



C.M.A(MD)No.62 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.07.2024

CORAM

**JUSTICE N.SESHASAYEE
AND
JUSTICE P.VADAMALAI**

C.M.A(MD)No.62 of 2021

National Insurance Company Limited,
No.37-C, S.N.High Road,
Tirunelveli Junction – 627 001. ... Appellant/Respondent No.2

Vs.

1.V.C.Arumugam ... 1st Respondent/Petitioner
2.Indhra Rajan ... 2nd Respondent/1st Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree in M.C.O.P.No.550 of 2016, dated 10.02.2020 on the file of the Motor Accident Claims Tribunal/Special Sub Court dealing with MCOP Cases, Tirunelveli and allow the appeal with costs.

For Appellant : Mr.J.S.Murali
For R1 : Mr.R.J.Karthick
For R2 : Ex-parte



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JUDGMENT

(Judgment of the Court was delivered by **P.VADAMALAI, J.**)

This Civil Miscellaneous Appeal is preferred against the award, dated 10.02.2020 passed in M.C.O.P.No.550 of 2016 by the Motor Accidents Claims Tribunal/Special Subordinate Court dealing with MCOP Cases, Tirunelveli.

2. The appellant herein is the 2nd respondent in M.C.O.P.No.550 of 2016.

3. The 1st respondent herein is the petitioner/claimant filed the claim petition in M.C.O.P.No.550 of 2016.

4. For the sake of convenience, the parties arrayed in M.C.O.P.No. 550 of 2016 is adopted hereunder.

5. The brief facts of the case:

On 17.02.2016 at about 07.00 a.m., the petitioner was walking near Vellakkal Pillaiyar Kovil bridge at left edge of the road from west to east, at



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that time, the 1st respondent's two wheeler bearing registration number TN 72 Q 7552 came from the opposite direction, driven by its rider in a rash and negligent manner and dashed against the petitioner. Due to impact, the petitioner sustained fractures in both legs and sustained injuries at the head, left eye and multiple injuries all over the body. The petitioner took first aid at Government Hospital, Tenkasi and after first aid he was taken to Government Hospital, Tirunelveli and took treatment as inpatient from 17.02.2016 to 14.03.2016. The petitioner was working as driver in TNSTC, Tenkasi and was earning Rs.18,000/- p.m. He was unable to continue his avocation as done earlier. He could not go up and down in staircase. As there was fracture in both legs, he could not walk and stand for a long time. F.I.R. was registered against the 1st respondent's vehicle rider in Crime No.31 of 2016 under Sections 279 and 337 of IPC by Surandai police station. Hence, the petitioner filed the claim petition seeking compensation of Rs.20,00,000/-.

6. The first respondent remained ex-parte before the trial Court.



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7. The second respondent objected the claim petition by contending that while the first respondent's vehicle rider was riding, the petitioner suddenly crossed the road without noticing the motorcycle and invited the accident. The rider of the vehicle was not possessing any driving licence and the first respondent allowed the rider to ride the two wheeler without valid license and thereby, violated the policy conditions. The first respondent alone is liable to pay compensation. Hence, the second respondent is not liable to pay any compensation.

8. Before the Tribunal both sides adduced oral and documentary evidence. On the petitioner's side two witnesses were examined as P.W.1 and P.W.2 and Ex.P.1 to Ex.P.15 were marked. On the respondents' side no witness was examined and no exhibit was marked. Court document Ex.C.1 was also marked.

9. After hearing both sides and after considering the evidences, the Tribunal has held that the accident took place on the negligence of the rider of the first respondent's two wheeler. The Tribunal has considered the



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medical treatment taken by the petitioner and arrived at compensation by applying the multiplier method and awarded a sum of Rs.34,05,360/- on various heads. Aggrieved by the said award, the second respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.

10. Heard both sides and perused the records in this Civil Miscellaneous Appeal.

11. The learned counsel appearing for the appellant/2nd respondent/Insurance Company has mainly argued that the claimant/driver was working as a driver in TNSTC, he was assessed at 90% disability, however, as per Ex.P.12 and Ex.P.13 - Medical Board Reports stated that the petitioner could not perform driver job, but he could perform any other lighter job and so recommended the TNSTC to provide for lighter job and accordingly he was working in non-technical section. The Tribunal has not appreciated the evidences and adopted multiplier method, which is not correct. The Tribunal ought to have awarded Rs.3,000/- for each percentage



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and hence for 90% disability the Tribunal ought to have awarded Rs.2,70,000/- for loss of earning power, whereas awarded Rs.32,85,360/-, exceeding the compensation claimed in the claim petition. Therefore, the compensation awarded by the Tribunal is not sustainable in law. Therefore, this Civil Miscellaneous Appeal may be allowed.

