



C.M.A.(MD)No.440 of 2011

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.DHANABAL

C.M.A.(MD)No.440 of 2011

- | | |
|---------------------|--------------------------|
| 1. Saravanan (died) | ... Appellant/Petitioner |
| 2. Sagunthala | ... Appellant |

(A2 is brought on record as LR of the deceased sole appellant vide order of this Court dated 26.02.2021 made in C.M.P(MD)No.1343 of 2021 in C.M.A (MD) No.440 of 2011)

-VS-

- | | |
|--|------------------------------|
| 1. S.Palaniammal | |
| 2. M/s.ICICI Lombard General Insurance
Vigneswara Christa
1 st Floor, 1095, Avanasi Road,
Pappanaikanpalayam,
Coimbatore – 37 | ... Respondents /Respondents |

(Memo dated 01.11.2023 in U.S.R.No.37814 is recorded to the effect that R1 given up, and she was set ex-parte before the Tribunal. Hence, issuance of notice to R1 is dispensed with, vide order of this Court dated 03.11.2023 made in C.M.A(MD) No.440 of 2011)



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the fair and decreetal order dated 06.10.2010 made in M.C.O.P.No.204 of 2008 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Karur.

For Appellant : Mr.S.Parthasarathy
For R2 : Mr.S.Srinivasa Raghavan
For R1 : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant as against the order passed in M.C.O.P.No.204 of 2008 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Karur, wherein, the deceased appellant filed a claim petition claiming compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only).

2. The Tribunal has awarded a sum of Rs.8,08,000/- (Rupees Eight Lakhs and Eight Thousand 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.



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

On 20.08.2008, at about 05.00 p.m while the deceased Saravanan was riding in his Yamaha Crux bearing Registration No.TN-47-L-2130 with his friend Kumar @ Nelamegam from Tiruchengode to Velur main road as pillion rider. At the time of a bus bearing Registration No.TN-34-D-3510 came in a rash and negligent manner and dashed against the Motor Cycle. Due to which, the petitioner and his friend sustained injuries all over the body. The petitioner was admitted in the hospital and his left leg was removed from the thigh and there were fractures on his pelvis bone and severe injury in his alimentary canal. Thereby, the deceased Saravanan claimed a sum of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) as compensation.

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

The petition is not maintainable either in law or on facts. The petitioner is put to strict proof of the averments made in the petition except those are specifically admitted by the respondent. The accident took place due to the



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rash and negligence on the part of the rider of the two wheeler and not by the driver of the bus. The respondent denied the age, income and occupation of the petitioner and also treatment taken by the petitioner. Since the accident had not taken place due to the rash and negligence on the part of the driver of the first respondent, the second respondent is not liable to pay any compensation to the petitioner.

5. In order to prove the case of the petitioner, the petitioner has examined P.W.1 to P.W.6 and marked Exs.P.1 to P.18. On the side of the respondents, no witnesses were examined and no documents were marked.

6. After evaluating the oral and documentary evidence adduced on the side of the petitioner, the Tribunal has passed the common order and awarded a sum of Rs.8,08,000/- (Rupees Eight Lakhs and Eight Thousand only) towards compensation along with interest at the rate of 7.5% p.a. As against the award passed by the Tribunal, the petitioner filed the present appeal on the ground of enhancement. During the pendency of the appeal, the appellant died and his legal heir has been impleaded as party.



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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 bus and the Tribunal also fixed liability and the negligence on the part of the driver of the bus. Thereafter, no appeal was filed as against the order of the Tribunal in respect of the negligence. But the Tribunal has 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 sustained grievous injuries and left leg was totally removed from the thigh and thereby, sustained disability and also sustained injuries on his private parts. 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 took place due to the negligence on the part of the rider of the Motor Vehicle. However, the Tribunal fixed the liability as against the bus driver. The petitioner sustained grievous injuries and his left leg below the thigh was also removed. The Tribunal after taking into consideration all the facts and the records, correctly awarded a sum of



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Rs.8,08,000/- (Rupees Eight Lakhs and Eight Thousand only) by taking a sum of Rs.2,000/- (Rupees Two Thousand only) towards functional disability.

Therefore, the present appeal is liable to be dismissed.

