



C.M.A.(MD)No.620 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 19.01.2024

CORAM:

THE HON'BLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.620 of 2014

Mohamed Ghouse

... Appellant / Claimant

Vs.

1.Mohamed Nizar

2.United India Insurance Company Ltd.,

Salai Road,

Thillai Nagar,

Trichy – 18.

... Respondents / Respondents

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to allow the appeal and modify the award passed in M.C.O.P.No.91 of 2007 dated 18.06.2010, on the file of the Motor Accident Claims Tribunal Cum Sub Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran

for Mr.N.Sudhagar Nagaraj

For Respondent No.1 : Mr.A.George Stephen Kanikkai Raj

For Respondent No.2 : Mr.R.Ravindran



WEB COPY



C.M.A.(MD)No.620 of 2014

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the order passed in M.C.O.P.No.91 of 2007, on the file of III Additional Subordinate Judge, Motor Accident Claims Tribunal Cum Sub Court, Tiruchirappalli, wherein the petitioner has filed the claim application and the Tribunal ordered a sum of Rs.77,500/- with interest at the rate of 7.5% from the date of petition till the date of realization. Aggrieved by the said award passed by the Tribunal, the present appeal has been preferred by the appellant, for enhancement of compensation.

2.Brief contents of the claim petition averments are as follows:

On 30.11.2005, at about 03.45 p.m., when the appellant was travelling in a two wheeler bearing registration No.TN 48 E 1828, belonging to the first respondent which was insured with the second respondent, the rider of the vehicle rode the vehicle in a rash and negligent manner and applied sudden break and thereby the appellant was thrown out from the vehicle and sustained grievous injuries all over the body, due to which he has become permanently disabled and also incurred a sum of Rs.50,000/- towards medical expenses. The appellant was aged about 45 years at the time of



C.M.A. (MD) No. 620 of 2014

accident and he was earning a sum of Rs.5,000/- per month and thereby he claimed a compensation of Rs.2,00,000/-.

3.The brief averments of the counter affidavit filed by the second respondent are as follows:

The claim petition is not maintainable either in law or on facts, the petitioner has to prove his age, income and occupation at the time of the accident. The respondent also denied the manner of accident. The accident did not happen due to the negligence on the part of the driver of the first respondent. Therefore, the petition is liable to be dismissed.

4.In order to prove the case of the appellant before the Tribunal, he examined P.W.1 and P.W.2 and marked Exs.P.1 to P.9. On the side of the respondents, R.W.1 was examined and Exs.1 to 4 were marked. Apart from that, Ex.X1 was also marked.

5.After hearing both sides and perusing the oral and documentary evidences adduced on either side, the Tribunal had partly allowed the claim petition and awarded a sum of Rs.77,500/- towards compensation by directing the respondents to pay the said amount to the claimant in M.C.O.P.No.91 of 2007. Aggrieved over



C.M.A. (MD) No. 620 of 2014

the said award amount, the present appeal has been filed for enhancement of the award amount on various grounds.

6. Learned Counsel for the appellant would contend that the appellant sustained grievous injuries and thereby he is permanently disabled with 43% disability and to that effect he also examined Doctor [P.W.2] and also marked Ex.P.9 [Disability Certificate]. But the Tribunal without any basis has reduced the percentage of disability from 43% to 35% and without adopting multiplier method awarded a meagre amount as compensation. The appellant was unable to do his regular work and he lost his earning capacity and thereby the multiplier method has to be adopted. Therefore, the order passed by the Tribunal is liable to be set aside.

7. Learned Counsel for the respondents would contend that the petitioner sustained only bone fracture and there is no functional disability and thereby even as per Ex.P.9 and the evidence of P.W.2, the disability is only 43% and thereby the Tribunal has taken a sum of Rs.1500 for 1% of disability and awarded fair compensation. Apart from that, the Tribunal has also awarded fair compensation on various heads and totally awarded a sum of Rs.77,500/- as compensation. Therefore, the Tribunal has awarded fair compensation and the present appeal is liable to be dismissed.



C.M.A. (MD) No. 620 of 2014

WEB COPY

8. This Court after hearing both sides and upon perusing the documents including the order of the Tribunal, the point for determination in this appeal is:

“Whether this appeal has to be allowed or not?”

9. In this case, there is no contravention with regard to the accident and the negligence on the part of the first respondent. The Tribunal has fixed the liability of negligence on the part of the driver of the first respondent and there is no appeal filed by the respondents as against the findings of the Tribunal, in respect of negligence.

