



CMA.No.1319 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.02.2023

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THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

**C.M.A.No.1319 of 2018
and
CMP.No.10631 of 2018**

The Oriental Insurance Company Limited,
Namakkal.

...Appellant

Vs.

1. C.Srinivasan
2.M/s.Raja Feeds,
145, B-2, Salem Road,
Namakkal Post, Namakkal District.
3.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem II Division Regional Office,
Bharathipuram, Dharmapuri – 5.

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree passed in MCOP.No.2036 of 2014 dated 10.01.2018 on the file of Motor Accident Claims Tribunal (Special Sub Court) Dharmapuri.

For Appellant : Mr.K.Vinod
for M/s.Elveera Ravindran
For Respondents : Mr.G.Jeremiah for R1



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Dispensed with for R2 on 17.09.2018

Mr.D.Nitin for R3

Standing Counsel for TNSTC, Salem

J U D G M E N T

This appeal has been filed by the appellant/Insurance Company to set aside the Judgment and Decree passed in MCOP.No.2036 of 2014 dated 10.01.2018 on the file of Motor Accident Claims Tribunal (Special Sub-Court) Dharmapuri.

2. On 14.06.1992, at 03.30 a.m., while the appellant/claimant was the duty conductor in the third respondent / Transport Corporation bus bearing Regn.No.TN-29-N-0276 and when the bus was nearing Kalangani, Salem to Namakkal Main Road, a lorry bearing Regn.No.TN-28-7864 which was proceeding in front of the said bus, at that time another lorry came from the opposite direction, the passenger bus and the lorry bearing Regn.No.TN-28-7864 dashed each other, due to which, the claimant in the bus sustained multiple grievous injures. Claiming that the claimant who was aged about 49 years at the time of accident and was working as conductor in the said



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Corporation and earning about Rs.7500/- per month at the time of accident and the driver of the lorry is solely responsible for the accident, the claimant has filed a claim petition before the Tribunal, claiming a sum of Rs.10,00,000/-.

3. Challenging the same, the appellant/Insurance Company has filed the present Civil Miscellaneous Appeal.

4. The learned counsel for the appellant/Insurance Company has submitted that the Tribunal has wrongly awarded a sum of Rs.23,36,712/- and directing the appellant to pay 50% of the same amount to Rs.11,68,356/-. He further submitted that the claimant had already received compensation in W.C.No.141 of 1994 from his then employer the TNSTC Ltd., It has failed to observe that as per Section 167 of M.V.Act and as laid down by the Apex Court, a victim once availed his claim under any of the provisions of M.V.Act or under Employees Compensation Act, 1923, and has received the compensation, he cannot again make a claim under other enactment. It failed to appreciate that since the claimant having received compensation under E.C.Act, 1923, he is not entitled to make a claim under



M.V.Act. The findings of the Tribunal on the choice of forum under Section 167 of M.V.Act is totally wrong and is without basis and against the law laid down by the Apex Court in 2006 ACJ page 528 and 2013 ACJ page 709. The Tribunal has also failed to appreciate that the claimant, continued his job till 2001, even after the accident in the year 1992. The Tribunal has wrongly held that merely deducting the compensation awarded under the earlier proceedings will give right to the claimant to make a claim once again. It has failed to note down that it was the claimant who on his own volition had opted for voluntary retirement in 2001 and the Tribunal has held that the claimant was dismissed from service due to alleged injuries. It has also wrongly held that the claimant was suffering from loss of earning capacity of 70%. It has failed to appreciate that the claimant was continuing his avocation even at the time of getting compensation under E.C. Act, without any loss of income or loss of job. It has failed to appreciate that in the absence of evidence regarding whole body disability and functional disability, the alleged percentage of disability of particular limb cannot be taken as the percentage of loss of earning power. He further submitted that the amount of income shown is only for the purpose of the petition. He further submitted that the appellant has to prove with documentary evidence



that the driver of the said lorry was having valid driving license at the time of the accident and valid insurance policy at the time of accident. The petition was filed after a lapse of 14 years and hence this petition is clearly barred by limitation. He further submitted that this Court has no jurisdiction to try this case since the cause of action arose outside the jurisdiction of this court. He also relied on the judgment in ***National Insurance Co., Ltd., Vs. Mastan and another*** reported in ***2006 ACJ 528***, wherein in paragraph No.33, it has been held as follows:

“33.....That section provides that death or bodily injury arising out of a motor accident which may also give rise to a claim for compensation under the Workmen's Compensation Act, can be enforced through the authorities under that Act, the option in that behalf, being with the victim or his representative. But Section 167 makes it clear that a claim could not be maintained under both the Acts. In other words, a claimant who becomes entitled to claim compensation both under Motor Vehicles Act, 1988 and under the Workmen's Compensation Act, because of a motor vehicle accident has the choice of proceeding under either of the Acts before the concerned forum. “

Stating so, he prays to allow this appeal.



