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CMA.(MD)No.220 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/06/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

CMA (MD) No. 220 of 2022

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CMP (MD) Nos. 1950 of 2022 and 1348 of 2023

M/s.National Insurance Co.Ltd.,
Through its Divisional Manager,
Divisional Office,
Anguvilas Building,
North Car Street,
Nagercoil.

: Appellant/2nd Respondent

Vs.

1.Ganesan
2.The Secretary,
St.John's College of Arts and
Science,
Thivanthakottai Road,
Ammandivilai Post,
Kanyakumari.

: 1st Respondent/Petitioner

: 2nd Respondent/R1

PRAYER:-Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act to set aside the judgment. dated 17/12/2021 in MCOP No.157 of 2018 on the file of the Special Sub Court dealing with MCOP Cases/MACT, Tirunelveli.

For Appellant : M/s.P.Malini

For 1st Respondent : Mr.R.J.Karthick

For 2nd Respondent : No appearance



CMA.(MD)No.220 of 2022

J U D G M E N T

WEB COPY This Civil Miscellaneous Appeal is filed seeking an order to set aside the award dated 17/12/2021 in MCOP No. 157 of 2018 on the file of the Special Sub Court dealing with MCOP Cases/MACT, Tirunelveli.

2.The facts in brief:-

On 17/04/2017 at about 04.30 pm, the petitioner was riding the motor cycle bearing registration No.TN-75-R-2081 with a pillion rider namely Senthil from Manakudy to Thengampudur. At that time, a Bus bearing registration No.TN-75-E-6025 which belongs to the first respondent driven by its driver in a rash and negligent manner and hit the two wheeler. In that process, both fell down. The petitioner sustained grievous injuries, admitted in the Kanyakumari Government Medical College Hospital and remained as inpatient from 07/04/2017 to 27/07/2017 and thereafter from 07/08/2017 to 28/09/2017 for more than five months. Even after discharge. he is continuing the treatment.

3.Over the occurrence, a case in Crime No.140 of 2017 was registered for the offences under sections 279 and 338 IPC. He was aged about 32 at the time of the occurrence. Because of the multiple injuries suffered by



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him, his kidneys were also affected. He is not in a position to walk as before. He was a Carpenter. He was earning not less than Rs.25,000/- per month. There is total disability. Claiming compensation amount of Rs.10,00,000/-, the petition was filed.

4.That was resisted by the 2nd Respondent namely the Appellant herein by filing a counter stating that the petitioner was riding his motor cycle in a drunken mood and invited the accident. Over which, a case in Crime No.140 of 2017 was registered and thereafter it was closed as 'Mistake of Fact', finding that the occurrence took place only due to the rash and negligence on the part of the petitioner.

5.Before the Tribunal, on the side of the claimant, 4 witnesses examined and 13 documents marked. On the side of the Insurance Company, 4 witnesses examined and 7 documents marked. Apart from that, the Disability Certificate of the petitioner was marked as court document.

6.At the conclusion of the trial process, regarding the negligent aspect, the Tribunal recorded a finding that the petitioner was under the influence of alcohol.



CMA.(MD)No.220 of 2022

Considering the manner of the occurrence, it fixed the contributory negligence at 50:50.

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7.Regarding the compensation, it assessed the total disability at 90%, which is permanent in nature. Considering the avocation of the petitioner, it fixed the monthly income as Rs.8,000/-. By adopting the proper multiplier, the total loss of earning power was calculated at Rs.19,39,360/-. To that, medical bills, attendant charges, transportation expenses, extra nourishment, compensation for pain and suffering, loss of convenience were added and finally arrived at the figure of Rs.22,17,856/- as per the tabulation given hereunder:-

Loss of earning power	Rs.19,35,360/-
Medical Bills	Rs. 2,496/-
Attendant Charges	Rs. 15,000/-
Pain and Suffering	Rs. 1,00,000/-
Loss of convenience	Rs. 1,00,000/-
Transport expenses	Rs. 15,000/-
Extra Nourishment	Rs. 50,000/-
Total	Rs.22,17,856/-

8.Out of the above said amount, 50% of the amount was ordered to be paid by the appellant herein.

9.Aggrieved over the same, this appeal is preferred.