10. The present appeal has been filed by the appellant only on the ground of inadequacy of the compensation. According to the appellant, he sustained fracture injuries and he is unable to do his regular work. Prior to the accident, he was doing fishing by travelling through his bicycle and now due to this fracture, he is unable to do his work by travelling through his bicycle and thereby he lost his earning capacity.

11. In order to prove the disability, he examined P.W.2 and marked Ex.P.9. A careful perusal of the aforesaid evidence of P.W.2



C.M.A. (MD) No. 620 of 2014

and Ex.P.9, clearly shows that the percentage of disability is 43%.

There is no evidence to show that the appellant entirely lost his earning capacity and there is no functional disability. Therefore, the argument of the learned Counsel for the appellant that the appellant lost his earning capacity is not acceptable one. At the same time, the Tribunal has awarded only Rs.1,500/- per percentage of the disability. Considering the nature of the case and considering the nature of injuries, this Court awards a sum of Rs.3,000/- for 1% of the disability. The Tribunal has also failed to take into consideration the evidence of P.W.2 and Ex.P.9 and without any contra evidence, the tribunal has reduced the disability percentage from 43% to 35% and the same is not acceptable. Therefore, this Court fixes the disability as 43% as per evidence of P.W.2 and Ex.P.9 and thereby the award would come to a sum of Rs.1,29,000/- towards permanent disability. Further, the Tribunal awarded a sum of Rs.10,000/- towards pain and sufferings and the same is also a meagre amount. Considering the nature of the injuries and as per the evidence of P.W. 2, the injured was subjected for surgery and thereby, this Court is inclined to award a sum of Rs.50,000/- for pain and sufferings. The Tribunal has awarded a sum of Rs.5000/- towards extra nourishment. The same is in order. The Tribunal has further awarded a sum of Rs.5000/- towards transport expenses. Considering the nature of the case, the amount awarded for



C.M.A. (MD) No. 620 of 2014

transport expenses is very meagre. Therefore, this Court awards Rs. 10,000/- towards transport expenses. The Tribunal has finally awarded a sum of Rs.5000/- under the head of medical expenses which is in order, but failed to award under the head of attendant charges. Considering the duration of the treatment, this Court is inclined to award a sum of Rs.10,000/- towards medical attendant charges and also Rs.10,000/- towards loss of amenities and a further sum of Rs.10,000/- towards loss of income during the period of treatment.

12.In total, the appellant is entitled for compensation under the following heads:

Permanent Disability	- Rs.1,29,000/-
Pain and sufferings	- Rs.50,000/-
Extra nourishment	- Rs.5,000/-
Transport expenses	- Rs.10,000/-
Medical expenses	- Rs.5,000/-
Attendant charges	- Rs.10,000/-
Loss of amenities	- Rs.10,000/-
Loss of income	- Rs.10,000/-

Total	- Rs.2,29,000/-



C.M.A.(MD)No.620 of 2014

WEB COPY

In total, the appellant is entitled to a sum of Rs.2,29,000/- rounded off to Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand only).

13.Though the appellant has filed a petition seeking for a compensation of Rs.2,00,000/-, following ***Nagappa's*** case ***[Nagappa Vs. Gurudayal Singh and others reported in 2003 (2) SCC 274]***, this Court can award more than the amount claimed in claim petition for just and fair compensation. Therefore, this Court is inclined to award a sum of Rs.2,30,000/- towards compensation to the appellant.

14.In the result, this Civil Miscellaneous Appeal, is partly allowed with costs and the order passed by the Tribunal is modified to the effect that the appellant is entitled to a sum of Rs.2,30,000/- (Rupees Two Lakhs and Thirty Thousand only) towards compensation, with interest at the rate of 7.5% per annum from the date of filing of the application till the realization of the amount. The second respondent is directed to deposit the award amount within a period of two [2] months from the date of the order of this Court after deducting the amount, if any already deposited. The



C.M.A. (MD) No. 620 of 2014

appellant is directed to pay the balance court fee within a period of ten [10] days from the date of this order.

19.01.2024

NCC : Yes/No

Index : Yes/No

Internet: Yes/No

MR

To

1.The Motor Accident Claims Tribunal /
III Additional Subordinate Court,
Tiruchirappalli.

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A. (MD) No. 620 of 2014

P.DHANABAL, J.

MR

C.M.A.(MD)No.620 of 2014

19.01.2024