



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.BASKARAN

C.M.A.No.1009 of 2016  
and CMP.No.7644 of 2016  
and CMP.No.11272 of 2016

Branch Manager  
The United India Insurance company Ltd.,  
Sirkazhi Town  
Sirkazhi Taluk & D.M.Jurisdiction  
Nagapattinam District ..Appellant/2<sup>nd</sup> Respondent

Vs.

1.Major Akash @ Akashkumar  
(R1 declared as major vide court order dated 21.02.2018 made in  
CMA.1009/16 AND CMP NO.7644 and CMP.NO.11272/16)

2.Durairaj ..2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Civil Miscellaneous Appeal filed against the judgment and  
decree dated 10.09.2015 passed in M.A.C.T.O.P.No.165 of 2015 on  
the file of Motor Accidents Claims Tribunal, Chief Judicial  
Magistrate Court, Nagapattinam.

For appellant : : Mr.D.Bhaskaran

for Respondents : : MR.G.K.Ilanthiraiyan  
for M/s.Sai Bharath & Ilan for R1

#### J U D G M E N T

This Civil Miscellaneous Appeal is filed by the  
appellant/Insurance company, challenging the judgment and decree  
dated 10.09.2015 passed in M.A.C.T.O.P.No.165 of 2015 on the  
file of Motor Accidents Claims Tribunal, Chief Judicial  
Magistrate Court, Nagapattinam.

2. For the sake of convenience, the parties are referred to  
as per their litigative status before the Tribunal. The case of  
the Petitioner is that on 01.04.2015 while the minor petitioner  
was travelling in the van bearing Reg.No.TN-31-U-5659 as Cleaner  
from Tachakadu to Sirkali, the driver of the van drove the van  
while going near Faisal Mahal Bypass road at about 3.30 am., on



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seeing a pig suddenly trying to cross the road, to avoid hitting the pig, applied sudden brake while the vehicle was going at high speed, resulting in the van capsizing and many other passengers in the van were injured seriously. The accident occurred due to negligent driving of the driver of the van. The Petitioner who was travelling as Cleaner in the vehicle suffered multiple grievous injuries all over his body. He was given treatment at G.H.Chidambaram and subsequently at Jipmer Hospital, Puducherry. He underwent amputation at Mid distal 1/3<sup>rd</sup> junction. The Petitioner was discharged on 12.04.2015 with instruction to take further medical treatment. The Petitioner was admitted at Government Stanley Hospital, Chennai, on 14.04.2015 and underwent Plastic surgery. The Petitioner was in need of two attenders to take care of him. By working as a cleaner in the van, the Petitioner was earning Rs.300/- per day. Now due to injury suffered, he is unable to earn any income as it is not possible for him to travel in the van as cleaner. Hence, the Petitioner seeks a sum of Rs.15,00,000/- as compensation from the respondents.

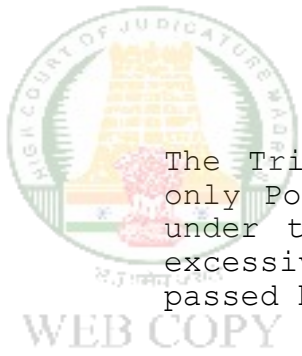
3. On the other hand, opposing the claim of the Petitioner by filing counter, the 2<sup>nd</sup> respondent/Insurance company contends that the claim petition itself is not maintainable. On 01.04.2015, the petitioner was travelling as unauthorised passenger in the van bearing Reg.No.TN-31-U-5659 belonging to the 1<sup>st</sup> respondent. The accident occurred only due to negligence of the 1<sup>st</sup> respondent van driver. The said driver was not having valid driving licence and the vehicle does not have RC Book. The claim of the petitioner is highly excessive. The said van was not insured with the 2<sup>nd</sup> respondent. Thus, the 2<sup>nd</sup> respondent seeks dismissal of the petition.

4. Before the Tribunal, the petitioner examined P.W.1 to P.W.3, produced documents Ex.P.1 to Ex.P.13 to prove his claim. The respondent neither examined any witness nor produced any documents. After analysing the evidence on record, the Tribunal found that the accident occurred only due to negligence of the 1<sup>st</sup> Respondent van driver and passed award for a sum of Rs.14,55,000/- payable by the respondents to the petitioner.

5. Aggrieved over the said finding of the Tribunal, the 2<sup>nd</sup> respondent/Insurance company has come forward with the present appeal.

6. Heard both sides and perused the records carefully.

7. The learned counsel for the Appellant/2<sup>nd</sup> respondent/Insurance company contends that the Tribunal erred in concluding that the petitioner/claimant travelled as cleaner without any basis. The Tribunal also failed to take note that under Section 147 of the Motor Vehicles Act, the Insurance company is not liable to pay any compensation for the cleaner.



The Tribunal also failed to consider that the policy was "Act only Policy" and liability cannot be more than what is required under the statute. The award passed by the Tribunal is highly excessive. Thus, the 2<sup>nd</sup> respondent seeks to set aside the award passed by the Tribunal.

8. Per contra, the learned counsel for the Petitioner/claimant contends that the Tribunal having found negligence of the 1<sup>st</sup> respondent vehicle driver alone caused the accident and also considering the circumstances stated by the Petitioner, passed an award which is just and appropriate. There is no need to interfere with the same. Thus, the Petitioner/claimant seeks dismissal of the appeal.

