



C.M.A.(MD).No.1258 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 07.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.1258 of 2014

Johnson

... Appellant / Petitioner

-VS-

1. Murugan

2. The Branch Manager,
The Oriental Insurance Company Ltd.,
Kumbakonam Rep by its
The Branch Office,
Gopalrao, Library Buildings,
Townhall Road, Kumbakonam,
Thanjavur District.

... Respondents /Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to enhance the compensation award amount in M.C.O.P.No.647 of 2007 dated 25.02.2013 on the file of the Motor Accidents Claims Tribunal cum Additional Sub Court, Kumbakonam.

For Appellant : Mr.B.Anandan

For R2 : Mr.K.Balasubramanian

For R1 : No appearance



C.M.A.(MD).No.1258 of 2014

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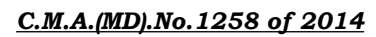
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant for claiming enhancement of compensation award amount passed by the Motor Accidents Claims Tribunal cum Additional Sub Court, Kumbakonam in M.C.O.P.No.647 of 2007 dated 25.02.2013.

2. The Tribunal has awarded a sum of Rs.2,23,825/- (Rupees Two Lakhs Twenty Three Thousand Eight Hundred and Twenty Five only) along with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the present appeal has been preferred by the appellant/claimant.

3. The brief facts of the averments made in the petition before the Tribunal are as follows:

On 02.04.2007, while the petitioner was riding in his TVS Suzuki Motorcycle (since new vehicle, there was no Registration number) near Thiruneelakudi, Atudurai Road, a vehicle, bearing Reg.No.TN-49-R-0487 came in a rash and negligent manner and dashed against the petitioner's Motor Cycle. Due to which, the petitioner sustained injuries all over the body.



4. The brief facts in the counter filed by the second respondent are as follows:

3/11



C.M.A.(MD).No.1258 of 2014

cannot claim any medical expenses. Hence, the petition is liable to be dismissed.

5. In order to prove the case of the petitioner, before the Tribunal, the petitioner has examined P.W.1 to P.W.3 and marked Exs.P.1 to P.14. On the side of the respondents, Ex.R.W.1 was examined and Exs.R.1 to R4 were marked.

6. After evaluating the oral and documentary evidence adduced on both side, the Tribunal has passed the impugned order and awarded a sum of Rs.2,23,825/- (Rupees Two Lakhs Twenty Three Thousand Eight Hundred and Twenty Five only) towards compensation along with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the petitioner has filed the present appeal on the ground of enhancement.

7. The learned counsel appearing for the appellant would contend that the accident took place due to the negligence on the part of the driver of the first respondent vehicle and the same was insured with the second respondent. At the time of accident, the petitioner sustained grievous injuries and he



C.M.A.(MD).No.1258 of 2014

sustained 90% of permanent disability. To that effect, he has also examined the Doctor P.W.2 and he deposed about the disability and injuries sustained by the petitioner and issued Ex.P.12, Disability Certificate. As per Disability Certificate, he sustained disability of 90%. But, the Tribunal has only awarded a meagre amount after taking a sum of Rs.2,000/- (Rupees Two Thousand only) for 1% of the disability instead of adopting multiplier method. The petitioner lost his right hand movement. Thereby, the disability is the functional disability. But the Tribunal failed to consider the same and awarded the less compensation. Therefore, the award of the Tribunal is liable to be modified.

8.The learned counsel appearing for the second respondent would contend that the accident did not take place due to the negligence on the part of the first respondent but also the negligence on the part of the petitioner. The disability caused to the appellant is only partial disability. The Tribunal after taking into consideration all the facts and the records, correctly awarded a sum of Rs.2,23,825/- (Rupees Two Lakhs Twenty Three Thousand Eight Hundred and Twenty Five only) by taking a sum of Rs.2,000/- (Rupees Two Thousand only) for 1% of the disability, under the head of disability. Therefore, the present appeal is liable to be dismissed.



C.M.A.(MD).No.1258 of 2014

WEB COPY

9. This Court, after hearing the learned counsel appearing on either side and perused the records including the order of the Tribunal frames the following point for determination in this appeal:

(i) Whether the appeal is liable to be allowed or not?

10. There is no dispute between the parties regarding the involvement of the vehicle and the tribunal also fixed the negligent on the part of the first respondent. The first respondent has not preferred any appeal as against the findings of the Tribunal. Therefore, the present appeal filed only on the ground of inadequacy of compensation.

11. According to the appellant, he sustained grievous injuries and thereby, he sustained disability of 90%. In order to prove the disability, he examined Doctors P.W.2 & P.W.3 and also marked Exs.P.7 to P.14.

