



C.M.A.(MD).No.793 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 06.12.2023

Delivered On : 22.01.2024

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

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and

M.P.(MD)No.3 of 2015

Oriental Insurance Company Ltd.,
Through its Divisional Manager,
1st Floor,
D.D.J. Centre,
Opp to Vadasery Bus Stand,
Nagercoil – 629 001.

... Appellant

Vs.

1.Iyyappan
2.Paulraj
(2nd Respondent given up)

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, to set aside the order of the Motor Accident Claims Tribunal Cum Special Sub Court, Tirunelveli in M.C.O.P.No.708 of 2013 dated 04.04.2014.

For Appellant	: Mr.C.Jawahar Ravindran
For R2	: Given Up
For R1	: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal is directed as against the judgment and award on certain counts passed by the learned Motor Accident Claims Tribunal cum Special Sub Court, at Tirunelveli in M.C.O.P.No.708 of 2013 dated 04.04.2014 by the appellant/petitioner/claimant.

2.For the sake of convenience, the parties are addressed herein as per the rank in M.C.O.P.No.708 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 13.11.2012 at about 07.15 p.m., while the petitioner was standing in front of his house, a Santro Hyundai car bearing registration No.TN-74-Q-4579 belonging to the first respondent insured with the second respondent came from north south direction and hit the petitioner in front of his house steps. As the result of which, he sustained skull, face and ribs besides multiple injuries all over the body. Immediately he was taken to nearby Subam hospital for first aid and

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thereafter, admitted in Kevin Hospital, Nagercoil as in patient till 03.12.2012. The injured had undergone Burhole surgery for removal of clotted blood by inserting tube in the skull and a FIR in Crime No.365 of 2012 was registered by the Boothapandy Police as against the first respondent driver. Seeking a compensation of Rs.12,00,000/-, the petitioner has filed the claim petition.

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

5.The learned Tribunal had framed 4 issues. Three witnesses were examined as P.W.1 to P.W.3 on the side of the petitioner and marked Ex.P1 to Exp10 and neither witness nor document was marked on the side of the respondents. The first respondent was called absent and was set exparte. On the basis of the oral and documentary evidence and arguments putforth by the respective parties, the learned Tribunal has proceeded to conclude that the accident happened only due to the rash



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and negligent driving of the first respondent driver.

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6. Though the petitioner claimed to have earned Rs.20,000/- per month as Welder, since he did not produce any relevant document to prove the same, the learned Tribunal arrived at a notional income of Rs. 4,500/- per month. One Dr.Ramaguru was examined as P.W.3 who had issued a certificate of partial permanent disability at 60% and the same was marked as Ex.P9. The said certificate has been issued by the Doctor on the basis of Ex.P10, Scan report. That apart, the Doctor Joseph who treated the petitioner was also examined as P.W.2. On the basis of the evidence deposed by P.W.2 and P.W.3, the learned Tribunal came to a conclusion that the petitioner has suffered the after effect of the accident though treated continuously. In view of the same, the learned Tribunal fully adopted 60% for the partial permanent disability as certified by P.W. 3, on the basis of the evidence of P.W.1 and P.W.2 towards partial permanent disability head. A notional income of Rs.4,500/- was adopted. The multiplier '15' was relevant to the age of the petitioner, who was 39 years old at the time of accident and his age was decided on the basis of his transfer certificate marked as Ex.P6. Thus the head of partial



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permanent disability was calculated as Rs.4,86,000/- [Rs. 4,500x12x15x60/100]. The learned Tribunal proceeded to pass the award under following heads:-

Head	Compensation awarded
(I)Partial Permanent Disability:	Rs.4,86,000/-
(ii)Pain and suffering	Rs.40,000/-
(iii)Transportation:	Rs.10,000/-
(iv)Medical Expenses as per Ex.P3, Ex.P4 and Ex.P5:	Rs.1,19,420/-
(v)Loss of earning:	Rs.27,000/-
(vi)Extra nourishment:	Rs.15,000/-
(vii)Attendant charges:	Rs.10,000/-
(viii)Compensation for Future Difficulties:	Rs.50,000/-
Total compensation awarded:	Rs.7,57,420/- with interest @ 7.5 % from the date of the claim until the realization and costs.

7.Challenging the same, this Civil Miscellaneous Appeal has been filed by the appellant/second respondent/insurance company.

8.The learned counsel for the appellant vehemently submitted that the learned Tribunal ought not to have fixed the partial permanent disability and the same has been excessively calculated. He further



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submitted that the learned Tribunal ought not to have allowed the compensation under the future difficulties and such a compensation is not at all available in the proforma of compensation provided by Motor Vehicles Act, 1988.

9.The learned counsel for the appellant relying upon the Hon'ble Apex Court in the case of ***Raj Kumar v. Ajay Kumar and another*** reported in ***(2011) 1 Supreme Court Cases 343*** submitted that the learned Tribunal ought to have overlooked the disability certificate referred as 60% disability certified by P.W.3 and should have assessed the same on the basis of loss of earning capacity.

10.That apart the learned counsel for the appellant submitted that instead of adopting multiplier method, the learned Tribunal ought to have applied Rs.3,000/- per percentage and arrived at a compensation amount under the head of partial permanent disability. However, the Hon'ble Apex Court in the case of ***Raj Kumar v. Ajay Kumar and another*** reported in ***(2011) 1 Supreme Court Cases 343*** has adopted only multiplier method.



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11. In view of the same, I am not inclined to interfere in the decision of the learned Tribunal under the head of partial permanent disability. However, the compensation awarded under the head of Future difficulty is without any basis. Such a compensation would not find place in the provision of Motor Vehicles Act, 1988. In view of the same, the same is liable to be struck off.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/ Confirmed
(I) Partial Permanent Disability:	Rs.4,86,000/-	Rs.4,86,000/-	Confirmed
(ii) Pain and suffering	Rs.40,000/-	Rs.40,000/-	Confirmed
(iii) Transportation:	Rs.10,000/-	Rs.10,000/-	Confirmed
(iv) Medical Expenses as per Ex.P3, Ex.P4 and Ex.P5:	Rs.1,19,420/-	Rs.1,19,420/-	Confirmed
(v) Loss of earning:	Rs.27,000/-	Rs.27,000/-	Confirmed
(vi) Extra nourishment:	Rs.15,000/-	Rs.15,000/-	Confirmed



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(vii)Attendant charges:	Rs.10,000/-	Rs.10,000/-	Confirmed
(viii)Compensation for Future Difficulties:	Rs.50,000/-	-	Reduced
Total Compensation:	Rs.7,57,420/-	Rs.7,07,420/-	Reduced

12.The petitioner/claimant is entitled to a sum of Rs.7,07,420/- as compensation with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The second respondent/insurance company is directed to deposit Rs.7,07,420/- 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 second respondent/insurance company are entitled to withdraw the excess amount, if any. The petitioner/claimant is not entitled for interest for the default period, if there is any.



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13. Accordingly, the Civil Miscellaneous Appeal stands partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

22.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn

To

1. Motor Accident Claims Tribunal
Special Sub Judge,
Tirunelveli.

2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI, J.

Mrn

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