



C.M.A.(MD).No.431 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 19.12.2023

PRONOUNCED ON : 24.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.431 of 2020

and

C.M.P.(MD)No.5138 of 2020

Branch Manager,
Cholamandalam M/s General
Insurance Company Ltd.,
Dindigul Road,
Keelavayal,
Madurai.

... Appellant

Vs.

1.Muthaiah
2.Arokiaraj
3.K.Selvakumar
(Amended as per I.A.No.113 of 2017
in order dated 17.08.2017)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.98 of 2013 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate), Pudukkottai dated 11.12.2019.



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For Appellant	: Mrs.K.R.Shiva Shankari
For R1	: Mr.B.Anandan
For R3	: Mr.R.L.Dilipan Pandian
For R2	: Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal has been directed as against the award on certain counts passed by the learned Motor Accident Claims Tribunal (Chief Judicial Magistrate), at Pudukottai, in M.C.O.P.No.98 of 2013 dated 11.12.2019 by the appellant/second respondent/insurance company.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.98 of 2013.

3.The brief facts leading to the filing of the Civil Miscellaneous Appeal is as follows:-

This is a case of injury. On 05.01.2012, while the petitioner was returning from work as a coolie in a bicycle at Pudukottai to Karambakudi road, while he reached Malaiyur road, a Tata Sumo bearing registration No.TN-49-Q-7430 owned by the first respondent dashed as against the bicycle. As the result of which, the petitioner sustained

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grievous injuries and he was admitted in Pudukottai Government Headquarters hospital and he took treatment from 05.01.2012 to 14.01.2012 as in patient. Seeking a compensation of Rs.3,00,000/- for the said injuries, the petitioner has filed this claim petition.

4.The first respondent is the owner of the Tata Sumo and the second respondent is the insurance company with which the said vehicle was insured. The second respondent has filed a counter refuting all the allegations set forth in the claim petition.

5.The learned Tribunal had framed four issues. Two witnesses P.W.1 and P.W.2 were examined on the side of the petitioner and 13 documents Ex.P1 to Ex.P13 were marked and on the side of the respondents, no witness was examined and three documents Ex.R1 to Ex.R3 were marked. On the basis of the oral and documentary evidence and arguments put forth by respective parties, the learned Tribunal has proceeded to conclude that the accident had happened only due to the rash and negligent driving of the driver of the first respondent, who was driving the Tata Sumo bearing registration No.TN-49-Q-7430. Though



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the petitioner filed the claim petition seeking a compensation of Rs. 3,00,000/-, on the side of the petitioner, the accident register has been marked as Ex.P3 and the medical records as Ex.P6, discharge summary Ex.P7, scan report Ex.P8 and the Doctor, who treated the petitioner namely Dr.Adiyappan was examined as P.W.2 and he has issued a partial permanent disability certificate to 21% and the same has been marked as Ex.P12. The said Ex.P12 has been issued by the Doctor on the basis of scan report marked as Ex.P8 and X ray marked as Ex.P13 and other medical records. The learned Tribunal has proceeded to grant an award of compensation for partial permanent disability at Rs.3,000 per percentage and loss of permanent disability at Rs.63,000 (3,000x21%).The learned Tribunal has passed the award under following heads:-

Head	Compensation awarded
(I) Loss of Earning :	Rs.25,000/-
(ii) Partial Permanent Disability:	Rs.63,000/-
(iii) Pain and suffering :	Rs.25,000/-
(iv) Medical Expenses:	Rs.300/-
(v) Transportation Expenses:	Rs.2,500/-
(vi) Mental Agony:	Rs.5,000/-
(vii) Extra Nourishment:	Rs.2,500/-



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Total compensation awarded:	Rs.1,23,300/- with interest @ 7.5 % from the date of the claim until the realization and costs.
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6.Challenging the same, the appellant/second respondent insurance company has filed this Civil Miscellaneous Appeal on the ground that the learned Tribunal ought not to have arrived the disability at 21%, when there is no disability at all as claimed by the petitioner and ought not to have awarded Rs.25,000/- towards loss of income when the injuries are not grievous in nature.

7.The learned counsel for the appellant relying upon the judgment passed by the Hon'ble Supreme Court in the case of ***Raj Kumar v. Ajay Kumar and others*** reported in ***2011 ACJ 1***, vehemently submitted that *'all the injuries or permanent disability arising from injuries do not result in loss of earning capacity. The Doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the learned Tribunal with reference to the*



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evidence in entirety'. Hence, the learned Tribunal ought not to have fixed 21% for partial permanent disability and sought for reducing the same.

8.The learned counsel for the appellant also produced Medico Legal Opinion, which was marked as Ex.R2 which would show the opinion of the Medical Officer was that the injuries were simple in nature. However, considering the fact that the accident has happened as early as in the year 2012, the learned Tribunal after diligently considering each and every medical records, which was duly marked on the side of the petitioner as Ex.P6 to Ex.P13 which include medical report, CT scan, X ray, discharge summary, disability certificate, has granted only Rs. 3,000/- per percentage and had calculated the compensation under the head partial permanent disability. That apart though the petitioner had claimed Rs.50,000/- under the head pain and suffering, as the injuries sustained were grievous. A careful observation of Ex.R2 would reveal that the injuries were simple in nature and the learned Tribunal had awarded only Rs.25,000/- towards the same.



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9.The second respondent/insurance company is directed to deposit the award amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the award amount with proportionate interest after deducting any amount received by him earlier without filing any formal petition before the Tribunal. The petitioner/claimant is not entitled for interest for the default period, if there is any.

10.In view of the above, I am not inclined to interfere in the award passed by the learned Tribunal. Accordingly, the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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L.VICTORIA GOWRI, J.

Mrn

To

- 1.The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate), Pudukottai.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

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