



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.03.2017

CORAM

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THE HONOURABLE MS.JUSTICE **V.M.VELUMANI**

C.M.A. (MD) No.179 of 2017 & C.M.P. (MD) No.1952 of 2017
and
C.M.A. (MD) No.858 of 2015
and
C.M.A. (MD) No.212 of 2017 & C.M.P. (MD) No.2539 of 2017

C.M.A. (MD) Nos.179 of 2017 & 858 of 2015:

The Oriental Insurance Company Limited,
Through its Branch Manager
Kumbakonam.

.. Appellant in
C.M.A. (MD) No.179/2017 &
2nd Respondent in
C.M.A. (MD) No.858/2015 /
2nd Respondent in
M.C.O.P.No.85 of 2013

Vs.

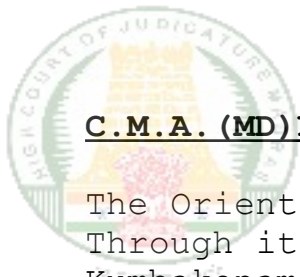
1.Palanivel, S/o. Govindaraj

.. 1st Respondent in
C.M.A. (MD) No.179/2017 &
Appellant in
C.M.A. (MD) No.858/2015 /
Petitioner in
M.C.O.P.No.85 of 2013

2.Panneer Selvam, S/o.Rathinasamy

.. 2nd Respondent in
C.M.A. (MD) No.179/2017 &
1st Respondent in
C.M.A. (MD) No.858/2015 /
1st Respondent in
M.C.O.P.No.85 of 2013

Common Prayer:- Appeals filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 30.06.2014, passed in M.C.O.P.No.85 of 2013, by the learned Principal Subordinate Judge [Motor Accident Claims Tribunal], Kumbakonam.

**C.M.A. (MD) No.212 of 2017:**

The Oriental Insurance Company Limited,
Through its Branch Manager
Kumbakonam.

.. Appellant/2nd Respondent
in M.C.O.P.No.79 of 2013

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Vs.

1.Senthamilzhan, S/o.Karunakaran

.. 1st Respondent/
Petitioner in
M.C.O.P.No.79 of 2013

2.Panneer Selvam, S/o.Rathinasamy

.. 2nd Respondent /
1st Respondent in
M.C.O.P.No.79 of 2013

Prayer:- Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree, dated 30.06.2014, passed in M.C.O.P.No.79 of 2013, by the learned Principal Subordinate Judge [Motor Accident Claims Tribunal], Kumbakonam.

For Appellant
in C.M.A. (MD) Nos.
179 & 212 of 2017 &
For R2 in
C.M.A. (MD) No.858/2015 : Mr.C.Ramachandran

For Appellant
in C.M.A. (MD) No.
858 of 2015 &
For R1 in
C.M.A. (MD) No.179/2017 : Mr.S.Sivathilakar
For R2
in C.M.A. (MD) Nos.179 & 212/2017
and For R1
in C.M.A. (MD) No.858 of 2015 : No Appearance

COMMON JUDGMENT

C.M.A. (MD) Nos.179 and 212 of 2017 have been filed by the appellant - Insurance Company / second respondent against the common award dated 30.06.2014, passed in M.C.O.P.Nos.85 and 79 of 2013 respectively, by the learned Principal Subordinate Judge [Motor Accident Claims Tribunal], Kumbakonam.

2.C.M.A. (MD) No.858 of 2015 has been filed by the appellant - claimant / petitioner, against the award dated 30.06.2014, passed in M.C.O.P.No.85 of 2013, by the learned Principal Subordinate Judge [Motor Accident Claims Tribunal], Kumbakonam, for enhancement of compensation.



3.All these Civil Miscellaneous Appeals arise out of compensation awarded due to the accident that took place on 12.04.2012. The issue involved in all these matters is one and the same and therefore, all the appeals are disposed of by this common judgment.

4.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

5.According to the claimants, on 12.04.2012 at 7.00 p.m., when the petitioner in M.C.O.P.No.85 of 2013 was riding a Motorcycle bearing Registration No.TN-49-U-6492 along with the petitioner in M.C.O.P.No.79 of 2013 as a pillion rider at Natchiyaar Kovil - Eravancheri Main Road from South to East, a Lorry bearing Registration No.TN-55-3679 belonging to the first respondent and insured with the second respondent - Insurance Company, driven by its driver in a rash and negligent manner and dashed against the Motorcycle and both the claimants were thrown out from the Motorcycle. Due to the said impact, both the claimants sustained multiple injuries and fractures all over their bodies. They were admitted in Government Hospital at Kumbakonam and subsequently, they took treatment as inpatient at Thanjavur Medical College Hospital. The claimant / petitioner in M.C.O.P.No.79 of 2013 was a DMLT [Diploma in Medical Lab Technology] Holder and was doing part time agricultural work and also working in a Lab at private Hospital and was earning a sum of Rs.15,000/- per month. The claimant in M.C.O.P.No.85 of 2013 was working in a Tailoring shop as Assistant and was earning a sum of Rs.18,000/- per month. Due to the injuries suffered by them, they were not able to do any work as done prior to the accident. Therefore, they claimed the respective compensation amounts in their claim petitions.

