



C.M.A.(MD).No.1691 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.12.2023

PRONOUNCED ON : 12.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.1691 of 2013

The General Manager,
United India Insurance Co. Ltd.,
7-A, Salai Road, Thillai Nagar,
Thiruchirappalli – 1.

... Appellant

Vs.

1.Nazar
2.N.Rajanikanth
(2nd respondent exparte before the Tribunal)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree made in M.C.O.P.No.675 of 2004 dated 31.01.2011 on the file of the Motor Accidents Claims Tribunal, I Additional Subordinate Judge, Thiruchirappalli.

For Appellant	: Mr.B.Rajesh Saravanan
For R1	: Mr.N.Sudhagar Nagaraj
For R2	: Exparte



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JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award passed by the Motor Accident Claims Tribunal (I Additional Subordinate Judge), at Tiruchirappalli in M.C.O.P.No.675 of 2004 dated 31.10.2011 by the appellant/second respondent/insurance company, challenging the quantum of the award.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.675 of 2004.

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

This is a case of injury wherein the petitioner/claimant had filed the petition limiting his claim to Rs.2,00,000/- for the injuries sustained by him in the accident, which happened on 25.10.2003. On 25.10.2003, while the petitioner was returning after work along the Trichy-Lawsons Road in his cycle in the left extreme near Vestry School Roundana at about 09.30 a.m., a auto belonging to the first respondent bearing



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registration No.TN-09-J-0437 came from the south to north and dashed against the petitioner's cycle and as the result of which, he sustained grievous injuries. Immediately he was admitted in Arun hospital, Thillai Nager, Tiruchirappalli on the same day and after undergoing surgery for his fracture in right leg, he was discharged after a month on 25.11.2003. Hence, seeking compensation, the petitioner has filed claim petition.

4.The first respondent is the owner of the auto. The second respondent is the insurance company with which the first respondent's auto was insured. Refuting the allegations made in the claim petition, a counter was filed by the second respondent.

5.The learned Tribunal has framed two issues. Two witnesses P.W. 1 and P.W.2 were examined on the side of the petitioner and Ex.P1 to Ex.P8 were marked. Neither witnesses nor any documents were marked on the side of the respondents. The first respondent was called absent and set exparte. On the basis of oral and documentary evidence and considering the arguments putforth by respective parties, the Tribunal came to a conclusion that the accident occurred only due to the negligent



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driving of the driver of the auto, which is owned by the first respondent.

On the basis of Ex.P2 wound certificate, the learned Tribunal has fixed the age of the petitioner as 36 years. The petitioner in his evidence deposed that he was working as Tinkering worker at the time of accident and was earning Rs.5,000/- per month. The learned Tribunal has notionally fixed the monthly income of the petitioner at Rs.3,000/-. On the basis of Ex.P2 wound certificate, Ex.P5 medical bills, Ex.P7 disability certificate and the evidence of P.W.2 Dr.Rajendran, it was concluded that the petitioner's right hip and leg movement has become partially dysfunctional and as the result of which, the petitioner could not sit, stand or work for a long time, for which the learned Tribunal has fixed 32% for partial permanent disability and as per Motor Vehicles Act, the multiplier '15' was adopted. For loss of income, the learned Tribunal has calculated as Rs.1,72,800/- ($\text{Rs.3,000} \times 12 \times 32\% \times 15$). Further the learned Tribunal has passed the award under the following heads:-

Head	Compensation awarded
(I) Loss of income:	Rs.1,72,800/-
(ii) Pain and suffering:	Rs.10,000/-
(iii) Medical Expenses as per Ex.P5:	Rs.21,000/-
(iv) Extra Nourishment:	Rs.4,000/-



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(v)Transportation Expenses:	Rs.3,000/-
Total compensation awarded:	Rs.2,10,800/- 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.The learned counsel for the appellant/second respondent vehemently submitted that the petitioner had suffered functional disability and in the absence of proof of functional disability, the application of multiplier ought not to have adopted by the learned Tribunal. The arguments of functional disability cannot be sustained, since the petitioner is continuing to do his avocation as Tinkering worker. Though the disability certificate as issued by the Doctor, P.W.2 deposed evidence regarding partial permanent disability at 36%, the learned Tribunal had fixed it to 32% and applied multiplier and awarded compensation towards loss of income at Rs.1,72,000/-, to which the petitioner is not entitled to. The Tribunal ought to have granted Rs. 2,000/- per percentage of disability I.e. $Rs.2,000 \times 32 = Rs.34,000/-$. In



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view of the same, the quantum is extremely less and on that basis, sought for allowing the Civil Miscellaneous Appeal.

8.Per contra the learned counsel for the first respondent/petitioner vehemently submitted that the Doctor who was examined as P.W.3, has issued the disability certificate at 36% for permanent disability. However, without any scientific basis/medical basis, the Tribunal had reduced the same to 32%. On the basis of which, he sought for dismissal of the appeal. It is true that the petitioner has sustained fracture in his right leg and had undergone surgery.

9.However, a critical perusal of records in hand would prove that P.W.3 is not a Doctor who treated the petitioner, but the one who had assessed the partial permanent disability on the petitioner on the basis of medical records provided by the petitioner and or being examined on the side of the petitioner, he has clearly deposed that the petitioner's right hip and leg movement has become partially dysfunctional and as the result of which, the petitioner could not sit, stand or work for a long time. Only after clearly examining his medical condition as on the date of disability



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certificate, he had issued the disability certificate fixing the partial permanent disability at 36%. Hence, the learned Tribunal ought not to reduced the same without any probable explanation. The learned Tribunal relying upon the judgment of the Hon'ble Apex Court in the case of ***Sarala Varma and others v. Delhi Transport Corporation and others*** reported in ***AIR 2009 (SCC) 3104*** and relying upon another case of this Court in the case of ***Division Manager v. Meherunnisa and another*** reported in ***2008 SCC Online Mad 351*** had applied multiplier '15' had arrived at a monthly income of Rs.3,000/-.

10.In the instant case, though the petitioner has claimed to have earned around Rs.5,000/- per month, the learned Tribunal fixed the same notionally as Rs.3,000/- and considering the age of the petitioner as 36 on the basis of wound certificate marked as Ex.P2, had applied multiplier '15' and thereafter, arrived at a total compensation under the head loss of income at Rs.1,72,800/- (Rs.3,000x12x32%x15). Since the appellant has not challenged the reduction of percentage of partial permanent disability, this Court is not inclined to interfere with the same. That apart as far as other aspects are concerned, I do not find any infirmity in the



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findings of the learned Tribunal.

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11.The petitioner/claimant is entitled to the award amount with interest at the rate of 7.5% from the date of the claim petition till the date of realization. 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 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.

12.Accordingly, the Civil Miscellaneous Appeal stands dismissed.
There shall be no order as to costs.

12.01.2024

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

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To

- 1.The Motor Accidents Claims Tribunal,
(Additional District Judge), Pudukkottai.
- 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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