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5. The learned counsel for the third respondent / Transport Corporation has submitted that the appeal is not maintainable. The driver of the bus has driven the vehicle in a proper manner following the rules and regulations. It is the lorry bearing Regn.No.TN-28 -7864 responsible for the accident. The appellant has to prove the age, avocation, income, injuries and medical treatment. Hence, he prays for dismissal of the appeal.

6. Before the Tribunal, three witnesses have been examined and marked as PW1 to PW3 and filed eighteen documents which were marked as Ex.P1 to Ex.P18. On the side of the Insurance Company, two witnesses were examined as RW1 and RW2. No document was marked on its side.

7. Based on the evidences of P.W.1 to P.W.3 and perusing the exhibits Ex.P1/FIR and Ex.P3 to ExP7, the Tribunal has fastened the liability on both the lorry and bus which has to be compensated jointly and severally by the Insurance Company and Transport Corporation.

8. The details of the compensation awarded by the Tribunal are as



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follows:

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HEADS	AMOUNT (in Rs.)
70% Permanent disability and future loss of earning	22,31,712/-
Pain and sufferings	50,000/-
Transport Expenses	10,000/-
loss of earning for 2 months	15,000/-
Nutrition and damage to clothes	20,000/-
Attender Charges	10,000/-
TOTAL	23,36,712/-

9. Heard the learned counsel for the appellant and the learned counsel for the third respondent and perused the materials available on record carefully and meticulously.

10. The learned counsel for the Insurance Company in its additional counter has submitted that the appellant has preferred an appeal in W.C.No.142 of 1994 before the Deputy Commissioner of Labour and he has also got compensation for the injuries sustained in the accident. He further submitted that the material aspect has been suppressed by the appellant and



the present appeal has been filed for the same relief which is against M.V.Act. Hence this appeal is not maintainable.

11. During cross examination of PW1, it is admitted by the appellant /claimant that he has received compensation of Rs.29,196/- from the third respondent through Workmen Compensation in W.C.No.142 of 1994.

12. The relevant portion, in paragraph No.12 of award of the Tribunal, is extracted hereunder as follows:

“மனுதாரர் தரப்பில் தான் W.C.142/94 சேலம் வேலையாளர் இழப்பீட்டு தீர்ப்பாயத்தில் இழப்பீடு மனுவை தொடர்ந்து விசாரிக்கப்பட்ட பின்னான 29,196/- 3-ம் எதிர்மனுதாரர் செலுத்த வேண்டுமென்று 05.11.1995-ல் உத்தரவிடப்பட்டு, அந்த தொகையை பெற்றுக் கொண்டதாகவும் குறிப்பிட்டுள்ளார். எதிர்மனுதாரர்கள் தரப்பில் ஏற்கனவே வேலையாளர் இழப்பீட்டு தீர்ப்பாயத்தில் மனுதாரருக்கு சேர வேண்டிய இழப்பீட்டு தொகையை பெற்று விட்டதால் இந்த இழப்பீட்டு கோருமை தீர்ப்பாயத்தில் மனு தாக்கல் செய்ய முடியாது என்றும், 2வது முறைாக இழப்பீடு தொகை எதுவும் கோர முடியாது என்றும் வாதிடப்பட்டது.”

13. For the foregoing reasons, this Court is of the opinion that no two claims can be granted in respect of the same occurrence/accident. This



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appeal is not maintainable . The award passed by the Tribunal is erroneous and hence the same is set aside.

14. In the result, this Civil Miscellaneous Appeal is allowed.

Consequently, the connected miscellaneous petition is closed. No costs.

Index : Yes/No

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Internet : Yes/No

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To

1.The Motor Accident Claims Tribunal/
(Special Sub Court) Dharmapuri.

2.The Section Officer,
VR Section,
High Court, Madras.



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A.A.NAKKIRAN.,J.
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