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CMA.(MD)No.375 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 375 of 2021

Murugesan : Appellant/Petitioner

Vs.

1.K.Saravanan

2.United India Insurance Company Ltd.,
Through its Divisional Manager,
Office at 2nd Floor,
Xavier Building,
ASSISI Campus,
PWD Office Road,
Post Box No.50,
Nagercoil.
(R1 ex-parte before the Tribunal
Hence, notice dispensed with) : Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to enhance the award amount in MCOP No.666 of 2016 on the file of the Motor Accident Claims Tribunal (Special Subordinate Judge dealing with MCOP cases), Tirunelveli, dated 21/02/2020.

For Appellant : Mr.T.Selvakumaran

For 1st Respondent : Dispensed with

For 2nd Respondent : Mr.S.Royce Immanuel



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JUDGMENT

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This Civil Miscellaneous Appeal is filed seeking enhancement of award passed in MCOP No.666 of 2016 by the Motor Accident Claims Tribunal (Special Subordinate Judge dealing with MCOP cases), Tirunelveli, dated 21/02/2020.

2.The facts in brief:-

On 02/01/2016 at about 08.30 pm, the petitioner was riding his motor cycle bearing registration No.TN-75-H-9625 from east to west on the Nagercoil-Kanyakumari main road. When he was nearing the place of occurrence, a Four Wheeler bearing registration No.TN-74-AB-1000 belonging to the first respondent in the main petition and insured with the second respondent came in the opposite direction in a rash and negligent manner and hit the motor cycle. As a result of which, the petitioner fell down, sustained grievous injuries on his right leg and other injuries all over body. He was taken to the Shri Ram Orthopedic Hospital, Nagarcoil and admitted as inpatient from 02/01/2016 to 04/01/2016 and underwent surgery twice on 02/01/2016 and 04/01/2016.

3.He was aged about 51 at the time of the occurrence. He was working as Special Sub Inspector of Police attached to Rajakamangalam Police Station and



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earning Rs.42,325/- per month. Because of the accidental injuries, his promotional prospect was completed affected. He was not able to discharge his official duty as before. So, claiming compensation of Rs.20,00,000/-, the claim petition was filed.

4.That was resisted by the 2nd respondent Insurance Company by filing counter stating that only general denials were made.

5.Before the Tribunal, on the side of the claimant, 3 witnesses were examined and 19 documents were marked. On the side of the Insurance company, no oral and documentary evidence was adduced.

6.At the conclusion of the enquiry process, the Tribunal recorded a finding on the issue of negligence that it occurred due to rash and negligence on the part of the first respondent vehicle.

7.With regard to the disability, it assessed at 46.8% and Rs.4,000/- was fixed for one percentage. Totally, the Tribunal awarded the following compensation:-



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Disability at Rs.4,000/- x 46.8%	Rs.1,87,200/-
Transport expenses	Rs. 5,000/-
Attendance charges	Rs. 3,000/-
Pain and Suffering	Rs. 40,000/-
Extra Nourishment	Rs. 25,000/-
Loss of convenience	Rs. 35,000/-
Medical Bills	Rs.1,96,530/-
Total	Rs.4,91,730/-

8.Against which, this appeal is preferred by the claimant stating that the nature of the injuries sustained by him was not taken into account by the Tribunal; Considering the nature of the injuries and the inconvenience caused to him, Rs.5,000/- ought to have been fixed by the Tribunal for one percentage. It is the only contention raised by the appellant. In support of his contention, he would rely upon the judgment of the Hon'ble Supreme Court in Erudhaya Priya Vs. State Express Transport Corporation Ltd., [2020(2)TN MAC 303(SC)].

9.Here, there is no evidence on record to show that because of the accidental injuries, the claimant could not recover from it completely and his physical inability to discharge his work as before is affected. Absolutely, there is no evidence on record and the Medical Expert was examined to say the same. But the-non examination on his side to show that the work was affected because of the



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accidental injuries and he was allotted to some other work. In the absence of any evidence to show the same, the percentage method adopted by the Tribunal cannot be found fault.

10.The evidence of PW3 shows that he assessed the disability. There was fracture on the right leg below knee. On both legs, bones were fixed by interlocking method. He may experience the discomfort in squatting. There is restriction in the ankle portion. Skin graft surgery was done to control the movement of his ankle the part where the skin was taken was infected and 10% of the tissue of the right leg joint was torn and its condition was abnormal. So, the evidence of PW3 does indicate that to some extent, his movement on the right leg is affected.

11.But, as mentioned above, it does not result in any permanent disability. So, awarding Rs.4,000/- for one percentage cannot be considered to be lesser. It is just and reasonable. Transport expenses, attendance charges were reasonably fixed. For pain and suffering Rs.40,000/- was also reasonably fixed. Extra Nourishment and loss of convenience were also reasonably fixed. All these amounts were reasonably fixed, which are only a guess work in



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nature. I find absolutely no reason to interfere into the award of the Tribunal and accordingly, it is sustained.

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12.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs.

30/07/2024

Index:Yes/No
Internet:Yes/No
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To,

- 1.The Motor Accident Claims Tribunal,
Special Sub Judge,
Tirunelveli.
- 2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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