

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.02.2020

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A. Nos. 3047 of 2017 & 1847 of 2018
and
C.M.P. No. 14311 of 2018

C.M.A.No.3047 of 2017

Muthusamy .. Appellants/Petitioner

Vs.

1.Rajendran
2.United India Insurance Company Ltd.,
No.146-N, Kumar Complex,
Tiruchengode, Namakkal District. ... Respondents/Respondents

C.M.A.No.1847 of 2018

United India Insurance Company Ltd.,
No.146-N, Kumar Complex,
Tiruchengode, Namakkal District. .. Appellant/2nd Respondent

Vs.

1.Muthusamy
2.Rajendran ... Respondents/Petitioner/1st Respondent

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 05.07.2017, made in M.C.O.P.No.633 of 2009, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

(In C.M.A.No.3047/2017)

For Appellant : Mr.T.S.Arthanareswaran for
Mr.C.Paraneedharan

For Respondents :Mrs.C.Harini for
M/s.M.B.Gopalan Associates for R2
R1 :Exparte in the Tribunal

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(In C.M.A.No.1847/2018)

For Appellant : Mrs.C.Harini for
M/s.M.B.Gopalan Associates

For Respondents: Mr.T.S.Arthanareswaran for
Mr.C.Paraneedharan for R1

R2 : Exparte in the Tribunal

C O M M O N J U D G M E N T

C.M.A.No.3047 of 2017 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 05.07.2017, made in M.C.O.P.No.633 of 2009, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

C.M.A.No.1847 of 2018 is filed by the Insurance Company against the award dated 05.07.2017, made in M.C.O.P.No.633 of 2009, on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed M.C.O.P. No.633 of 2009 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankagiri, claiming a sum of Rs.5,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.03.2006.

4.According to the claimant, on the date of accident i.e., on 26.03.2006 at about 11.00 p.m., while the claimant was travelling as a loadman in a lorry bearing Registration No.TN 34 5338 from Nilanga to Hatka Road near Bhakavanthlar house, murakpur, at the extreme left side of the road, the driver of the said lorry drove the vehicle in a rash and negligent manner, toppled the lorry and the claimant fell down on the road. In the said accident, the claimant sustained grievous injuries all over the body. Hence, the claimant filed claim petition claiming compensation against the respondents.

5.The first respondent, owner of the lorry, remained exparte before the Tribunal.

6.The second respondent/Insurance Company filed counter statement denying the averments made in the claim petition and

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stated that as per RC Book and permit, the seating capacity of the lorry is 3, but 7 persons have travelled in the lorry including the driver. It is a violation of policy and permit conditions by the owner of the vehicle. The load men are not allowed in the rig unit and they are not required in the rig unit. The claimant was not a load man and he travelled as an unauthorised passenger in the said lorry. The driver of the offending vehicle was not added as a party in the claim petition. The second respondent/Insurance Company has also denied the age, avocation and income of the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.1 and Dr.R.Krishnasamy was examined as P.W.2 and marked nine documents as Exs.P1 to P9. On the side of the respondents, One Appas, Senior Branch Manager of the Insurance Company was examined as R.W.1 and marked three documents as Exs.R1 to R3.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the first respondent and directed the second respondent being insurer of the said lorry to pay a sum of Rs.4,00,000/- as compensation to the claimant at the first instance and recover the same from the first respondent/owner of the offending vehicle.

9.Against the said award dated 05.07.2017, made in M.C.O.P.No.633 of 2009, the second respondent/Insurance Company has filed C.M.A.No.1847 of 2018. Not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A.No.3047 of 2017 for enhancement of compensation.

10.The learned counsel appearing for the claimant contended that the claimant travelled as a load man in the lorry at the time of accident and he is not an unauthorised passenger. The Tribunal considering the fact that the Insurance Policy was in force, has rightly ordered pay and recovery for violation of policy condition. P.W.2/Doctor has assessed that the claimant suffered 38% disability. The Tribunal erred in reducing the disability to 36% and applied percentage method for awarding compensation. The Tribunal ought to have fixed the disability at 60% in respect of loss of earning capacity and awarded compensation by adopting multiplier method. The amounts awarded by the Tribunal towards pain & sufferings, loss of amenities are meagre and prayed for dismissal of the appeal filed by the Insurance Company and enhancement of compensation.

