



C.M.A.(MD)No.67 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 10.08.2023

Pronounced on : 12.09.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)No.67 of 2019

The Branch Manager,
Cholamandalam MS General Insurance Co. Ltd.,
2nd Floor, Dare House
2, NSC Bose Road,
Chennai 600 001.

... Appellant/
2nd Respondent

Vs.

1. Vellaichamy

... Respondent/
Petitioner

2. Nijam Mohideen (Died)

3. Savuri Nizam

4. Mohamed Meera

5. Haji Bahurudeen

6. Ramjan Banu

7. Jamal Mohamed

... Respondents

*(respondents 3 to 7 are brought on record as LRS of
the deceased 2nd respondent vide Court order dated
20.06.2022 made in CMP(MD)No.5234 of 2020 in
CMA(MD)No.67 of 2019)*



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Prayer : This Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, to set aside the fair and decreetal order dated 20.07.2018 made in M.C.O.P.No.228 of 2016 on the file of Motor Accidents Claims Tribunal, (Additional District Judge/Special Court), Pudukkottai and allow this civil miscellaneous appeal.

For Appellant : Mr.S.Srinivasa Raghavan

For R1 : Mr.J.Anand Kumar

For R3 to R7 : No appearance

JUDGMENT

The Civil Miscellaneous Appeal is directed against the award passed in M.C.O.P.No.228 of 2016 dated 20.07.2018 on the file of the Motor Accident Claims Tribunal/Additional District and Special Court, Pudukkottai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.13,93,300/- (Rupees Thirteen Lakhs Ninety Three Thousand and Three Hundred only) with interest at 7.5% per annum to the first respondent/claimant for the disability suffered by him, consequent to an accident occurred on 10.02.2016, challenged the liability mulcted on it and also the quantum of compensation awarded at, by the Tribunal.



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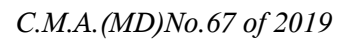
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3. The case of the first respondent/claimant is that he was travelling as a load man in Ashok Leyland DHEST vehicle bearing Registration No.TN-78-A-4955 owned by the second respondent/first respondent at the time of accident.

4. It is the further case of the first respondent/claimant that he was aged 39 years and that he was working as a load man and was earning Rs.20,000/- per month.

5. The defence of the appellant/insurer is that the vehicle involved in the accident is a goods vehicle, that the seating capacity of the vehicle is 2 in all including the driver, that 4 persons had travelled in the second respondent/first respondent's vehicle at the time of accident, that the passengers including the first respondent/claimant are unauthorized passengers and that since the second respondent/first respondent had willfully violated the terms and conditions of the policy, Motor Vehicles Act and Rules, the appellant/ insurer is not liable for the claim.

6. It is pertinent to note that the appellant/insurer has not challenged the finding of the Tribunal that the accident was occurred only due to the



7. The first respondent/claimant, in his evidence before the Tribunal, did reiterate the contentions raised in the claim petition. In cross-examination, he would say that he was engaged as a load man at the time of the accident and that he was travelling with the goods as a load man along with the driver and the relevant evidence is extracted hereunder for better appreciation;

□நான் லோடுமேனாக வேலை பார்க்கிறேன்.
10.02.2016 தேதியன்று காட்டுபாவாபள்ளிவாசலில் இருந்து
கோழி ஏற்றி சென்றேன். நான் பயணம் செய்த
வாகனம் பொருட்கள் ஏற்றிச்செல்லும் வாகனம் என்றால்
சரிதான். நானும் ஓட்டுநரும் மாத்திரம் முன்னால்
அமர்ந்திருந்தோம். பின்னால் யாரும் அமரவில்லை.
புகார் வாக்குமூலம் கொடுத்தது நான் தான். அந்த
வாகனத்தில் இரண்டு நபர்தான் பயணம் செய்தோம்.
காவல் நிலைய புகாரில் மீரா பிராய்லர் கம்பெனியில்
கோழி இறக்குவதற்கு வேலைக்கு சென்று இருந்தேன்
என்றால் சரிதான். கோழி பண்ணையில் கோழி
ஏற்றி, இறக்கும் வேலை செய்கிறேன் என்றால் சரிதான்.□



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8. He would deny the suggestions that he had travelled only as an unauthorized passenger in the said vehicle, that 4 persons including the driver had travelled in the vehicle and that he was not a load man on the date of accident.

9. As rightly contended by the learned counsel appearing for the first respondent/claimant, the evidence of P.W.1 that he had travelled in the goods vehicle as a load man for loading and unloading the poultry and that he had accompanied the driver in the cabin of goods vehicle, despite cross-examination, was not at all shaken.

10. The second respondent/first respondent/owner of the vehicle had remained *ex parte* before the Tribunal. Admittedly, the appellant/insurer, except marking the insurance policy as Ex.R.1, has not adduced any other evidence. Admittedly, the appellant/insurer has issued a Goods carrying vehicle package policy to the second respondent/first respondent, in respect of the vehicle involved in the accident.

11. As rightly contended by the learned counsel appearing for the



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first respondent/claimant, there is absolutely no evidence to show that the first respondent/claimant was travelling on the backside of the vehicle or that 4 persons including the first respondent/claimant were travelling in the goods vehicle at the time of accident.

