



C.M.A.No.2326 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.09.2024

Pronounced on : 20.11.2024

CORAM

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MRS. JUSTICE R. KALAIMATHI

C.M.A.No.2326 of 2022

The Manager,

United India Insurance Company Ltd.,

No.2, Buvaneswari Complex,

Dr.Sankaran Road,

Namakkal Taluk and District

...Appellant

vs.

1.Gokulraj

2.M/s. Mahendra Feeds and Foods,

D.No.123B, Kadhapalli Road,

Mudalaipatti Post,

Namakkal Taluk and District

...Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 25.07.2022 made in M.C.O.P.No.192 of 2019 on the file of the Motor Accident Claims Tribunal (Sub Court), Paramathi.



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For Appellants : Mr.D.Bhaskaran

For 1st Respondent : Mrs. S.Vennila

For 2nd Respondent : No appearance

JUDGMENT

(Judgment was made by Mrs.R.Kalaimathi, J.)

This Civil Miscellaneous Appeal is preferred by the Insurance Company against the award dated 25.07.2022 made in M.C.O.P.No.192 of 2019 on the file of Motor Accident Claims Tribunal / Sub Court, Paramathi, on the question of liability and quantum.

2. Facts led to filing of the claim petition is set out hereunder in brief:

On 02.02.2019 at about 14.30 hours, while the petitioner was riding motor cycle bearing registration No.TN 34 T 9155 with his grandmother Ramayee as pillion along Maniyanur – Velagoundampatty road from West to East direction, when he was passing Serukkalai Pudupalayam Manimuthar bridge, a lorry bearing Registration No.TN 28 AM 8599 which was proceeding before his vehicle suddenly turned right side and hit on his vehicle. In the result, he fell down and the right rear side of the lorry tire ran over his left hand fingers and his left hand fingers got mangled. He was



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treated as an inpatient at Coimbatore Ganga Hospital, where he underwent surgery and his two left hand fingers were removed. Because of the rash and negligent driving of the first respondent lorry the accident occurred. At the relevant time, he was studying in the IIInd year B.E. degree in Mechanical Engineering Department. Therefore, the first respondent as the owner of the erred vehicle and the second respondent who is the insurer of the said vehicle are jointly and severally liable to pay compensation.

3. Mr.D.Bhaskaran, learned counsel appearing for the petitioner would vehemently argue that it is the petitioner who rode the motor cycle in a high speed, and when he was trying to overtake the lorry at the left side without showing any signal, this accident occurred. He could have averted the accident. The amount claimed under various heads are on the higher side. The first respondent did not follow the conditions stipulated in the insurance policy.

4. At trial, the petitioner has examined himself as P.W1 and 18 documents were marked. Wound Certificate issued by Covai Ganga Hospital is Ex.P2. Ex.P7 is the accident register (copy) and other medical



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records are Ex.P13, Ex.P14 and Ex.P17. On the respondents side, rough sketch is marked as Ex.R1.

5. It has come on record through the evidence of P.W1-Goghul Raj / claimant herein that on 02.02.2019 at about 14.30 hours, while he was proceeding in two wheeler bearing Registration No.TN 34 T 9155 along Maniyanur – Velagoundampatty from West to East direction, when he was crossing Manimuthar Bridge, a lorry bearing Registration No.TN 28 AM 8599 was proceeding before his vehicle. When he was overtaking on the right side of the lorry, the driver of the lorry without any indication turned his vehicle towards his right side and eventually hit on his vehicle and he fell down. The rear side of the right tire ran over on his left hand fingers, and the left hand fingers got mangled. No ocular witness was examined by the respondent side. Even in the rough sketch marked as Ex.R1, on a careful perusal would explicate that the accident had occurred on the southern side of the road as narrated by the claimant herein. More so, the fact that the claimant was hit by the lorry and he fell down and his left fingers were run over by the lorry would clearly indicate that only the right side of the lorry hit on the claimant. Therefore, it is made clear through the evidence of P.W1 that, due to the negligent driving of the driver of the first respondent lorry, the accident happened. Based on the same, the Tribunal has fastened the



liability on the owner and insurer of the erred vehicle, namely the first and second respondent herein, cannot be found fault with.