12. This Court carefully perused the evidence of P.W.2 & P.W.3 and Ex.P.12, Disability Certificate and found that the appellant sustained disability of 90%. This Court, on the previous hearing, directed the appellant



C.M.A.(MD).No.1258 of 2014

WEB COPY

to appear before this Court. As per direction of this Court, the appellant also appeared before this Court in person. The movement of the right hand of the appellant was completely restricted. Further, as per medical evidence, the appellant has difficulties in eating food because bone of Lower Jaw of his mouth was broken in the accident. Since the movement of right hand was completely restricted, there was a functional disability. Therefore, the Tribunal ought to have taken the multiplier method for awarding compensation. Unfortunately, the Tribunal failed to consider the said aspects and only awarded a sum of Rs.2,000/- (Rupees Two Thousand only) for 1% disability. Therefore, the award passed by the Tribunal is liable to be modified. Considering the nature of injury sustained by the appellant, this Court is inclined to adopt multiplier method.

13. According to the appellant, the deceased was aged about 35 years on the date of accident and the same was not disputed by the second respondent. The age of the appellant / petitioner is mentioned in the petition as 35 years. Thereby, this Court has taken that the appellant/petitioner is aged about 35 years. According to the appellant, he was earning a sum of Rs.5,000/- (Rupees Five Thousand only) per month, but, no documents were



C.M.A.(MD).No.1258 of 2014

produced. However, taking into consideration the nature of work and age of the appellant / petitioner, monthly income of the appellant/petitioner is fixed at Rs.3,000/- (Rupees three Thousand only) per month, including future prospectus. Considering the age of the petitioner, the multiplier of “16” is adopted and thereby, award amount for loss of income of the petitioner would come to a sum of **Rs.5,18,400/-** ($\text{Rs.3000} \times 12 \times 16 \times 90/100 = \text{Rs.5,18,400/-}$) (Rupees Five Lakhs Eighteen Thousand and Four Hundred only).

14. Considering the nature of injuries, this Court is inclined to modify the award passed by the tribunal in other heads except under the head of Medical bills and Attendant Charges. The Tribunal has awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards pain and sufferings. Considering the nature of injuries, this Court is inclined to enhance the same as **Rs.30,000/-** (Rupees Thirty Thousand only) towards pain and suffering. The tribunal has awarded a sum of Rs.5,000/- towards Extra Nourishment and the same is meagre amount. Hence, this Court is inclined to enhance the same as **Rs.10,000/-** towards Extra Nourishment. Further, the trial Court has failed to award compensation under the head of Transport Charges. Hence, this Court is inclined to award a sum of **Rs.10,000/-** towards Transport Charges.



C.M.A.(MD).No.1258 of 2014

WEB COPY

15. In view of the above discussion, the appellant/petitioner is entitled to the award amount as follows:

Sl.No.	Descriptions	Amount
1.	Loss of income 3000x16x12x90/100	Rs. 5,18,400/-
2.	Medical Bills	Rs. 17,425/-
3 .	For Pain and suffering	Rs. 30,000/-
4.	Extra Nourishment	Rs. 10,000/-
5.	Attendant Charges	Rs. 11,400/-
6.	Transport Charges	Rs. 10,000/-
	Total	Rs. 5,97,225/-

In total, the appellant / petitioner is entitled for **Rs. 5,97,225/-** (Rupees Five Lakhs and Ninty Seven Thousand Two Hundred and Twenty Five only) and the same is rounded off to **Rs.6,00,000/-** (Rupees Six Lakhs only) towards compensation.

16. In the result, this Civil Miscellaneous Appeal is partly allowed with costs. The order passed by the the Motor Accidents Claims Tribunal cum Additional Sub Court, Kumbakonam in M.C.O.P.No.647 of 2007 dated 25.02.2013, is modified to the effect that the appellant/ petitioner is entitled to



C.M.A.(MD).No.1258 of 2014

WEB COPY

a sum of **Rs.6,00,000/- (Rupees Six Lakhs only)** towards compensation along with interest at the rate of 7.5% p.a from the date of filing of the petition till realization of payment. The second respondent/ Insurance Company is directed to deposit the entire amount within a period of two months from the date of this judgment. The appellant/petitioner is at liberty to withdraw the said amount, after depositing of the said amount by the second respondent/ Insurance Company. The appellant/ petitioner is directed to pay the balance Court fee, if any, within ten days from the date of this judgment.

07.03.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
dss

To

1. The Motor Accidents Claims Tribunal cum Additional Sub Court,
Kumbakonam.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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C.M.A.(MD).No.1258 of 2014

P.DHANABAL,J.

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C.M.A.(MD)No. 1258 of 2014

07.03.2024