



C.M.A.(MD)Nos.1059 and 1060 of 2014

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Dated: 01.02.2024

CORAM:

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

C.M.A.(MD)Nos.1059 and 1060 of 2014

C.M.A(MD) No.1059 of 2014

M.Ramesh

...Petitioner/Appellant

Vs.

1. K.P.Natarajan
2. M/s. National Insurance Company Ltd.,
Divisional Office
Rajaji Tower,II Floor
11, Ramakrishna Road
Salem- 636 007

.. Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.03.2014 made in M.C.O.P.No.3311 of 2013 on the file of the Motor Vehicles Accidents Claims Tribunal Authority and Special Subordinate Judge, Tiruchirapalli.

For Appellant	: M/s.J.Lakshmi Prasanna for M/s.P. Thiyagarajan
For R1	: No appearance
For R2	: Mr.J.S.Murali

C.M.A(MD) No.1060 of 2014

P.Muthuveeran

...Petitioner/Appellant

Vs.



C.M.A.(MD)Nos.1059 and 1060 of 2014

1. K.P.Natarajan
2. M/s. National Insurance Company Ltd.,
Divisional Office
Rajaji Tower, II Floor
11, Ramakrishna Road
Salem- 636 007

.. Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the judgment and decree dated 27.03.2014 made in M.C.O.P.No.3312 of 2013 on the file of the Motor Vehicles Accidents Claims Tribunal Authority and Special Subordinate Judge, Tiruchirapalli.

For Appellant	: M/s.J.Lakshmi Prasanna for M/s.P. Thiyagarajan
For R1	: No appearance
For R2	: Mr.J.S.Murali

JUDGMENT

These Civil Miscellaneous Appeals have been filed as against the common order passed in M.C.O.P.Nos. 3311 and 3312 of 2013 on the file of the Motor Vehicles Accidents Claims Tribunal Authority and Special Subordinate Judge, Tiruchirapalli, Wherein the appellants herein have filed claim petition before the Tribunal.

2. The appellants herein have filed claim petitions before the Tribunal and the Tribunal has awarded a total compensation of Rs.1,02,335/- in MCOP. No.3311 of 2013 and by fixing 50% liability



C.M.A.(MD)Nos.1059 and 1060 of 2014

as against the petitioner awarded a sum of Rs.51,167.50/- towards compensation with interest @ 7.5% per annum. In MCOP No.3312 awarded a sum of Rs.98,000/- after fixing 50% liability as against the petitioner and awarded a sum of Rs.49,000/- with interest @ 7.5% per annum. As against the order passed by the Tribunal , these present appeals have been filed by the appellants/petitioners respectively.

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 case in both the appeals are as follows:

On 08.04.2011 at about 4.45 pm., these petitioners along with their friend were proceeding in a two wheeler bearing Reg. No. TN 47 Z 2802 from JJ college to their house. At that time the vehicle bearing Reg. No. TN 02 T 9199 belonging to the first respondent came in a rash and negligent manner and dashed against the motor cycle, thereby these petitioners sustained injuries. The accident that took place due to the negligence on the part of the driver of the bus of the first respondent. The first respondent vehicle was insured with the second respondent insurance company. Both



C.M.A.(MD)Nos.1059 and 1060 of 2014

the petitioners sustained multiple injuries on their body and got fracture in the wrist, thereby permanently disabled. Therefore they claimed compensation of Rs.4,00,000/- each in their respective petitions.

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

The petitions are not maintainable and the petitioners are put to strict proof of the averments made in the petition except that those are specifically admitted herein. These petitioners along with another person, i.e. three persons travelled in a two wheeler and due to over seated the two wheeler was skided, when the present vehicle was going in the opposite direction close to the two wheeler. Therefore the rider of the two wheeler is responsible for the accident. The accident did not take place due to the negligence on the part of the driver of the first respondent bus. Therefore the petitioners are not entitled for any compensation and this respondent is not liable to pay compensation. The respondent denied the age, income, occupation of the deceased and the petitioner are the only injured. The award claimed by the petitioners are too high, hence the petitions are liable to be dismissed.



C.M.A.(MD)Nos.1059 and 1060 of 2014

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6. Before the Tribunal, on the side of the petitioners they have examined P.W.1 to P.W.4 and marked exhibits Ex.P.1 to P.14 and on the side of the respondent no one was examined and no documents were marked.

7. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a total compensation of Rs.1,02,335/- in MCOP. No.3311 of 2013 and by fixing 50% liability as against the petitioner awarded a sum of Rs.51,167.50/- towards compensation with interest @ 7.5% per annum. In MCOP No.3312 awarded a sum of Rs.98,000/- after fixing 50% liability as against the petitioner and awarded a sum of Rs.49,000/- with interest @ 7.5% per annum.

8. As against the common order passed by the Tribunal, the petitioners have preferred these appeals on various grounds.

9. The learned counsel appearing for the appellants would contend that these appellants/petitioners have sustained fracture injuries and they permanently disabled. The petitioner in MCOP No. 3311 of 2013 permanently disabled and his permanently disability is



C.M.A.(MD)Nos.1059 and 1060 of 2014

fixed as 38% and the petitioner in MCOP No.3312 of 2013 was also permanently disabled and his disability is fixed as 40%. But the Tribunal without any basis reduced the disability of 2% and awarded only meagre amount. In other heads also the Tribunal awarded only meagre amount. Further the Tribunal has fixed 50% negligence as against the petitioners without any evidence. But the petitioner's side evidence clearly shows the negligence on the part of the driver of the bus. Only because of three persons ridden in the two wheeler the Tribunal without any evidence fixed the negligence of 50 % as against the petitioners. Therefore the order of the Tribunal is liable to be set aside and the quantum of amount is liable to be enhanced. Hence the appeals are liable to be allowed.

10.The learned counsel appearing for the second respondent / second respondent would contend that the accident took place only due to the negligence on the part of the rider of appellants/ petitioners two wheeler. These appellants along with another person, totally three persons travelled in the two wheeler and thereby they lost their control and dashed against the first respondent bus, thereby the Tribunal fixed 50% negligence on the part of the petitioners. The Tribunal in other heads considering all other aspects correctly awarded just and fair compensation by fixing 50%



C.M.A.(MD)Nos.1059 and 1060 of 2014

towards the petitioners and 50% towards the second respondent.

Therefore the order passed by the Tribunal is in order and the present appeals are liable to be dismissed.

11. This Court after hearing both sides and upon perusing the documents including the common order of the Tribunal the point for determination in these appeals are :

i)whether the appeal in CMA(MD) No.1059 of 2014 is liable to be allowed or not?

ii)whether the appeal in CMA(MD) No.1060 of 2014 is liable to be allowed or not?

12. In this case, there is no dispute with regard to the involvement of the vehicle and the accident. According to the appellants/petitioners the accident took place due to the negligence on the part of the driver of the first respondent. According to the respondents the accident took place due to negligence on the part of the petitioners. The Tribunal has fixed 50% liability. In this case it is pertinent to note that the petitioners have examined P.W.1 and P.W. 2 and they deposed about the negligence on the part of the driver of the bus. In order to rebut the petitioner's side evidence there is no contra evidence adduced by the respondent. In the absence of any



C.M.A.(MD)Nos.1059 and 1060 of 2014

contra evidence, the evidence of P.W.1 and P.W. 2 and Ex.P.1 are reliable and acceptable. As per the evidence of PW.1 and P.W. 2 and exhibits Ex.P.1 the accident took place due to negligence on the part of the driver of the first respondent. But the Tribunal without considering the same and without any contra evidence and without any basis fixed 50 % negligence as against the petitioners. As per the available evidence, the accident took place due to the negligence on the part of the driver of the first respondent. Therefore this Court holds that the accident took place due to negligence on the part of the driver of the first respondent alone. Since the first respondent vehicle was insured with the second respondent on the date of accident, the second respondent is liable to pay the compensation to the petitioners. Therefore the order passed by the Tribunal is liable to be set aside in respect of fixing negligence.

13. So far as quantum is concerned, according to the petitioners, the petitioner in MCOP No. 3311 of 2013 had sustained grievous injuries and his permanent disability is 38%. In order to prove the same he examined P.W.3, doctor and as per the evidence of P.W.3 and Ex.P.9 they revealed that the disability of the petitioner in MCOP No.3311 of 2013 is 38%. No contra evidence adduced by the



C.M.A.(MD)Nos.1059 and 1060 of 2014

respondents in that aspect. The Tribunal without any basis reduced the disability from 38% to 36% and the same is not acceptable. Further the trial Court has fixed the same as Rs.2000/- per 1% disability and the same is too less.