9. The mother of the minor petitioner who deposed as P.W.1 stated about the manner in which the accident occurred. The Police registered Ex.P.1-FIR against the 1st respondent vehicle driver only. The MVI report is filed as Ex.P.5. It is clear from contents of Ex.P.1-FIR that while trying to avoid hitting a pig, which suddenly crossed the road, the 1st respondent driver applied sudden brake and at that time, the vehicle capsized. There is no contra evidence let in by the respondents to disprove the petitioner's evidence. As such, the Tribunal is justified in holding that negligence of the 1st respondent driver alone caused the accident.

10. The Petitioner stated that by working as a Cleaner, he was earning Rs.300/- per day. The employer of the Petitioner who deposed as P.W.2 clearly stated that the minor petitioner was paid Rs.300/- per day and produced Ex.P.11-salary proof for the same. The Tribunal considering the evidence of P.W.2 and other attendant circumstances found that Ex.P.11-Salary details is not proper. Thus, the Tribunal fixed the notional monthly income at Rs.6000/-. The learned counsel appearing for the Insurance company contends that policy was only "Act only Policy" and as the petitioner himself states that he was working as cleaner in the 1st respondent van when the accident took place, it will be appropriate to compensate him under the Workmen Compensation Act only.

11. In the petition, it is stated that the minor petitioner was aged 15 years. Considering the records produced by the Petitioner, it will be appropriate to fix the age of the Petitioner at 16 years.

12. It is not in dispute that the accident occurred while the petitioner was travelling in the 1st respondent van. According to P.W.1, he used to travel regularly as Cleaner. On



the side of the 2<sup>nd</sup> respondent, neither oral nor documentary evidence was let in to contradict the said claim of the Petitioners. Thus, it is clear that the petitioner was travelling in the vehicle as Cleaner only. Therefore, as rightly pointed out by the 2<sup>nd</sup> respondent/claimant, the accident occurred while he was in the course of employment under the 1st respondent. In such circumstances, the learned counsel for the insurance company contends that the compensation has to be provided under the Workmen's compensation Act forum only. The same is not disputed by the Petitioner/claimant also.

13. The Petitioner stated that his left hand is amputated. The doctor who examined the petitioner stated that he suffered 70% permanent disability. The certificate issued by him is produced as Ex.P.13. According to the Petitioner, he is not in a position to work as Cleaner, since his left arm is amputated. It is also contended by the Petitioner that having lost one arm, he will be not in a position to do any work and as such, disability should be fixed at 100%. In the case on hand, the petitioner having suffered amputation and accident having occurred during the course of employment, he has to be provided compensation under Workmen's Compensation Act formula only.

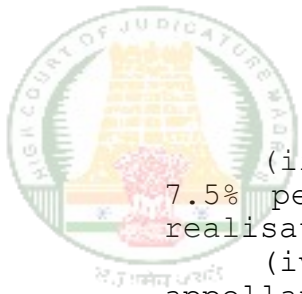
14. Considering the fact that the petitioner has suffered injury and amputation of his left arm, definitely he would be having difficulty in carrying out his normal work and further it is apparent that the petitioner due to amputation of his left arm would be prevented from working as cleaner. Hence, he pleaded to fix the disability at 100%. In support of the said contention, the learned counsel for the petitioner rightly relied on 2012 2 LW 305 [Mohan Soni Vs. Ram Avtar Tomar and others] and also 2009 1 CTC 599 [National Insurance Co.Ltd., Krishnagiri Vs. Francis Xavier and another]. In the light of the above said discussion, the disability suffered by the petitioner is fixed at 100%.

15. The petitioner being aged 16 years, the correct factor to be applied is 228.54. For the 100% disability, it will be appropriate to fix the compensation as per Workmen's Compensation Act as follows:-

$60/100 \times 228.54 \times 6000/- \times 100\% = 8,22,744/-$ .

16. In view of the above findings,

- (i) The Civil Miscellaneous Appeal is Partly Allowed;
- (ii) The quantum of the award is reduced to Rs.8,22,744/- from Rs.14,55,000/-.



(iii) The award amount will carry interest at the rate of 7.5% per annum, from the date of petition till the date of realisation;

(iv) This court by order dated 01.06.2016 directed the appellant/Insurance company to deposit the entire award amount granted by the Tribunal. Hence, the appellant/Insurance company is entitled for refund of excess sum, lying in deposit.

(v) The claimant was aged 16 years at the time of accident and he would have attained majority, by now. Hence, the claimant/1<sup>st</sup> respondent, is entitled to withdraw the modified compensation amount along with accrued interest, by filing necessary application before the Tribunal.

(vi) No costs. Consequently, connected MPs are closed.

Sd/--

Assistant Registrar(CS)

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Sub Assistant Registrar

nvsri

To

- 1.The Motor Accidents Claims Tribunal,  
Chief Judicial Magistrate Court, Nagapattinam.
- 2.The Section Officer,  
V.R.Section, High Court, Madras.

+1cc to M/s.Sai Bharath & Ilan , Advocate SR.No. 13273

+1cc to Mr.D.Bhaskaran, Advocate SR.No.13500

C.M.A.No.1009 of 2016

ASK(02/01/2019)