12. Per contra, the learned counsel for the respondent/petitioner/claimant has contended that the petitioner was aged 46 years at the time of accident and he was working as driver in TNSTC and was earning Rs.18,000/- p.m. After accident, he could not continue as driver and could not earn income as driver. Though he was given a lighter job by the TNSTC, the Tribunal correctly awarded compensation for the injuries sustained by the claimant in the accident. The Tribunal is empowered to award just compensation more than the compensation claimed in the petition. The Tribunal has made elaborate discussion over the evidences adduced by parties. After considering all aspects, the Tribunal has awarded the just compensation. Therefore, the compensation awarded by the Tribunal need not be interfered. Hence, the Civil Miscellaneous



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Appeal may be dismissed.

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13. On hearing both sides and on perusal of records, there is no dispute that the accident took place due to the negligence of the rider of the first respondent's vehicle TN 72 AQ 7552. There is no dispute that the petitioner/claimant was working as driver and he sustained fracture in both legs and took treatment from 17.02.2016 to 14.03.2016. The appellant/Insurance Company's main contention is that the petitioner/claimant was given a job by the TNSTC in the non-technical section and so he had not lost earning power because of accidental injuries and hence, the multiplier adopted by the Tribunal has to be set aside. It is a settled position that while the Tribunal is passing an award for the injured who sustained injuries in the accident, the physical disability caused due to an accident must be judged with reference to the nature of the work being done by the injured for assessing the award of compensation. Admittedly, the claimant was working as a driver at the time of accident and was earning Rs.18,000/- p.m., as seen from Ex.P.9 - Salary Certificate. Ex.P.12 and Ex.P.13 reports issued by the Medical Board were taken into consideration.



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The Medical Board Report in Ex.P.12, dated 31.10.2016 certified that the petitioner should take light duties, to avoid driving, for one year and to review after one year. From Ex.P.13, it is revealed that the Medical Board has given an opinion in Ex.P.13 that the petitioner is permanently unfit to continue as driver as per Neurologist and Orthopedic. Therefore, the petitioner lost his driver job and he avoided driver job for one year which caused mental agony and the same is not compensated by way of money. Moreover, the Hon'ble Supreme Court pointed out in various accident claim cases that 'money cannot renew a physical frame that has been battered.' and appreciated the fixation of compensation applying multiplier on notional income.

14. The only dispute raised by the appellant/2nd respondent Insurance Company is that the Tribunal awarded multiplier method and also taking of 90% disability. On perusal of medical records, there is no dispute that the petitioner sustained 90% permanent disability, due to fracture in both legs and also injuries all over the body. Considering the available medical records and also considering the age of the petitioner as 46 years, the



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Tribunal adopted multiplier method based on settled positions by the Hon'ble Apex Court and High Courts as discussed in its order. There is nothing wrong in it.

15. The another contention raised by the appellant/Insurance Company is that the claimant claimed Rs.20,00,000/- in the claim petition, but the Tribunal awarded Rs.34,05,360/-, which is more than the claimed amount. The petitioner took treatment as inpatient from 17.02.2016 to 14.03.2016 at Government Hospital, Tirunelveli and he underwent surgery for the fracture in both legs. Hence, considering all the aspects of the petitioner's accidental injuries, period of treatment and mental agony, the Tribunal awarded compensation under various heads more than the claimed amount. There is no restriction that the Tribunal cannot award compensation amount exceeding the claim amount. The position of law has been settled by the Apex Court. On perusal of the order of the Tribunal, it is clear that the Tribunal has correctly discussed the matter and awarded just compensation. The Tribunal was not erred in awarding just compensation as per decisions held by the Apex Court in the case of **Nagappa /v/**



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Gurudayal Singh and others reported in (2003) 2 SCC 274 and in the case of **Laxman alias Laxman Mourya /v/ Divisional Manager, Oriental Insurance Company Limited and Another** reported in (2011) 10 SCC 756.

16. There is no dispute on both sides in respect of age, income and other incidental amounts arrived by the Tribunal. Therefore, this Court is of the view that the award passed by the Tribunal is just compensation. Considering the facts and circumstances of the case the same need not be interfered. This Civil Miscellaneous Appeal fails.

17. In the result, this Civil Miscellaneous Appeal is dismissed and the award, dated 10.02.2020 passed in M.C.O.P.No.550 of 2016 by the Motor Accidents Claims Tribunal/Special Subordinate Court dealing with MCOP Cases, Tirunelveli is confirmed. No costs.

(N.S.S.,J.) (P.V.M.,J.)
30.07.2024

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

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To

- 1.The Motor Accident Claims Tribunal/
Special Sub Court dealing with MCOP Cases,
Tirunelveli.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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N.SESHASAYEE, J.

AND

P.VADAMALAI. J.

VSD

Judgment made in
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