14. Considering the nature of injuries and considering the age of the petitioner, this Court is inclined to fix a sum of Rs.3000/- per 1% disability. As per medical records Ex.P.9 and evidence of Ex.P.3 the percentage of disability is 38% therefore, the award would come about Rs.1,14,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, Rs.10,000/- towards transport expenses and extra nourishment and also awarded a sum of Rs.2000/- towards medical assistance and also Rs.8325/- towards medical bills. The Tribunal in other heads awarded reasonable amount and the petitioners also not disputed the claim. The award passed by the Tribunal is also not disputed. The award passed by the Tribunal in other heads have not been disputed by the appellants, thereby this Court is inclined to award compensation as follows:

Partial permanent disability (Rs.3000X18)	:	Rs.1,14,000/-
For pain and sufferings	:	Rs.10,000/-



C.M.A.(MD)Nos.1059 and 1060 of 2014

For Transport to hospital and extra nourishment	:	Rs.10,000/-
For medical assistance	:	Rs.2000/-
Medical Bills	:	Rs.8335/-
Total	:	Rs.1,44,335/-

15.The petitioner is entitled for compensation of Rs.1,44,335/- which is rounded to Rs.1,50,000/-

16. So far as M.C.O.P.No.3312 of 2013 is concerned, according to the petitioner he sustained fracture injuries and his permanent disability is 40%. Inorder to prove the same he examined P.W.3,doctor and as per the evidence of P.W.3 and Ex.P.8 they revealed that the disability of the petitioner in MCOP No.3312 of 2013 is 40%.Further the trial Court has fixed the same as Rs.2000/- per 1% disability and the same is too low.

17.Considering the nature of injuries and considering the age of the petitioner, this Court is inclined to fix a sum of Rs.3000/- per 1% disability. As per medical records, Ex.P.7 and evidence of P.W.3 the percentage is 40% therefore, the award would come about Rs.1,20,000/-. The Tribunal has awarded a sum of Rs.10,000/- towards pain and sufferings, Rs.10,000/- towards transport expenses and extra nourishment and also awarded a sum of Rs.2000/-



C.M.A.(MD)Nos.1059 and 1060 of 2014

towards medical assistance. The Tribunal also awarded reasonable amount and the petitioner also not disputed the claim awarded in other heads.

18.The petitioner has claimed a Rs.30,000/- towards future medical expenses and the doctor P.W.3 in his evidence stated that for future medical expenses estimated amount would be Rs. 30,000/-. The petitioner has not produced any medical bills either for the earlier treatment given to the petitioner or for the estimated future medical treatment. The doctor, who was examined as P.W. 3 stated that due to the plate fixed inside the injuries there should be some medical expenses for removing the plate. In this context considering the nature of injuries this Court is inclined to award a sum of Rs.30,000/- towards future medical expenses. Therefore, the petitioner is entitled for compensation as follows:

Partial permanent disability (Rs.3000X40)	:	Rs.1,20,000/-
For pain and sufferings	:	Rs.10,000/-
For Transport to hospital and extra nourishment	:	Rs.10,000/-
For medical assistance	:	Rs.2000/-
For future medical expenses	:	Rs.30,000/-
Total	:	Rs.1,72,000/-



C.M.A.(MD)Nos.1059 and 1060 of 2014

19. The petitioner is entitled for compensation of Rs.1,72,000/- which is rounded to Rs.1,75,000/-

20. In the result:

i) the Civil Miscellaneous Appeal in CMA(MD) No.1059 of 2014 is partly allowed and the order passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs. 1,50,000/- as compensation along with interest @ 7.5% per annum from the date of petition till the realization. The second respondent /insurance company is directed to deposit the enhanced 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.

ii) the Civil Miscellaneous Appeal in CMA(MD) No.1060 of 2014 is partly allowed and the order passed by the Tribunal is modified to the effect that the petitioner is entitled for a sum of Rs. 1,75,000/- as compensation along with interest @ 7.5% per annum from the date of petition till realization. The second respondent /insurance company is directed to deposit the enhanced



C.M.A.(MD)Nos.1059 and 1060 of 2014

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.

01.02.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
aav

To:

1. The Motor Vehicles Accidents Claims Tribunal
Special Subordinate Judge, Tiruchirapalli
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD)Nos.1059 and 1060 of 2014

P. DHANABAL,J.

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C.M.A.(MD)Nos.1059 and 1060 of 2014

01.02.2024