12. Considering the evidence available on record and also taking note of the nature of the policy issued, this Court has no hesitation to hold that the first respondent/claimant being the load man is covered under the policy and as such, the finding of the Tribunal that the appellant/insurer and the second respondent/first respondent are liable to pay compensation, cannot be found fault with.

13. Now turning to the quantum of compensation, it is evident that the first respondent/claimant has suffered the following injuries (1) closed traumatic M/3rd fracture shaft of left humerus with no distal neuro vascular deficits and (2) open type III – B gustillo andersen isolated proximal 3rd fibula fracture + crush injury of foot & left ankle subluxation. It is evident from the records that after the accident, the first respondent/claimant was admitted in Devadoss Multispeciality Hospital, Madurai on 10.02.2016 and surgeries were performed on 10.02.2016 and 13.02.2016 and he was



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discharged on 26.02.2016.

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14. The first respondent/claimant has examined P.W.2-Doctor, who has treated him in Devadoss Multispeciality Hospital, Madurai. P.W.2, by referring to the injuries sustained by the first respondent/claimant in his left leg and left upper hand, has fixed the disability at 63% and according to him, it is a permanent disablement.

15. The learned counsel appearing for the appellant/insurer would submit that the application of multiplier formula is not automatic in all the injury cases and relied on the decision of the Hon'ble Supreme Court in ***Raj Kumar Vs. Ajay Kumar and another*** reported in **2011 (1) SCC 343**,

“9. Therefore, the Tribunal has to first decide whether there is any permanent disability and if so the extent of such permanent disability. This means that the tribunal should consider and decide with reference to the evidence: (i) whether the disablement is permanent or temporary; (ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement, (iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is the permanent disability suffered by the



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person. If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity.

....

13. We may now summarise the principles discussed above :

(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of his



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permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors.”

16. Considering the above, it is very much clear that in all cases of injury or permanent disablement, the ascertainment of future loss of income or loss of earning capacity is not automatic, that the Tribunal is duty bound to take into consideration the various factors such as nature of extent of disablement, avocation of the injured and the impact of the disability on the avocation and that the multiplier method cannot be applied mechanically.

17. Even according to P.W.2, there was no amputation. But he would say that the injuries suffered by the first respondent/claimant would come under the category of permanent disablement. The Tribunal, by holding that the evidence of P.W.2 is creditable and acceptable, has come to a



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decision that there is no need or necessity to send the first respondent/claimant to the Medical Board for assessing the disability. But considering the medical evidence available on record and the evidence of P.W.2, this Court is of the clear view that the first respondent/claimant has suffered only partial permanent disability and not permanent disability and there is no evidence to show that the first respondent/claimant has also suffered functional disability. Considering the above, the decision of the Tribunal in applying the multiplier formula is not proper. Applying the percentage method, the first respondent/claimant is entitled to get Rs.5,000/- (Rupees Five Thousand only) per percentage and the disability compensation comes to Rs.3,15,000/- (Rs.5,000 x 63).

18. Considering the nature of injuries, period of inpatient treatment and subsequent outpatient treatment, consequent disability sustained and other attending circumstances, the first respondent/claimant is entitled to get Rs.1,00,000/- for pain and suffering, Rs.50,000/- for loss of amenities, Rs.25,000/- for extra nourishment, Rs.15,000/- for transport expenses and Rs.20,000/- for attendant charges. The Tribunal, in the absence of any evidence to prove the income of the first respondent/claimant, taking note of his age and the nature of the work, has rightly fixed the monthly income



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at Rs.9,000/-. Considering the nature of the injuries and the period of treatment, this Court is inclined to grant loss of income for 4 months at Rs.36,000/-. As per the medical bills produced, the Tribunal has rightly awarded Rs.2,85,700/- towards medical expenses. Hence, the first respondent/claimant is entitled to get total compensation of Rs.8,46,700/- and accordingly, the compensation awarded by the Tribunal is modified as follows:-

S. No.	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1.	Disability	10,20,600	3,15,000	Reduced
2.	Pain and suffering	50,000	1,00,000	Enhanced
3.	Loss of amenities	25,000	50,000	Enhanced
4.	Medical expenses	2,85,700	2,85,700	Confirmed
5.	Transport expenses	3,000	15,000	Enhanced
6.	Attendant charges	9,000	20,000	Enhanced
7.	Loss of income for 4 months	Nil	36,000	Granted
8.	Extra nourishment	Nil	25,000	Granted
	Total	13,93,300	8,46,700	Reduced by Rs.5,46,600/-

19. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own



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costs.

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20. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.13,93,300/- (Rupees Thirteen Lakhs Ninety Three Thousand and Three Hundred only) is hereby reduced to **Rs.8,46,700/- (Rupees Eight Lakhs Forty Six Thousand and Seven Hundred only)** together with interest at 7.5% per annum and costs. The appellant/insurer is directed to deposit the modified award amount with interest and costs from the date of petition till realization to the credit of M.C.O.P.No.228 of 2016 on the file of the Motor Accident Claims Tribunal/Additional District and Special Court, Pudukkottai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent/claimant is permitted to withdraw the said amount together with interest and costs. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer. Parties are directed to bear their own costs.

12.09.2023

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



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To:

1. The Motor Accident Claims Tribunal/
Additional District and Special Court, Pudukkottai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.M.A.(MD)No.67 of 2019

Dated : 12.09.2023