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10. Heard both sides.

11. The learned counsel appearing for the appellant would submit that she has disputed the quantum assessed by the Tribunal; The injury sustained by the claimant is only partial permanent disability and there was no total permanent disability; In the absence of any functional disability, the multiplier method adopted by the Tribunal is not proper; Awarding compensation amount under the head of pain and suffering, loss of convenience segregating the same is not correct; since the petitioner was under influence of alcohol, the quantum arrived by the Tribunal is on the higher side.

12. Per contra, the learned counsel appearing for the 1st respondent would submit that the petitioner was working as Carpenter and reasonable amount was taken into account as monthly salary by the Tribunal; He was in the hospital for more than 66 days; It is a total permanent disability; The multiplier method adopted by the tribunal is just and reasonable.

13. In the grounds, it is stated that fixating the liability of 50% of contribution upon the first respondent vehicle driver is not proper.



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14. When we examine the evidences on record, the manner in which the occurrence said to have been taken place indicates that the petitioner was taking the right side. At that time, the first respondent vehicle driver drove the vehicle and hit the petitioner. There was a damage on the front right side of the portion of the vehicle bearing registration No. TN-75-E-6025. If really the petitioner was solely responsible for suddenly crossing, it would have hit the front right side of the Bus. The manner, in which the occurrence said to have been taken place, the first respondent was also negligent. Since the petitioner was under the influence of alcohol, fixing of 50% contributory negligence appears to be proper, which requires no interference. Simply because, the case was closed as 'Mistake of Fact' by the police namely the Investigating Officer, the Tribunal can assess the same on the basis of the evidence available on record independently. So, the manner in which the occurrence said to have been place as mentioned above does indicate the rash and negligent driving of the first respondent vehicle also.



WEB COPY



CMA.(MD)No.220 of 2022

15.Regarding the compensation, Ex.P4 shows that there was amputation, the disability was assessed as per Ex.C1 at 90%. He was in the hospital for more than six months.

16.Reading of the Wound Certificate shows that it is a case of multiple injuries. So the disability certificate was also issued by the Government under Ex.P4 which shows that the post traumatic disability is 60%. Discharge summary issued by the Kanyakumari Medical College Hospital, Araripallam shows that he was admitted on 27/06/2018, underwent surgery on 16/08/2018 and discharged on 31/08/2018. There was Malunion of femur bone at the time of discharge. The petitioner was referred to the Disability Board attached to Tirunelveli Medical College Hospital and the disability was assessed at 90%. Since the disability assessed by the Medical Board, the disability fixed by the Tribunal cannot be found fault.

17.Regarding the income aspect, the Tribunal has taken a notional income as Rs.8,000/- per month. Since there was a total permanent disability, for adopting multiplier method, multiplier 16 was taken. So the assessment of permanent disability and the loss of income, I find absolutely no interference is called for.



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18.The medical expenses are supported by documents. So no interference is required. But however, the learned counsel appearing for the appellant would heavily dispute the compensation under the head of pain and suffering, loss of convenience, extra nourishment. According to her, when multiplier method for assessing the disability, categorizing the head of pain and suffering and loss of convenience separately is not proper.

19.But as mentioned above, he suffered total permanent disability of 90%. Absolutely, he is not in a position to carry his avocation. For more than 60 days he was in the hospital and underwent surgery, categorizing the pain and suffering and loss of convenience separately appears to be proper. Extra nourishment was arrived at Rs.50,000/-, considering the age of the petitioner. I am of the considered view that this also cannot be construed as excessive in nature.

20.In effect, the total compensation fixed by the Tribunal considering the nature of the disability suffered by the petitioner is just and reasonable, requires no interference by this court.



CMA.(MD)No.220 of 2022

21.In the result, this Civil Miscellaneous Appeal is

dismissed. No costs. Consequently, connected

Miscellaneous Petitions are closed.

05/06/2024

Index:Yes/No

Internet:Yes/No

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To,

1.The Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP
Cases, Tirunelveli.

2.The Section Officer,
VR/ER Section,
Madurai Bench of Madras High Court,
Madurai.



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CMA.(MD)No.220 of 2022

G.ILANGOVAN, J

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