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. In this case, according to the petitioner, the accident took place due to the negligence on the part of the driver of the bus and the bus was insured with the second respondent. Therefore, the second respondent is liable to pay the compensation. There is no dispute with regard to the negligence on the part of the driver of the bus and the respondents have not preferred the appeal as against the findings of the Tribunal with regard to the negligence on the part of the bus driver. Therefore, the present appeal filed only on the ground of inadequacy of compensation.



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11. According to the petitioner, he sustained grievous injuries and his left leg was removed from thigh and thereby, he sustained disability of 80%. In order to prove the disability, he examined Doctors P.W.3 to P.W.5 and also marked Exs.P.6 to P.12, Exs.P.14 to P.16.

12. A careful perusal of materials reveals that the removal of left leg, thigh of the petitioner was due to the accident and also lost of his private part due to the accident. As per the evidence, his left leg was removed and thereby, there was a functional disability. Therefore, the Tribunal ought to have taken the multiplier method for awarding compensation, since there was functional disability. Unfortunately, the Tribunal failed to consider the 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 petitioner, this Court is inclined to adopt multiplier method.

13. According to the appellant, the deceased was aged about 31 years



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on the date of accident and the same was not disputed by the second respondent. The age of the petitioner is mentioned in the petition as 31 years. Thereby, this Court has taken that the appellant/petitioner is aged about 31 years. According to the petitioner, he was working in a Textile and earning a sum of Rs.5,000/- (Rupees Five Thousand only) per month and no documents were produced. However, taking into consideration the nature of work and age of the petitioner, monthly income of the appellant/petitioner is fixed at Rs.4,000/- (Rupees Four 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 $(4000 \times 16 \times 12 \times 80 / 100 = \text{Rs.}6,14,400/-)$ (Rupees Six Lakhs Fourteen Thousand and Four Hundred only).

14. Further the Tribunal has awarded a sum of Rs.5,08,000/- (Rupees Five Lakhs and Eight Thousand only) towards medical bills, and the same is not disputed by the respondents. Therefore, this Court is also inclined to award the said amount towards medical bills.

15. The Tribunal has also awarded a sum of Rs.25,000/- (Rupees



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Twenty Five Thousand only) towards pain and sufferings. Considering the nature of injuries, this Court is inclined to award a sum of Rs.50,000/- (Rupees Fifty Thousand only) towards pain and sufferings.

16. The Tribunal has awarded a sum of Rs.1,00,000/- (Rupees One Lakh only) towards attendant charges and for artificial leg. Since the appellant/petitioner died, this Court is not inclined to award the said amount, for artificial leg. But inclined to award a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) towards attendant charges.

17. Further, the Tribunal has awarded a sum of Rs.5,000/- (Rupees Five Thousand only) towards extra nourishment. This Court is inclined to award a sum of Rs.10,000/- (Rupees Ten Thousand only) towards Extra Nourishment.

18. The Tribunal has awarded a sum of Rs.10,000/- (Rupees Ten Thousand only) towards Transport Expenses. Considering the nature of injuries, this Court is inclined to award a sum of Rs.20,000/- (Rupees Twenty Thousand only) towards Transport Expenses.



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19. 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 4000x16x12x80/100	Rs. 6,14,400/-
2.	Medical Bills	Rs. 5,08,000/-
3 .	For Pain and suffering	Rs. 50,000/-
4.	Extra Nourishment	Rs. 10,000/-
5.	Transport expenses	Rs. 20,000/-
6.	Attendant Charges	Rs. 25,000/-
	Total	Rs.12,27,400/-

In total, the petitioner is entitled for Rs.12,27,400/- (Rupees Twelve Lakhs Lakhs and Twenty Seven Thousand and Four Hundred only) rounded off to **Rs.12,30,000/- (Rupees Twelve Lakhs and Thirty Thousand only)** towards compensation.

20. In the result, this Civil Miscellaneous Appeal is partly allowed with costs. The order passed by the Motor Accidents Claims Tribunal (Chief Judicial Magistrate) Karur, in M.C.O.P.No.204 of 2008, dated 06.10.2010, is



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modified to the effect that the appellant/ petitioner is entitled to a sum of **Rs.12,30,000/- (Rupees Twelve Lakhs and Thirty Thousand 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 directed to pay the balance Court fee within ten days from the date of this judgment.

30.01.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Motor Accidents Claims Tribunal
(Chief Judicial Magistrate) Karur.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL,J.

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