensation with @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 aged about 31 years at the time of accident. On 17.01.2009 at about 6.00 pm., when the petitioner was riding two wheeler bearing Reg.No. TN 59 Y 1166 along with his aunt as pillion rider in Trichy to Pudukottai main road near S.P. Office Subramaniyapuram, Trichy at that time a



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vehicle bearing Reg. No. T N 47 1556 belongs to the first respondent came in a rash and negligent manner and dashed against the two wheeler of the petitioner and due to the accident the petitioner sustained multiple injuries all over the body. Immediately, he was taken to Kavery Medical Centre, Trichy and incurred a sum of Rs.3,00,000/- towards medical expenses. The accident occurred only due to the rash and negligent driving of the car driver. The petitioner also lost his eye sight and also sustained injuries on his lower jaw and he could not chew the food and his face was disfigured. Hence the present application has been filed seeking compensation of Rs.10,00,000/-.

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

The respondents denied the averments made in the petition. The first respondent is the owner of the vehicle and the same was insured with the second respondent. He also denied the rash and negligent driving on the part of the driver of the first respondent. The age, income, manner of accident, injuries sustained by the petitioner are all denied by the second respondent. Claiming compensation of Rs.10,00,000/- is too high and hence the petition is liable to be dismissed.



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6. In order to prove the case of the petitioner , the petitioner has examined P.W.1 to P.W.4 and marked exhibits Exs.P.1 to Ex.P.15 and on the side of the respondent none was examined and no documents were marked.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.5,65,000/- towards compensation with interest of 7.5 % per annum .

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 failed to appreciate the evidence of the petitioner and wrongly adopted multiplier method. There is no functional disability and the petitioner has not proved the same in accordance with law. Further the petitioner himself has admitted in the petition that he dashed behind the first respondent vehicle. It shows the negligence on the part of the petitioner and thereby the petitioner has also contributed the negligence. The Tribunal taken disability as 50 % without applying formula, hence the order passed by the Tribunal are liable to be set aside by allowing this appeal.



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10. The learned counsel appearing for the first respondent/petitioner would contend that due to the rash and negligence on the part of the first respondent vehicle the petitioner sustained injuries all over the body and lost his eye sight and he sustained injuries on his face and it was disfigured. The doctor who treated the victim have deposed about the disability and injuries sustained by him. Thereby the petitioner has proved the disability through sufficient medical evidence. The Tribunal also after taking into consideration all these aspects, fairly adopted multiplier method and awarded the fair 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 contravention with regard to the accident. The accident is admitted by both the parties. The appellant/second respondent denied the negligence on the part of the driver of the first respondent and the contention of the appellant is that even as per the petition the petitioner dashed behind the first respondent vehicle thereby it shows the



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negligence on the part of the petitioner. Therefore the petitioner has also contributed the negligence. In order to prove the negligence on the part of the petitioner, there is no sufficient evidence adduced by the second respondent. Per contra on the side of the petitioner they examined P.W.1 and also examined eye witnesses to the occurrence and they categorically deposed about the negligence on the part of the driver of the first respondent. In the absence of contra evidence on the side of the second respondent it is not proper to hold that the petitioner also has contributed the negligence.

13. With regard to the quantum, according to the appellant/second respondent the doctor who treated the victim was not examined properly. In order to prove the disability the petitioner has examined P.W.2 to P.W.4 and they have categorically deposed the injuries sustained by the petitioner and also the disability and he gave disability certificate for the bone fracture. As per the neurology doctor the disability is 35 %. As per the Ophthalmologist 30% disability for loss of eye sight. In order to rebut the above said evidence there is no rebuttal evidence adduced by the appellant/second respondent. However the Presiding Officer of the Tribunal has taken 50% of the disability of the whole body based on the certificate given by the P.W.2 to P.W.4. Though there is no reference about as to how the Tribunal has taken disability as 50%, taking into consideration of the injuries sustained by the petitioner the Tribunal has



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taken 50% disability. Further apart from this, the Tribunal has taken a sum of Rs.3000/- as notional income of the petitioner and also adopted multiplier method since the petitioner has lost his eye sight and also his face was disfigured. After adopting the multiplier method the Tribunal awarded a sum of Rs.2,88,000/- towards loss of income and the same is reasonable. The Tribunal has awarded the compensation as follows:

1.	Loss of consortium and Income	Rs.2,88,000/-
2.	Transport Expenses and Nourishment	Rs.35,000/-
3.	Actual loss of income	Rs.12,000/-
4.	Future Medical Expenses	Rs.25,000/-
5.	Pain and sufferings	Rs.50,000/-
6.	Medical Expenses	Rs.1,55,000/-
	Total	Rs.5,65,000/-

14. Considering the nature of injuries sustained by the petitioner and also considering the disability the award passed by the Tribunal is a reasonable one. The Tribunal failed to award consortium separately and included in the loss of income. However the claimant has not filed any appeal of cross objection. Therefore 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



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15. 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 28.02.2011 passed in M.C.O.P.No. 171 of 2009 dated 28.02.2011 on the file of the Motor Accident Claims Tribunal, Sub Court, Kulithalai, is confirmed. As per the order of this Court the Insurance Company has deposited the entire award amount and the petitioner was also permitted to withdraw Rs.2,00,000/- Now the petitioner is permitted to withdraw the remaining 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, Sub Court, Kulithalai .
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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