



C.M.A. (MD) No. 200 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04.01.2024

CORAM:

THE HON'BLE MR.JUSTICE **P. DHANABAL**

C.M.A.(MD)No.200 of 2013

Rahini

... Appellant / Petitioner

Vs.

1.John Jelastin

2.F.John

3.The New India Assurance Co. Ltd.,
through its Branch Manager,
First Floor,
Balamoor Road, Nagercoil,
Agatheeswaram Taluk,
Kanyakumari District.

... Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to allow this appeal and enhance the award amount in M.C.O.P.No.77 of 2006 on the file of the Motor Accident Claims Tribunal, (2nd Additional Sub Judge), Nagercoil, dated 12.01.2010.

For Appellant : Mr.M.Suri

For R1 : Mr.M.Suresh

For R2 and R3 : No appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed by the petitioner as against the order passed in M.C.O.P.No.77 of 2006 on the file of the Motor Accident Claims Tribunal, (2nd Additional Sub Judge), Nagercoil, wherein the petitioner has filed a petition for claiming compensation of Rs.10,00,000/-.

2. The Tribunal has awarded a sum of Rs.2,72,866/-. As against the award passed by the Tribunal, the present Civil Miscellaneous Appeal is filed by the petitioner.

3. The claim of the petitioner before the Tribunal is that on 13.01.2006 at about 7.45 p.m., when the petitioner along with his family proceeded in a four wheeler near Nagercoil Monday market, the driver of the first respondent bearing registration No.TN 74 A 0102, maxi cab van drove the vehicle in a rash and negligent manner and dashed against the car. Due to which the petitioner sustained injuries all over the body. The petitioner was aged about only 40 years and was earning a sum of



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Rs.3,000/- per month. Thereby she claimed a compensation of Rs.10 Lakhs.

4. The counter filed by the second respondent are as follows:

The petition is not maintainable either in law or facts. The petitioner is put to strict proof of the averments made in the petition except those are specifically admitted by the respondent. The accident was not occurred as alleged in the petition. The driver of the second respondent drove the vehicle by observing the traffic rules. The accident occurred owing to the negligence on the part of the driver of the petitioner's car. Since the accident is not took place due to the negligence on the part of the van driver, the respondent is no way responsible for any compensation to the petitioner. Therefore, this petition is liable to be dismissed.

5. The brief facts of the counter filed by the third respondent are as follows:

The First Information Report was registered as against the first respondent. The accident took place only due to the negligence on the part of the deceased and not the driver of the tempo bearing registration



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number TN 74 A 6408, both the vehicles colluded with each other.

Therefore, this respondent is no way responsible for the compensation.

6. In order to prove the case of the petitioner, the claimants have examined P.W.1 to P.W.5 and marked exhibits Ex.P.1 to Ex.P.36. On the side of the respondents, the third respondent staff was examined as R.W.1 and Ex.R.1 to Ex.R.3 were marked.

7. After hearing both sides and perusing the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.2,72,866/-. As against the order passed by the Tribunal, the present Civil Miscellaneous Appeal has been filed, by the petitioner.

8. Learned counsel appearing for the appellant would contend that the petitioner sustained three fractures and permanent disability is 45%. But the trial Court has only awarded a meagre amount by awarding Rs.1,500/- for 1% of the disability and in other heads also awarded only a meagre amount. Since the petitioner was unable to do his work and lost his employment, the multiplier method has to be adopted and in other



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heads also the award amount has to be enhanced. Therefore, the award passed by the Tribunal has to be enhanced.

9. On the side of the third respondent, none appeared. Learned counsel for the second respondent represented would contend that he is the driver of the vehicle and the vehicle was insured with the third respondent insurance company and thereby the third respondent insurance company is liable to pay compensation.

10. 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?

11. In this case, there is no dispute that the accident took place due to the rash and negligence on the part of the driver of the first respondent. The Tribunal also fastened the liability and negligence on the part of the driver of the first respondent and there is no appeal has been filed as against the order of the Tribunal by the respondents. The Tribunal



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also held that the accident took place due to the rash and negligence on the first respondent.

12. The contention of the appellant is that the petitioner has sustained injuries, fractured wounds and the disability also assessed by the Doctor as 45%. In order to prove the same, she has examined the Doctor and also marked documents. As per the medical evidence, the disability is fixed at 45%. The respondent has also not disputed the disability. As per the medical evidence there is no functional disability to the appellant / petitioner. Considering the nature of injuries, this Court is also not agreed with the arguments of the learned counsel for the appellant with regard to adopting the multiplier method to arrive the compensation.

13. (i) Since there is no functional disability, the trial Court has correctly not applied the multiplier method and awarded a sum of Rs. 1,000/- for 1% disability. Taking into consideration of all the facts and cost of living and other aspects, this Court is inclined to award a sum of Rs. 3,000/- for 1% of disability and whereby the award amount for 45% disability, would come to a sum of Rs. 1,35,000/- (3,000 x 45) under the head of permanent disability.



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(ii) The trial Court has awarded a sum of Rs.12,000/- for the loss of income by taking a sum of Rs.3,000/- per month. Considering the cost of living, this Court is inclined to increase the same as Rs.5,000/- per month and thereby the award amount would come under the head of loss of income at Rs.20,000/-.

(iii) The Tribunal also awarded a sum of Rs.3,000/- towards transport expenses. This Court is inclined to award a sum of Rs.5,000/-, towards Transport expenses.

(iv) The Tribunal has awarded a sum of Rs.7,000/- towards extra nourishment that is too low, thereby this Court is inclined to award a sum of Rs.15,000/- towards extra nourishment.

(v) The Tribunal has awarded Rs.15,000/- towards pain and sufferings. Considering the nature of injuries, this Court is inclined to award Rs.50,000/- towards pain and sufferings.

(vi) Further, the petitioner has filed medical bills through Exs.P25, P26, P29 to P34 for a sum of Rs.1,68,366/-. This Court is inclined to grant the entire amount under the head of medical expenses. In



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

Permanent Disability	-	Rs.1,35,000/-
Loss of Income	-	Rs. 20,000/-
Transport Expenses	-	Rs. 5,000/-
Extra nourishment	-	Rs. 15,000/-
Pain and sufferings	-	Rs. 50,000/-
Medical Expenses	-	Rs.1,68,366/-

Total	-	Rs. 3,93,366/-

In total, the petitioner is entitled for Rs.3,93,366/- rounded off to **Rs. 3,90,000/- (Rupees Three Lakhs Ninety Thousand only)** towards compensation.

14. Accordingly, this Civil Miscellaneous Appeal is partly allowed with costs. The order passed by the Motor Accident Claims Tribunal, (2nd Additional Sub Judge), Nagercoil, in M.C.O.P.No.77 of 2006, dated 12.01.2010, is modified to the effect that the petitioner is entitled to a sum of Rs.3,90,000/- (Rupees Three Lakhs Ninety Thousand only) towards compensation along with interest at the rate of 7.5% from



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the date of filing of the petition till realization of payment. The third respondent / insurance company is directed to deposit the entire amount within a period of two months from the date of this order, after deducting the amount, if any already deposited.

04.01.2024

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

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To:

1. The Motor Accidents Claims Tribunal (District Court), Karur.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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