6. As per the medical records in Ex.P2, Ex.P10, Ex.P11, Ex.P13, Ex.P14 and Ex.P17, It appears that the claimant sustained crush injury over his left hand fingers and two of his left hand fingers got mangled with loss of composite soft tissue and crush avulsion of the thumb, index, middle, ring fingers and sustained degloving injury of the left little finger. The flexor tendons were exposed. The thumb was hanging with the flexor tendon which was shredded and was non vascular. It has to be noted that the first metacarpal was lying loosely attached with minimal soft tissues. The little finger appears viable with intact FDS and FDP.

7. For the abovesaid fractures, his left hand two fingers were amputated by undergoing surgery. The medical board fixed his disability at 75%. At the relevant point of time, the claimant was pursuing IIInd year B.E. Mechanical and Automation Engineering. By closely looking into the injuries sustained by the claimant (He appeared before the Court), because of the partial permanent disability, he cannot either ride cycle or two wheeler and it is also not possible to ride four wheeler by holding the steering wheel.



Even if he completes the degree, he may not get a better job, commensurate with his educational qualification. Even to do minimal work, it will not be possible for him to do with his left hand. Furthermore, he would find it difficult to lift the objects by left hand and he cannot carry any objects with both hands. The difficulties that would be faced by the claimant go hard on arm. We are also reminded of the fact he was pursuing degree in Mechanical Engineering at the relevant point of time which involved workshop procedures and operating machines.

8. In injury cases, under what circumstances, multiplier method can be invoked has elaborately been dealt with by the Apex Court in **Raj Kumar vs Ajay Kumar** reported in **[(2011) 1 SCC 343]**, the principles have also been summarised, which are given hereunder:

“(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,



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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 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."

9. We are conscious of the fact that the same permanent disability would result in different percentages of loss of earning capacity in different persons. It also depends upon the nature of job, age, gender, education and such other factors. While sustaining the injuries over his left hand, the dream of the petitioner to become a Mechanical Engineer is shattered that to at the age of 19 years. The disabilities cannot be cured in the future also. He has to learn to live with those difficulties. The Tribunal has fixed his income at Rs.20,000/- per month, by adding 40% future prospects, the income was fixed at Rs.28,000/- per month and by applying multiplier '18', compensation was working out. Taking the disability fixed by the medical



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broad as functional disability, an amount at Rs.45,36,000/- was granted for loss of income. The compensation granted by the Tribunal under various heads is tabulated hereunder:

Sl. No.	Description	Amount awarded by the Tribunal
1.	For loss of income	Rs.45,36,000/-
2.	For pain and suffering	Rs.25,000/-
3.	For extra nourishment	Rs.15,000/-
4.	Lack of comfort due to accident	Rs.15,000/-
5.	For attendant charges	Rs.10,000/-
6.	For loss of clothes	Rs.10,000/-
7.	For medical expenses	Rs.4,44,521/-
8.	For transport expenses	Rs.15,000/-
Total		Rs.50,70,521/-

10. Considering the injuries suffered by the 19 years old Mechanical Engineering student, the compensation granted by the Tribunal under various heads appears to be reasonable and acceptable. Based on the aforesaid discussions and observations, we are not inclined to interfere with the same. In the result, this Civil Miscellaneous Appeal stands dismissed. There is no order as to costs.

(J.N.B.,J.)

(R.K.M.,J.)



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Index : Yes/No
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Neutral Citation Case : Yes/No
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J.NISHA BANU, J.

and

R.KALAIMATHI, J.

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To

1. Motor Accident Claims Tribunal (Sub Court), Paramathi.
2. The Section Officer,
VR Section,
High Court, Madras

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