



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.11.2019
CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A(MD)No.412 of 2017

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M.Sathaiya

... Appellant / Petitioner

Vs.

Subramaniam Chettiyar (Died)
1.K.Kanniyammal

2.Thenkarai Maharaja

3.B.Renuka Devi

4.S.Nagoorpitchai

5.S.Mangaleswari

6.S.Janakiram

... Respondents 1 to 6 /
LRs of the 1st respondent

7.The Branch Manager,
New India Assurance Co., Ltd.,
Salai Street, Ramanathapuram.

... 7th respondent / 2nd respondent

(Cause tile accepted vide court order
dated 31.01.2017 made in C.M.P.(MD)
No.698 of 2017 in CMA.SR.(MD)No.
48206 of 2016)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award dated 31.07.2006 made in M.C.O.P.No.1 of 2001, on the file of the Motor Accident Claims Tribunal(Subordinate Judge) at Paramakudi.

For Appellant	: Mr.A.Kannan
For R-1 to R-6	: No Appearance
For R-7	: Mr.B.Vijay Karthikeyan

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/claimant against the award dated 31.07.2006 made in M.C.O.P.No.1 of 2001, by the learned Subordinate Judge, Paramakudi.



2. It is a case of the claimant before the Tribunal that on 08.04.1999 at about 11.45 hours, when the petitioner was travelling along with others from Puliyankudi to Virudhunagar along with their goods in a van bearing registration No.TN 59 A 9495 and nearing Kallaurani TNEB office, the driver of the van drove the vehicle in a rash and negligent manner on seeing the lorry bearing registration No.TN 67 0967, which was coming in front of the van and ultimately the van capsized. Due to the said accident, the petitioner sustained grievous injuries. Therefore, he filed an application in M.C.O.P.No.1 of 2001, on the file of the learned Subordinate Judge, Paramakudi, seeking compensation.

3. Before the Tribunal, on the side of the petitioner, three witnesses were examined as P.Ws.1 to 3 and eleven documents were marked as Ex.P.1 to Ex.P.11. On the side of respondents, R.Ws.1 and 2 were examined and Exs.R1 to R4 were marked.

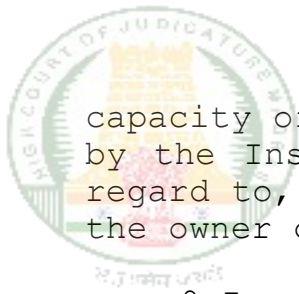
4.The Tribunal, after considering the pleadings, oral and documentary evidence and arguments of the counsel for both sides and also on appreciating the evidence on record, held that the accident occurred only due to the rash and negligent driving of the driver of the van and therefore, directed the first respondent/driver of the van to pay a sum of Rs.77,550/-, as compensation.

5. The learned counsel appearing for the appellant/claimant would mainly argue on liability and quantum.

6.Heard the learned counsel appearing on both sides and perused the materials available on record.

7.This appeal has been preferred by the appellant/claimant. According to the claimant, he travelled in the vehicle along with the goods. In the First Information Report as well as in the deposition of P.W.2-eye witness, it is clearly stated that the appellant/claimant travelled in the vehicle in the capacity as owner of the goods, whereas though the Court below has recorded the averments, it has failed to give any finding on the evidence of P.W.2 and the averments made in the FIR. However, the Court below has given finding accepting the contention of R.W.2., as if the appellant/claimant travelled as a passenger without carrying any goods. Further, the Court below examined the aspect as to whether the appellant travelled in the van in the capacity as a load man, since the owner of the vehicle obtained premium for 'Non Fair Paying Passengers', however, it has come to the conclusion that the appellant has not travelled in the vehicle as a load man.

8.The main contention of the appellant is that the appellant/claimant travelled in the vehicle as the owner of the goods and on perusal of the FIR and the deposition of P.W.2, it is



capacity of owner of the goods and in the cross examination of P.W.2 by the Insurance Company also not at all culled out anything with regard to, whether the appellant was travelled in the van other than the owner of the goods.

