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C.M.A. (MD) No. 468 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 03.01.2024

CORAM:

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

C.M.A.(MD)No.468 of 2013

Suresh Kumar

... Appellant/ Petitioner

Vs.

1. Suresh Kumar
2. The Branch Manager
Bajaj Alliance General Insurance Company Limited
24 Balamore Road
Opp to Rajesh Theatre, Vadaseri
Nagercoil- 629 001

3. Rishikashkumar
4. Sunil Gangadharan
5. Branch Manager
Reliance General Insurance Company Limited
Kottayam

..Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the award dated 14.03.2011 made in M.C.O.P.No.259 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli and praying to set aside the same.

For Appellant	: Mr.P.Athimoolapandian
For R1& R4	: No appearance
For R2	: Mr.J.S.Murali
For R3	: Mr.Rober Chandrakumar
For R5	: Mr.V.Sakthivel



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JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P.No.259 of 2009 on the file of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tirunelveli, wherein the Tribunal has awarded a sum of Rs.2,17,636/- along with interest @ 7.5% per annum from the date of filing of petition.

2. Being aggrieved by the above said order of the Tribunal the petitioner has filed this 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:

On 17.08.2009 at about 4.00 p.m., when the petitioner was travelling in a car bearing Reg. No. TN 74 M 6459 along with Sumathilakshmi, Banumathy and Murugesan near Balaramapuram a car bearing Reg. No. KL01 L4743 was proceeding towards opposite side in a rash and negligent manner and dashed against the car in which the petitioner was travelling. Due to the accident the petitioner sustained injuries on his head, hip and also sustained multiple fracture all over the body. Immediately he was taken to Ananthapuri



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Hospital at Trivandrum for first aid and thereafter he has taken treatment in a private hospital at Nagercoil, thereby he has spent a sum of Rs.4,00,000/- towards medical expenses. The accident took place due to the negligence on the part of the driver of the vehicle KL 01 L 4743. Before accident the petitioner was doing business at flower decoration shop and earning Rs. 20,000/- per month and now he is unable to do his regular work. At the time of accident the petitioner was only aged about 34 years. Hence he has filed this application for compensation for Rs.20,00,000/-.

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

The car bearing Reg.No. TN 74 M 6459 belongs to the first respondent was insured with the second respondent at the time of accident. The accident occurred only due to the rash and negligent driving on the part of the vehicle bearing Reg.No. KL 01 L4743. The driver of the first respondent was holding no valid licence on the date of accident and there is no any valid permit and fitness certificate and there is clear violation of policy. Hence this respondent is no way responsible to pay compensation to the petitioner. There is no permanent disability or loss of earning power to the petitioner and claiming Rs.20,00,000/- is highly excessive and hence the petition is liable to be dismissed.



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6. The counter filed by the fifth respondent is as follows:

The accident took place due to the negligence on the part of the driver of the first respondent. The First Information Report was registered as against the driver of the first respondent. Infact there is no rash or negligence on the part of the driver of the third respondent. This respondent is only a formal party. The vehicle bearing Reg.No.KL 01 L 4743 was insured with the respondent at the time of the accident. The driver also had valid license . The respondent denied the injuries sustained by the petitioner and the permanent disability. The claim of the petitioner is too high , hence the appeal is liable to be dismissed.

7. The Tribunal passed common order since all the petitions were arising out of the same accident. In order to prove the case of the petitioner he has examined P.W.1 to P.W.5 and marked exhibits Exs.P.1 to Ex.P.22 and on the side of the respondent no witnesses were examined and no documents were marked. This petitioner was examined as P.W.3 and documents Exs.P.11 to 17 and 20 were marked.

8. After evaluating the oral and documentary evidence adduced on either side, the Tribunal has awarded a sum of Rs.2,17,636/- towards compensation with interest of 7.5 % . As against the award passed by the



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Tribunal the claimant has preferred this appeal for enhancing the compensation amount on various grounds

9. The learned counsel appearing for appellant/claimant would contend that the tribunal ought to have awarded compensation considering the loss of income for 12 months @Rs.20,000/- per month and also failed to award a sum of Rs.10,000/- towards transport expenses. Further the Tribunal failed to consider the medical bills produced for a sum of Rs.4,00,000/- and also failed to consider the injuries sustained by the petitioner. Only awarded meagre amount towards compensation. Hence the order of the Tribunal is liable to be set aside by enhancing the compensation amount.

