



C.M.A.(MD).No.282 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.282 of 2013

and

M.P(MD) No.1 of 2013

The Divisional Manager,
National Insurance Company Limited,
Represented by its Branch Manager,
175 A, Great Cotton Road,
Tuticorin.

... Appellant/2nd Respondent

-vs-

1. Umarani

... 1st Respondent/Petitioner

2. K.Sreekumar

... 2nd Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the award dated 16.02.2006 made in M.C.O.P.No. 1265 of 2003 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Tirunelveli to set aside the same.

For Appellant	: Mr.A.S.Mathialagan
For R1	: No appearance
For R2	: Given up



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This Civil Miscellaneous Appeal is filed to set aside the order passed in M.C.O.P.No.1265 of 2003 on the file of the Motor Accidents Claims Tribunal, II Additional Sub Court, Tirunelveli, wherein, the first respondent herein has filed a claim petition for claiming a compensation of Rs.2,00,000/- (Rupees Two Lakhs only) as against the appellant/second respondent herein.

2. The Tribunal has awarded a sum of Rs.44,200/- (Rupees Forty Four Thousand and Two Hundred only) towards compensation with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the present appeal has been preferred by the second respondent/Insurance Company.

3. When the matter is taken up for hearing, no representation on the side of the first respondent and already the second respondent was given up.

4. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 02.07.2003 at about 19.30 hours, when the petitioner was riding in



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the T.V.S. Suzhuki Motor Cycle bearing Registration No. TN-74-E-2821 as a pillion rider along with her husband who was riding the Motor cycle. When they were coming near Kanyakumari to Nagercoil Main Road Panchalingapuram the driver of the first respondent vehicle bearing registration No.TN-41-F-5987 came in a rash and negligent manner and dashed against the first respondent Motor cycle. As a result of which, the petitioner and her husband were thrown away from the motor cycle and sustained grievous injuries all over the body. The accident occurred due to the rash and negligence on the part of the first respondent thereby she claimed compensation of sum of Rs.2,00,000/- (Rupees Two Lakhs only).

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

The petition is not maintainable either in law or facts. The respondent denied the age, income and occupation of the claimant and also manner of accident. The accident have happened due to the negligence on the part of the rider of the petitioner Motor Cycle. The petitioner have no valid insurance for the vehicle and thereby, the petition is not maintainable. 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 and P.W.2 and marked Exs.P1 to P.7 and on the side of the respondents R.W.1 and R.W.2 were examined and Exs.R.1 to R.2 were marked.

7. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.44,200/- (Rupees Forty Four Thousand and Two Hundred only) towards compensation with interest at the rate of 7.5% p.a. by directing the second respondent to pay the amount. Aggrieved over by the award passed by the Tribunal, the second respondent/Insurance Company has preferred the present appeal on various grounds.

8. The learned counsel appearing for the appellant would also contend that the Tribunal has awarded a sum of Rs.16,000/- (Rupees Sixteen Thousand only) by taking a sum of Rs.1,000/- (Rupees One Thousand only) for 1% disability and awarded a sum of Rs.16,000/- (Rupees Sixteen Thousand only). Once again awarded a sum of Rs.10,000/- (Ten Thousand only) towards injuries and the same is not in accordance with law. Therefore,



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the Insurance Company filed this appeal. The Tribunal without considering the fact that a sum of Rs.16,000/- (Rupees Sixteen Thousand only) was awarded for disability, once again awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) for the injuries. Therefore, the order passed by the Tribunal liable to be set aside.

9. No representation on the side of the respondents.

10. This Court after hearing the learned counsel appearing for the appellant and perused the records 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 with regard to the negligence on the part of the driver of the first respondent. Already the Tribunal after considering the evidence of both sides, fastened the liability on the part of the driver of the first respondent. Since the first respondent vehicle insured with the second respondent, the second respondent was directed to pay the award amount. The appeal is filed only as against the quantum of the award amount.



