



C.M.A.(MD)No1377 of 2016

WEB COPY

Dated: 05.03.2024

CORAM:

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

C.M.A.(MD)No.1377 of 2016

R.Mani

...Appellant/Claimant

Vs.

1. A.Murugan
2. Justinrajan
3. V.Laxumanan
4. R.Ramesh
5. The Branch Manager
United India Insurance Company Ltd.,
Xavier Building,
P.W.D.Road, Nagercoil,
Kanyakumari District

..Respondents/Respondents

Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the fair and decreetal order dated 30.12.2005 made in MCOP No.111 of 2001 on the file of the Principal Motor Accident Claims Tribunal , Nagercoil, Kanyakumari District for the enhancement of the award.

For Appellant : Mr. C.Ananth Rajesh

For R1 : Mr.S.Subaharan

For R2 & R3 : No appearance

For R5 : Mr.C.Jawahar Ravindran



C.M.A.(MD)No1377 of 2016

WEB COPY

JUDGMENT

This Civil Miscellaneous Appeal has been filed as against the order passed in M.C.O.P No.111 of 2001 on the file of the Principal Motor Accident Claims Tribunal, Nagercoil, Kanyakumari District. Wherein the appellant herein has filed petition for claiming compensation due to the road accident. The Tribunal has awarded a sum of Rs.19,372/- towards compensation with interest @ 7.5% per annum. As against the order passed by the Tribunal, this present appeal has been filed by the appellant/petitioner.

2. For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The brief facts of the case in the appeal are as follows:

The petitioner was working as a load man in the second respondent lorry bearing Reg. No. TN 74 2730. While so on 29.07.1999 when he was proceeding in the above said lorry the above said lorry was driven by the first respondent. At that time a tempo bearing Reg. No. TN 09 D 1850 belonging to the third



C.M.A.(MD)No1377 of 2016

respondent insured with the fifth respondent came in a rash and negligent manner and dashed against the lorry, due to which the petitioner was thrown out from the lorry and sustained injuries. The petitioner was permanently disabled and thereby he claims compensation.

4. The brief facts of the counter filed by the fifth respondent are as follows:

The claim of the petitioner is too high. The respondent denied the age, income, occupation of the deceased and the manner of the accident. The petitioner only sustained simple injuries. The accident did not take place as alleged in the petition, hence the petition is liable to be dismissed.

5. The respondents 1 to 4 were set exparte before the trial Court. Before the Tribunal, on the side of the petitioner he has examined P.W.1 and P.W.2 and marked exhibits Ex.P.1 to P.10 and on the side of the respondent R.W.1 was examined and Exhibits R.1 to R7 were marked.

6. After hearing both sides and perusing the documents available on record, the Tribunal has awarded a sum of Rs. 19,272/-



C.M.A.(MD)No1377 of 2016

towards compensation. As against the order passed by the Tribunal, the petitioner has preferred this appeal for enhancement of award amount on various grounds.

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 tempo and the said tempo was insured with the fifth respondent. The Tribunal correctly fixed the liability as against the driver of the tempo but at the same time awarded only meagre amount. The petitioner sustained grievous injuries and he permanently disabled thereby the Tribunal ought to have awarded fair compensation instead only awarded meagre amount and the same is liable to be enhanced. Hence the appeal is liable to be allowed.

8. The learned counsel appearing for the fifth respondent / fifth respondent would contend that the petitioner has not produced any disability certificate and only produced medical records in respect of injuries thereby the Tribunal has only awarded a sum of Rs.19,272/- and the same is reasonable one. Therefore the order passed by the Tribunal is in order and the present appeal is liable to be dismissed.



C.M.A.(MD)No1377 of 2016

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

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

10. In this case there is no dispute in respect of accident and the negligence on the part of the driver of the tempo and the said vehicle was insured with the fifth respondent. The Tribunal also fixed the liability as against the driver of the tempo and awarded compensation. The appeal is only against the quantum of amount. According to the appellant he sustained injuries but the Tribunal failed to awarded fair compensation. In this context the petitioner has failed to produce disability certificate and only marked wound certificate and as per evidence of P.W.2 and wound certificate the petitioner sustained bone fracture. However there is no proof for disability. The Tribunal after taking into consideration of the injuries sustained by the petitioner has awarded Rs.2000/- for loss of income, Rs.5000/- towards pain and sufferings, Rs.10,000/- for permanent disability. The petitioner has also produced medical bills for a sum of Rs.2,271.54. Though the petitioner has not produced any documents for disability, P.W.2 doctor in his evidence deposed that the petitioner sustained fracture injuries in his jaw and also



C.M.A.(MD)No1377 of 2016

sustained fracture on his fingers and also he was subjected for surgery.

11. Therefore considering the nature of injuries, this Court is inclined to award compensation as follows:

Permanent disability	:	Rs.50,000/-
For pain and sufferings	:	Rs.10,000/-
Loss of income	:	Rs.5,000/-
Extra nourishment	:	Rs.5000/-
Medical Bills	:	Rs.2,271/-
Total	:	Rs.72,271/-

12.The petitioner is entitled for compensation of Rs.72,271/- which is rounded to Rs.75,000/-

13. The Tribunal has failed to consider the nature of injuries and awarded meagre amount , therefore the order passed by the Tribunal is liable to be enhanced as stated above.

14. In the result this Civil Miscellaneous Appeal 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.75,000/- as compensation along with interest @ 7.5% per annum from the date



C.M.A.(MD)No1377 of 2016

of petition till the realization. The fifth 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.

05.03.2024

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

To:

1. The Principal Motor Accident Claims Tribunal ,
Nagercoil, Kanyakumari District
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No1377 of 2016

P. DHANABAL,J.

aav

C.M.A.(MD)No1377 of 2016

05.03.2024