



C.M.A(MD)No.2017 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 05.01.2024

CORAM:

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

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B.Baskaran

... Appellant / Petitioner

Vs.

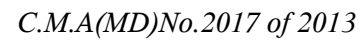
1.G.Shanmugam

2.National Insurance Company Limited,
Divisional Office,
Promenade Road,
Cantonment,
Trichy.

... Respondents / Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment the decree passed in M.C.O.P.No.32 of 2007 on the file of the Motor Accident Claims Tribunal (II Additional Sub Court), Trichy, dated 01.08.2011.

For Appellant	: Mr.Prabhakaran for Mr.N.Sudhagar Nagaraj
For R-1	: Ex parte
For R-2	: Mr.J.S.Murali



The present Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.32 of 2007 on the file of the II Additional Sub Court, Thiruchirapalli, dated 01.08.2011.

2. The Tribunal has awarded a sum of Rs.97,657/- along with interest at the rate of 7.5% interest. Being aggrieved by the award passed by the Tribunal, the claimant has filed the present Civil Miscellaneous Appeal.

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 claimant has filed a petition before the Tribunal due to the accident occurred on 28.03.2006 at about 11.45 am near Trichy - Chennai Main Road at G.Corner, Ponmalai. According to the petitioner, when the petitioner was travelling in an auto bearing Registration No.TN 45 AD 6687 on 28.03.2006 at about 11.45 am near Trichy-Chennai Main Road at



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G.Corner at the time the vehicle bearing Registration No.TAD 1166 (Lorry) came in a rash and negligent manner and dashed against the petitioner. Thereby he sustained injuries. The first respondent vehicle was insured with the second respondent. Hence, the petitioner has filed a claim petition claiming compensation as Rs.3,00,000/-.

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

The second respondent had filed a counter by denying the age, occupation, income of the petitioner and manner of accident. According to the second respondent, the accident took place only due to the negligence on the part of the auto driver and not occurred while due to the negligence on the part of the driver of the first respondent. The injury sustained by the petitioner are not grievous in nature. Hence, he prayed for dismissal of the petition.

6. In order to prove the case of the petitioner before the Tribunal, the petitioner was examined P.W.1 and also examined P.W.2 and marked as Exhibits P.1 to P.13 and on the side of the respondents none was examined and no documents were marked.



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7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.97,657/- towards compensation with interest of 7.5 %. Aggrieved over the above said award amount, the petitioner has preferred the Civil Miscellaneous Appeal for enhancement of the award amount.

8. The learned Counsel appearing for the appellant contended that the accident was took place due to rash and negligence on the part of the driver of the first respondent. The first respondent vehicle was insurer of the second respondent. Thereby, the second respondent is liable to pay compensation to the petitioner. Already the Tribunal also passed an order that the negligence on the part of the driver of the first respondent and the second respondent has not filed any appeal as against the order and the appellant only filed an appeal for enhancement of the compensation. Therefore, the second respondent is liable to pay compensation. Due to the accident, the petitioner sustained grievous injuries and his permanent disability is 30% and incurred a sum of Rs.50,000/- towards medical expenses. In order to prove the disability, he examined the Doctor as P.W.

2. As per the evidence of the Doctor, the disability is 30% and the



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Tribunal without any basis reduced the disability from 30% to 10%. The petitioner due to the accident cannot do his day to day work and thereby multiplier method has to be adopted for awarding compensation, but the Tribunal failed to consider the same and awarded only the meager amount. Hence, the present Civil Miscellaneous Appeal has been filed.

9. The learned Counsel appearing for the second respondent has contended that the Doctor, who gave a disability certificate to the petitioner during the course of cross examination admitted that the disability arrived by him is higher and thereby the Tribunal has correctly reduced the disability from 30% to 10%. Since there is no functional disability, the Tribunal has not applied the multiplier method. Even according to the petitioner the bones were reunited. Thereby there is no any disability to the petitioner. Hence, the petition is liable to be dismissed.

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:



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i)whether the appeal is liable to be allowed or not?

11. In this case, there is no dispute with regard to the negligence on the part of the driver of the first respondent. The first respondent vehicle was insured with the second respondent on the date of accident. The Tribunal has awarded a sum of Rs.97,657/-, by taking into consideration of Rs.2,000/- per 1% of disability and arrived the disability at 10%. The contention of the appellant is that the Tribunal has taken 10% disability without any basis and the petitioner has examined the Doctor who is an expert and as per the evidence of P.W2 Doctor, the disability is 30% but the Tribunal without any rebuttal evidence *suo motu* reduced the disability from 30% to 10%.

12. With this contention, this Court has perused the records and on perusal of the records on the side of the petitioner, who examined as P.W2, who is the Doctor who had given disability certificate to the petitioner and as per the evidence of P.W2, the disability was 30%. At the time of cross examination also, the Doctor stated that about the % of the disability for state arms of the body but nowhere admitted about the 10% of the



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disability for the injuries sustained by this petitioner. In order to rebut the evidence of P.W2, the second respondent has not adduced any rebuttal evidence. Thereby without any rebuttal evidence, the Tribunal has reduced the disability from 30% to 10% which is not permissible.

13. In view of the above discussion, this Court is of the opinion that the petitioner is entitled to get compensation for the disability of 30%. The Tribunal has correctly awarded a sum of Rs.2,000/- for 1%. Thereby this Court also awarded a sum of Rs.2,000/- for 1% of disability and thereby the award amount comes to a tune of Rs.60,000/-. Further the Tribunal awarded a sum of Rs.15,000/- towards pain and sufferings. Considering the nature of injuries, this Court is enhanced an amount of Rs.30,000/- towards pain and sufferings. Further, the Tribunal also awarded a sum of Rs.5,000/- towards extra nourishment in two places and also awarded a sum of Rs.47,650/- towards medical bills and a sum of Rs.5,000/- for the attendance expenses. The above said award amount awarded by the Tribunal in other heads are fair and reasonable. Thereby, this Court need not interfere with the order passed by the Tribunal. However, the Tribunal failed to award compensation for Transport expenses. Hence, this Court is



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inclined to award a sum of Rs.10,000/- towards Travel expenses. In total, the petitioner is entitle to a sum of Rs.1,65,000/- as tabulated below:

1.	Disability	Rs.60,000/-
2.	Pain and Sufferings	Rs.30,000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Medical Bills	Rs.47,650/-
5.	Travel Expenses	Rs.10,000/-
6.	Attendance Expenses	Rs.5,000/-
	Total	Rs.1,62,650/-
	Rounded off	Rs.1,65,000/-

14. In the result, this Civil Miscellaneous Appeal stands partly allowed and the award passed by the Tribunal in M.C.O.P.No.32 of 2007, dated 01.08.2011 on the file of the Motor Accident Claims Tribunal (II Additional Sub Court), Trichy is modified to the extent that the petitioner is entitled to a sum of Rs.1,65,000/- towards compensation with interest at the rate of 7.5% per annum from the date of petition till the date of realisation and the second respondent is directed to pay the said amount with interest within two months from the date of order of this Court. On



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being deposit made by the second respondent, the petitioner is entitled to withdraw the award amount by filing appropriate petition as per law. There shall be no order as to costs.

05.01.2024

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

To

1. The Motor Accident Claims Tribunal
(II Additional Sub Court),
Trichy.
2. The Section Officer,
Vernacular Record Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL, J.

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