6.According to the claimants, the accident took place only due to rash and negligent driving by the driver of the first respondent. The vehicle was insured with the second respondent and therefore, both the respondents 1 and 2 are liable to pay compensation.

7.The first respondent remained ex-parte before the Tribunal.

8.The second respondent filed counter statement and contended that the accident took place only due to the negligence of the claimants. The driver of the lorry did not have valid driving licence and did not have badge endorsement in the licence and the second respondent denied the permit with regard to the lorry. The insurance policy is in the name of one Manikandan and the lorry is in the name of the first respondent and therefore, he prayed for dismissal of the claim petitions.

9. Before the Tribunal, the claimant in both the claim petitions examined themselves as P.Ws.1 and 2 and one Yagcob and Dr.Vijayakumaran were examined as P.Ws.3 and 4 and eight documents were marked as Exs.P.1 to P.8. The second respondent/appellant examined an Assistant from R.T.O. Office and an Assistant of their Office as R.Ws.1 and 2 and marked three documents as Exs.R.1 to R.3.

10. The Tribunal considering the pleadings and oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by the driver of the lorry belonging to the first respondent. The second respondent by examining the Official from R.T.O. Office / R.W.1 proved that the driver of the lorry did not renew the Badge for driving licence, but having valid licence to drive the vehicle. In the circumstances, the Tribunal directed the second respondent - Insurance Company to pay the compensation amount at first instance and recover the same from the first respondent/owner of the vehicle.

11. Aggrieved against the said award, dated 30.06.2014, the second respondent - Insurance Company has filed C.M.A.(MD)Nos.179 and 212 of 2017 and the claimant / petitioner in M.C.O.P.No.85 of 2013 filed C.M.A.(MD)No.858 of 2015 for enhancement of compensation.

12. I have heard the learned counsel appearing for the parties and perused the materials available on record.

13. The learned counsel for the appellant Insurance Company / second respondent contended that from the report of the Motor Vehicle Inspector - Ex.P.2, it is clear that only due to the negligence of the claimants, the accident had occurred. The damage caused to the lorry is on the right side and the Tribunal did not properly appreciate the report of the Motor Vehicle Inspector and erred in holding that the accident occurred due to rash and negligent driving by the driver of the lorry. The said contention of the learned counsel for the appellant Insurance Company/second respondent is untenable. The F.I.R. was lodged against the driver of the lorry and he admitted his guilt and paid the fine amount. This fact was admitted by R.W.2, the Assistant from the appellant Insurance Company/second respondent. The first respondent or driver of the lorry did not lodge any complaint against the claimants for rash and negligent driving. On the other hand, the Tribunal has held that the accident occurred only due to rash and negligent driving of the driver of the lorry belonging to the first respondent.

14. The Tribunal considering the nature of injuries, percentage of disability and the evidence of Doctor and the documents filed by the claimants, awarded a sum of Rs.61,000/- fixing Rs.2,000/- for each percentage of disability in M.C.O.P.No.79 of 2013 and

Rs.1,80,000/- in M.C.O.P.No.85 of 2013, towards permanent disability. The award of the Tribunal in both the M.C.O.Ps. is as follows:

Sl. No.	Heads	M.C.O.P.No.79/ 2013	M.C.O.P.No.85/ 2013
1	Permanent disability	61,000	1,80,000
2	Pain and suffering	20,000	20,000
3	Nutritious food	3,000	5,000
4	Transportation	2,000	3,000
	Total	86,000	2,08,000

15.The amount awarded by the Tribunal in M.C.O.P.No.79 of 2013 is just compensation.

