



C.M.A.(MD)No.1848 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12.02.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1848 of 2013

and

M.P.(MD)No.2 of 2013

M/s.National Insurance Company Limited,
1st Floor, K.R.D. Building,
33, Bharathidasan Salai,
Pramanede Road, Cantonment,
Trichy -1.

... Appellant

Vs.

1.Chinnachamy
2.D.Ravinchandran

... Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal, Kulithalai in M.C.O.P.No.365 of 2007 dated 08.02.2012.

For Appellant : Mr.D.Sivaraman

For Respondent No.1 : Mr.N.Sudhagar Nagaraj

For Respondent No.2 : No appearance



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C.M.A. (MD) No. 1848 of 2013

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.365 of 2007 dated 08.02.2012, on the file of Motor Accident Claims Tribunal, Kulithalai, wherein the petitioner has filed a petition for compensation for the injuries sustained by him in the road accident and the Tribunal has awarded a sum of Rs.1,11,900/- towards compensation. Aggrieved by the said award passed by the Tribunal, the present appeal has been preferred by the appellant.

2. Brief contents of the claim petition averments are as follows:

On 27.03.2007, at about 09.00 a.m., when the petitioner was proceeding in a bicycle towards Anjalam in Namakkal Road, near Devarappampatti, the first respondent's Tipper Lorry bearing registration No.TN 45 H 2367, came in a rash and negligent manner and dashed against him and thereby he sustained injuries all over the body and incurred expenses of Rs.50,000/- towards medical expenses. The petitioner was earning a sum of Rs.5000/- and he was 55 years old at the time of the accident. Due to the accident, the petitioner became permanently disabled and he could not continue his occupation. Therefore, he filed a claim petition claiming a sum of Rs.4,00,000/- towards compensation.



C.M.A. (MD) No. 1848 of 2013

WEB COPY

3.The brief averments of the counter affidavit filed by the second respondent are as follows:

The claim petition is not maintainable either in law or on facts. The accident took place only due to the negligence on the part of the petitioner and not due to the negligence on the part of the first respondent / driver. The amount claimed by the petitioner is too high and hence, the claim petition is liable to be dismissed.

4.In order to prove the case of the appellant before the Tribunal, he examined P.W.1 and P.W.2 and marked Exs.P.1 to P.9. On the side of the respondents, neither any witnesses were examined nor any documents were marked.

5.After hearing both sides and perusing the oral and documentary evidences adduced on either side, the Tribunal had partly allowed the claim petition and awarded a sum of Rs.1,11,900/- towards compensation by directing the second respondent to pay the said amount to the claimant in M.C.O.P.No.365 of 2007, with interest at the rate of 7.5% from the date of the claim petition till the date of judgment. As against the order passed by the Tribunal, the second respondent has preferred this appeal by disputing the quantum of compensation.



C.M.A. (MD) No. 1848 of 2013

WEB COPY

6. Learned Counsel for the appellant would contend that as per the discharge summary, the claimant sustained only fracture injury at 2nd metatarsal bone and the same is not permanent disability and P.W.2 Doctor has given disability certificate at a higher percentage of disability ie., 28% disability. The Tribunal has erroneously adopted multiplier method without any basis and therefore, the order of the Tribunal is liable to be modified and the quantum has to be reduced.

7. Learned Counsel for the first respondent would contend that the injured sustained fracture injuries and he lost his earning capacity. The petitioner was doing stone work and earning an amount of Rs.5000/-. Now, due to the permanent disability, he is unable to do his work. In order to prove the same, he examined P.W.2 and Ex.P.7 [Disability Certificate] and as per the evidence of P.W.2 and Ex.P.7, the percentage of disability is 28%. Thereby, the Tribunal adopted multiplier method and awarded a fair compensation.

8. This Court heard both sides and perused the documents including the order of the Tribunal. The point for determination in this appeal is:

“Whether this appeal has to be allowed or not?”



C.M.A. (MD) No. 1848 of 2013

WEB COPY

9. There is no dispute in respect of the accident and negligence on the part of the driver of the first respondent. The present appeal has been preferred by the appellant only disputing the quantum of the award and not disputing the finding of the Tribunal in respect of the negligence.

10. According to the appellant, the claimant sustained one fracture injury and the percentage of disability has been given by the Doctor on higher side. The Doctor, without following the Rules had calculated the percentage of disability and thereby the certificate given by the doctor is not in accordance with law and the Tribunal also erroneously adopted multiplier method. In this context the claimant has examined P.W.2 Doctor, who is an expert and he in his evidence categorically stated that the claimant sustained severe fracture injuries and disability certificate [Ex.P.7] was marked. There is no contra evidence adduced by the appellant to the disability certificate. In the absence of any contra evidence, the contention of the appellant that the disability certificate of appellant is on the higher side is not acceptable. Therefore, this Court takes the percentage of disability as mentioned in Ex.P.7 [Disability Certificate]. The Tribunal has adopted multiplier method but in this case, the disability is only partial permanent disability and there is



C.M.A. (MD) No. 1848 of 2013

no permanent disability or functional disability and therefore, the multiplier method adopted by the Tribunal is not fair.

11.Therefore, this Court taking into consideration the percentage of the disability and the avocation of the claimant, is inclined to award Rs.2000/- to 1% of the disability. Therefore, the award amount would come to Rs.50,000/-. In other heads, the Tribunal has awarded a reasoned amount and the appellant also has not disputed the said amount and this Court is inclined to confirm the amount awarded by the Tribunal on all other heads. Therefore, the petitioner entitled to a sum of Rs.89,000/- rounded off to Rs.90,000/-. Therefore, the petitioner is entitled to an amount of Rs.90,000/- as compensation with interest at the rate of 7.5% from the date of petition till the date of judgment. Learned Counsel for the appellant represented that an amount of Rs.90,000/- with interest has already been deposited and the petitioner has also withdrawn Rs.50,000/-.

12.In the result, this Civil Miscellaneous Petition is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a compensation of Rs.90,000/- as awarded above and the appellant / second respondent is directed to deposit the amount after deducting the award amount



C.M.A. (MD) No. 1848 of 2013

already deposited, if any, within two [2] months from the date of this order. Since the second respondent has already deposited a part of the amount, the petitioner is at liberty to withdraw the remaining amount in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

12.02.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

MR

To

1.The Motor Accident Claims Tribunal,
Kulithalai.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A. (MD) No. 1848 of 2013

P.DHANABAL, J.

MR

C.M.A.(MD)No.1848 of 2013

12.02.2024