10. The learned counsel appearing for the second respondent herein would contend that the Tribunal has awarded fair compensation taking into consideration all the evidence adduced by the petitioner and the petitioner sustained only 20% disability and the Tribunal awarded a sum of Rs.40,000/- for the disability sustained by the petitioner and awarded reasonable amount on various heads and the Tribunal has awarded a sum of Rs.2000/- per 1% of the disability based on the judgment produced on the side of the petitioner. Therefore the Tribunal has passed reasonable award and hence the petition is liable to be dismissed.



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11. 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?

12. In this case there is no dispute with regard to the negligence on the part of the driver of the first respondent. The Tribunal has fasten the liability as against the driver of the first respondent and there is no appeal as against the order of the Tribunal and this petitioner has only preferred appeal for enhancing the award amount. The Tribunal has already awarded a sum of Rs.40,000/- towards disability by taking into account Rs.2000/- per one percent disability. Further there is no dispute that the petitioner sustained partial permanent disability of 20 % and thereby the Tribunal has awarded the compensation as follows:

1.	Loss of partial income	Rs.30,000/-
2.	Transport Expenses	Rs.3000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Medical attendants	Rs.10,000/-
5.	Pain and sufferings	Rs.20,000/-
6.	Medical Expenses	Rs.1,04,363/-
7.	Disability	Rs.40,000/-
	Total	Rs.2,17,636/-



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13. The learned counsel appearing for the appellant has produced judgment of this Court in the case of **National Insurance Company Ltd., vs. G. Ramesh and others reported in 2013(2)TN MAC 583**, wherein this Court has awarded a sum of Rs.3000/- for 1% of the disability for the injuries sustained by the petitioner.

14. On careful reading of the above said judgment it is clear that this Court has taken a sum of Rs.3000/- for 1% disability for the accident that took place in the year 2009. In this case also the accident took place in the year 2009. Therefore, by relying on the above said judgment this court is inclined to award a sum of Rs.3000/- per 1 % disability. As per the medical evidence, this petitioner sustained fracture injuries and his disability is fixed as 20 % that was also not disputed by the respondent and thereby, the petitioner is entitled for a sum of Rs.3000/- per 1% of disability. The Tribunal awarded a sum of Rs.40,000/- for 20% disability and this Court taking into consideration judgment relied on by the learned counsel for the petitioner, enhanced the same Rs.3000/- per 1% disability, thereby entitled to a sum of Rs.60,000/- towards disability. Under various heads the Tribunal has already awarded reasonable amount. However, the Tribunal has awarded a sum of Rs.20,000/- for pain and sufferings, which is a meagre amount and hence, this Court is inclined to award sum of Rs.25,000/- towards pain and sufferings. The



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petitioner is entitled to compensation as follows:

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1.	Loss of partial income	Rs.30,000/-
2.	Transport Expenses	Rs.3000/-
3.	Extra Nourishment	Rs.10,000/-
4.	Medical attendants	Rs.10,000/-
5.	Pain and sufferings	Rs.25,000/-
6.	Medical Expenses	Rs.1,04,363/-
7.	Disability	Rs.60,000/-
	Total	Rs.2,42,636/-

15. Hence the petitioner is entitled in total a sum of Rs.2,42,636/- rounded to Rs.2,45,000/- towards compensation.

16. In the result this Civil Miscellaneous Appeal is partly allowed and the order passed by the Tribunal in M.C.O.P.No.257 of 2009 is modified to the effect that the petitioner is entitled for a sum of Rs.2,45,000/- as compensation along with interest @ 7.5% from the date of order. The second respondent /insurance company is directed to deposit the entire award amount with interest and costs, within a period of two months from the date of this judgment, if not already deposited. On such deposit being made, the petitioner is permitted to withdraw the amount together with interest and costs by filing application before the Tribunal.

03.01.2024

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

1. The Motor Accident Claims Tribunal,
Chief Judicial Magistrate, Tirunelveli
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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