9. In such being the case, the Court below without providing any finding on the aspect of evidence of P.W.2 and the averments made in the FIR with regard to the travelling of the appellant/claimant in the capacity as owner of the goods, the finding of the Tribunal to the extent that the appellant / claimant has not travelled in the capacity as a load man and thereby it has come to the conclusion that the appellant / claimant is not entitled for any compensation from the Insurance Company, is totally incorrect and therefore, it is not sustainable either on the fact or in the eye of law and hence, the same is liable to be set aside.

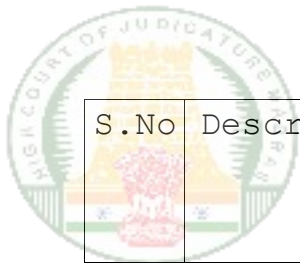
10. While setting aside the order of the Court below with regard to the liability, this Court holds that the appellant travelled in the vehicle along with the goods in the capacity as owner of the goods and therefore, the Insurance Company is liable to pay the compensation to the appellant / claimant.

11. With regard to quantum of compensation, though the Doctor has issued certificate for permanent disability as 46%, the Court below has taken only 36% disability and awarded a sum of Rs.1,000/- per percentage and accordingly awarded a sum of Rs.36,000/- as compensation for permanent disability.

12. In view of the above, this Court is of the opinion that the appellant / claimant, who injured with 46% disability, it is very difficult to perform his own work, as he did before the accident, since he is aged about 45 years. Therefore, this Court is inclined to take the disability as 46%, as per the doctors certificate and to award a sum of Rs.1,500/- per percentage of disability. Accordingly, this Court awarded a sum of **Rs.69,000/-** (Rs.1500 x 46%) towards disability for 46%.

13. The Tribunal has awarded a sum of Rs.300/- towards transportation, which is low and hence, the same is enhanced to **Rs.1,000/-**. The Tribunal has also awarded a sum of **Rs.5,000/-** towards nutritious food; a sum of **Rs.20,250/-** for medical expenses and a sum of **Rs.10,000/-** towards pain and sufferings, which are reasonable and hence, the same are hereby confirmed.

14. In view of the above, this Court modifies the award of the Tribunal by enhancing the compensation, as under:-



S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For disability	36,000	69,000	enhanced
2.	For transportation	300	1,000	enhanced
3.	For nutritious food	5,000	5,000	confirmed
4.	For medical expenses	20,250	20,250	confirmed
5.	For pain and sufferings	10,000	10,000	confirmed
	Total	Rs.71,550	Rs.1,05,250/-	By enhancing a sum of Rs.33,700/-

15. In the result,

(i).The Civil Miscellaneous Appeal is allowed, enhancing the award of the Tribunal from **Rs.71,550/-** (Rupees Seventy One Thousand Five Hundred and Fifty Only) to a sum of **Rs.1,05,250/-** (Rupees One Lakh Five Thousand Two Hundred and Fifty Only)_along with interest at the rate of 7.5% per annum from the date of petition till date of realisation with proportionate cost;

(ii).The seventh respondent / Insurance Company is directed to deposit the entire award amount along with accrued interest at the rate of 7.5% p.a. and costs, less the amount already deposited, if any, to the credit of M.C.O.P.No.1 of 2001, on the file of the Subordinate Court at Paramakudi, within a period of three weeks from the date of receipt of a copy of this Judgment;

(iii).The Claimant is directed to submit his Savings Bank Account Details along with the copy of his passbook to the Tribunal **forthwith**;

(iv).The claimant is directed to pay the additional Court Fees, if any, within a period of **two weeks** from the date of receipt of a copy of this judgment; and

(v).On such payment of Additional Court fees, if any, by the claimant and upon the deposit made by the Insurance Company, the Tribunal is directed to transfer the entire award amount along with



accrued interest and costs directly to the Personal Savings Bank Account Number of the Claimant, through RTGS/NEFT system, after getting his Account Details, within a period of **three weeks thereafter**. No costs.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Subordinate Judge,
Paramakudi.

Copy to:
The Record Keeper,
VR Section, (2 copies)
Madurai Bench of Madras High , Madurai

+1 CC to Mr.B.VIJAY KARTHIKEYAN, Advocate (SR-95816[F] dated 04/11/2019)

+1 CC to Mr.A.KANNAN, Advocate (SR-95671[F] dated 01/11/2019)

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MK (11.12.2019) 5P 6C