C.M.A. (MD) Nos.179 of 2017 and 858 of 2015:

16.As far as C.M.A.(MD)Nos.179 of 2017 and 858 of 2015, arising out of M.C.O.P.No.85 of 2013 is concerned, the Tribunal considering the nature of injuries and also considering the disability with regard to a portion of limb, fixed Rs.2,000/- for each percentage of disability and awarded a sum of Rs.1,80,000/- towards permanent disability. The same is just compensation. The contention of the learned counsel for the claimants that the Tribunal considered the discharge summary as well as the evidence of P.W.4 Doctor, wherein it has been stated that the claimant has recovered from the injuries and rejected the contention of the claimant to apply multiplier method to arrive at compensation. It is well settled that in a case of injury, multiplier method cannot be applied in all the cases. Only in exceptional cases, the multiplier method will be applied where the disability completely affects the earning capacity of the injured concerned. In view of Ex.P.4 and evidence of P.W.4 - Doctor, wherein it has been stated that the claimant has recovered from the injuries and rejected the contention of the claimant to apply multiplier method to arrive at compensation. In view of Ex.P.4 - Discharge Summary and the evidence of P.W.4 - Doctor, it is not a fit case for applying multiplier method. The claimant was working as Tailoring Assistant in a Tailoring Shop. He claimed Rs.18,000/- per month, but he has not produced any document to substantiate that he was getting Rs.18,000/- per month. In the absence of any documents, the monthly income of the claimant is fixed at Rs.4,500/- and a sum of Rs.4,500/- is hereby awarded towards loss of income during the treatment period. The Tribunal has given Rs.20,000/- towards pain and suffering. Considering the evidence of P.W.4 - Doctor, the amount awarded towards pain and suffering is enhanced from Rs.20,000/- to Rs.50,000/-. Considering the nature of injuries, a sum of Rs.5,000/- awarded towards extra nourishment is enhanced to a sum of Rs.10,000/-. A sum of Rs.3,000/- awarded towards Transportation is enhanced to Rs.5,000/-. The Tribunal has not

awarded any amount under the head 'Attendant charges' and loss of happiness and future earnings. Considering the facts and circumstances of the case, a sum of Rs.10,000/- is hereby awarded towards Attendant charges and a sum of Rs.20,000/- is hereby awarded towards loss of happiness and future earnings. Accordingly, the award of the Tribunal in M.C.O.P.No.85 of 2013 is modified as follows:

Sl. No.	Heads	Amount
1	Permanent Disability	1,80,000
2	Pain and suffering	50,000
3	Nutritious food	10,000
4	Transportation	5,000
5	Loss of Income during treatment period	4,500
6	Attendant charges	10,000
7	Loss of Happiness and Future earnings	20,000
	Total	2,79,500

17.The rate of interest awarded by the Tribunal at 7.5% per annum remains unaltered.

18.Accordingly, the claimant / petitioner in M.C.O.P.No.85 of 2013 is entitled to enhanced compensation of Rs.2,79,500/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs.

19.In the result,

(i) C.M.A.(MD)No.212 of 2017 is dismissed, confirming the award dated 30.06.2014, passed in M.C.O.P.No.79 of 2013 by the learned Principal Subordinate Judge [Motor Accident Claims Tribunal], Kumbakonam. It is represented by the learned counsel for the appellant that the first respondent/claimant died. Hence, the legal heirs of first respondent/claimant is/are entitled to a sum of Rs.86,000/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs, by making necessary application before the Tribunal. No costs. Consequently, the connected miscellaneous petition is also dismissed.

(ii) C.M.A.(MD)No.179 of 2017 filed by the appellant Insurance Company is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed;

(iii) C.M.A.(MD)No.858 of 2015 filed by the claimant is partly allowed and the appellant/claimant, viz., Palanivel, is entitled to a sum of Rs.2,79,500/- along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs. No costs.;



(iv) The claimant in M.C.O.P.No.85 of 2013 and the legal heir of the claimant in M.C.O.P.No.79 of 2013, who is stated to be died, are directed to submit their Savings Bank Account Details along with the copies of their passbooks to the Tribunal forthwith;

(v) The appellant-Insurance Company is directed to deposit the respective entire award amount along with accrued interest and costs, less the amount deposited, if any, to the credit of M.C.O.P.Nos.79 and 85 of 2013 respectively, on the file of the Principal Subordinate Court [Motor Accident Claims Tribunal] Kumbakonam, within a period of six weeks from the date of receipt of a copy of this judgment; and

(vi) On such deposit, the Tribunal is directed to transfer the respective share amounts of the respective claimant (s) directly to their Personal Savings Bank Account Numbers, through RTGS/NEFT system, after getting their Account Details, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(AE)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Subordinate Judge
[Motor Accident Claims Tribunal],
Kumbakonam.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.

+3cc to M/S.C.RAMACHANDRAN, Advocate SR.No. 15380
+1cc to M/S.S.SIVATHILAKAR, Advocate SR.No. 15149

Common Judgment made in

C.M.A. (MD)No.179 of 2017 & C.M.P. (MD)No.1952 of 2017
and
C.M.A. (MD)No.858 of 2015
and
C.M.A. (MD)No.212 of 2017 & C.M.P. (MD)No.2539 of 2017
15.03.2017