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The Tribunal has awarded a sum of Rs.16,000/- (Rupees Sixteen Thousand only) for disability by taking a sum of Rs.1,000/- (Rupees One Thousand only) for 1% disability, since the petitioner sustained disability of 16% and a sum of Rs.16,000/- (Rupees Sixteen Thousand only) was awarded by the Tribunal. However, the Tribunal once again awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) for the injuries sustained by the petitioner. In other heads the Tribunal has awarded reasonable amount.

12. The Tribunal has awarded the compensation as follows:

Sl.No.	Descriptions	Amount
1.	For injuries	Rs.10,000/-
2.	For Pain and suffering	Rs.10,000/-
3.	Extra Nourishment	Rs. 3,000/-
4.	Attendant charges	Rs. 1,000/-
5.	Transport expenses	Rs. 1,000/-
6.	Medical Expenses	Rs. 3,200/-
7.	Permanent Disability	Rs. 16,000/-
	Total	Rs.44,200/-

13. This Court has perused the records and the order of the Tribunal.

On perusal of records, it appears that the Tribunal awarded a sum of Rs.



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16,000/- (Rupees Sixteen Thousand only) by taking a sum of Rs.1,000/- (Rupees One Thousand only) for 1% disability and ought not to have awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards injuries sustained by the petitioner. Apart from that, the Tribunal has awarded compensation in various other heads. Considering the nature of disability sustained by the petitioner/ 1st respondent, the Tribunal has awarded a sum of Rs.1,000/- (Rupees One Thousand only) for 1% disability. Taking into consideration of the facts, and the date of accident i.e., on 02.07.2003, the amount awarded by the Tribunal i.e., Rs.1,000/- (Rupees One Thousand only) towards 1% disability is very meager amount.

14. Considering the date of accident and the cost of living and the price index, this Court fixes a sum of Rs.1,500/- (Rupees One Thousand and Five Hundred only) for 1 % disability and thereby awarded a compensation of Rs.24,000/- (Rupees Twenty Four Thousand only) for the permanent disability instead of Rs.16,000/- (Rupees Sixteen Thousand only) awarded by the Tribunal. The amount awarded for the injuries sustained by the petitioner i.e., of Rs.10,000/- (Rupees Ten Thousand only) is not sustainable and the same is set aside. The petitioner has produced the Medical Bills for a sum of



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Rs.3,246/- (Rupees Three Thousand Two Hundred and Forty Six only).

Hence, this Court is inclined to award a sum of Rs.3,300/- (Rupees Three Thousand and Three Hundred only) towards medical expenses. The amount awarded in other heads by the Tribunal has not been disputed by the appellant and this Court also accepts the award amount passed by the Tribunal, since the same is fair and just compensation. Therefore, the petitioner is entitled to the compensation as follows:

Sl.No.	Descriptions	Amount
1.	For Permanent Disability a sum of Rs.1,500/- x 16	Rs.24,000/-
2.	For Pain and suffering	Rs.10,000/-
3.	Extra Nourishment	Rs. 3,000/-
4.	Attendant charges	Rs. 1,000/-
5.	Transport expenses	Rs. 1,000/-
6.	Medical Expenses (Rs.3,246/-) Rounded off Rs.3,300/-	Rs. 3,300/-
	Total	Rs.42,300/-

15. Therefore, the total award of Rs.44,200/- (Rupees Forty Four Thousand and Two Hundred only) awarded by the Tribunal is hereby modified and the award amount is reduced to the extent of Rs.42,300/-



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(Rupees Forty Two Thousand and Three Hundred only) which shall carry interest at the rate of 7.5% per annum from the date of filing of the claim petition, till the date of realization.

16. In the result, this Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs.42,300/- (Rupees Forty Two Thousand and Three Hundred only) towards compensation and the appellant/second respondent is directed to pay the above said amount to the 1st respondent herein/petitioner within a period of two months from the date of this order. After deposit, the petitioner is entitled to withdraw the amount by filing appropriate application before the Tribunal. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

12.01.2024

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

1. The Motor Accidents Claims Tribunal,
II Additional Sub Court, Tirunelveli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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