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11.The learned counsel appearing for the second respondent/Insurance Company contended that the vehicle involved in the accident is a rig unit and load man is not necessary for the rig unit. The claimant has travelled only as an unauthorised passenger in the rig unit. The Tribunal ought to have exonerated the second respondent/Insurance Company from its liability. The second respondent/Insurance Company without prejudice to the above contention, further contended that the claimant is entitled to compensation only under Workmen Compensation Act and the compensation awarded by the Tribunal is excess of amount payable under Workmen Compensation Act. The Tribunal ought to have dismissed the claim petition with liberty to the claimant to approach the authority under Workmen Compensation Act. The Tribunal failed to consider that as per Workmen Compensation Act, the second respondent is not liable to pay any medical expenses incurred by the claimant. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal and prayed for dismissal of C.M.A.No.1847 of 2008 filed by the claimant.

12.Heard the learned counsel appearing for the claimant as well as the second respondent/Insurance Company and perused the entire materials available on record.

13.It is the contention of the claimant that he travelled in the lorry belonging to the first respondent as a load man and due to rash and negligent driving by the driver of the lorry, the accident has occurred. To substantiate the said contention, the claimant examined himself as P.W.1 and deposed to that effect and marked the First Information Report as Ex.P1, which was registered against the driver of the lorry. On the other hand, it is the contention of the second respondent/Insurance Company that the offending vehicle is a rig unit and no load man is required in that rig unit. Further, it is the contention of the second respondent that the seating capacity in the cabin is only 3 but 7 persons have travelled in the lorry at the time of accident and therefore, the second respondent/Insurance Company is not liable to pay any compensation to the claimant. The second respondent examined the Senior Branch Manager of its company as R.W.1 and marked the copy of Policy as Ex.R1 & Registration Certificate as Ex.R2. From the award of the Tribunal, it is seen that the Tribunal has accepted the contention of the second respondent that 7 persons have travelled in the lorry at the time of accident, which is more than the permitted seating capacity of 3 persons. For the said violation of policy condition, the Tribunal has ordered pay and recovery as policy was in force at the time of accident. There

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is no error in the said finding of the Tribunal warranting interference by this Court.

14.It is the contention of the claimant that he travelled in the truck lorry as a load man. While it is the contention of the second respondent that the offending vehicle is a rig unit and load man is not required in the rig unit and the said contention of the second respondent is not acceptable. Even for rig unit, the workers are required to carry out the work done by the rig unit. Further, the contention of the learned counsel for the second respondent is that the claimant being workman ought to have filed claim petition under Workmen Compensation Act. In the judgment of this Court reported in 2015 (2) TNMAC 362 (DB) [M.Anbalagan Vs. K.M.Asalm Basha and others], it is held as follows:

"9.However, as rightly contended by the learned counsel for the second respondent, this Court is empowered to award compensation as payable under the Employees' Compensation Act, 1923. In Oriental Insurance Company Limited, V.Kaliya Pillai and another, 2002 (4) CTC 469 (DB) : 2003 (1) LW 113, a Division Bench of this Court held that the aggrieved or interested person can make a claim for compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The only bar is that the claim cannot be made under both the Acts."

The claimants are given option under Section 167 of Motor Vehicles Act either to file the claim petition under Motor Vehicles Act or under Workmen Compensation Act. They cannot file two claim petitions under both Acts. In the present case, the claimant has opted to file claim petition under Motor Vehicles Act, which is maintainable. The above said contention of the learned counsel appearing for the second respondent is without merits.

15.As far as quantum of compensation is concerned, the Tribunal considering the evidence of P.W.2/Doctor held that the claimant has not suffered any functional disability. P.W.2/Doctor has certified the percentage of disability suffered by the claimant as 38% including pain and sufferings. The Tribunal reduced 2% disability for pain & sufferings and fixed the disability as 36% and awarded a sum of Rs.1,08,000/- (Rs.3,000/- X 36%) towards disability at the rate of Rs.3,000/- per percentage of disability and the same is proper.

16.According to the claimant, he has taken treatment as in-patient for nearly 45 days. The amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges

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are meagre. Considering the nature of injuries and period of treatment taken by the claimant, the amounts awarded by the Tribunal towards transportation, extra nourishment and attendant charges are enhanced to Rs.15,000/-, Rs.25,000/- and Rs.25,000/- respectively. The Tribunal has not awarded any amount towards loss of amenities and for fixing artificial leg. Hence, the sum of Rs.25,000/- and Rs.1,00,000/- are awarded towards loss of amenities and for fixing artificial leg. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Disability	1,08,000/-	1,08,000/-	Confirmed
2.	Medical expenses	1,90,000/-	1,90,000/-	Confirmed
3.	Pain & sufferings	50,000/-	50,000/-	Confirmed
4.	Transportation	10,000/-	15,000/-	Enhanced
5.	Extra nourishment	10,000/-	25,000/-	Enhanced
6.	Attendant charges	10,000/-	25,000/-	Enhanced
7.	Future medical expenses	20,000/-	20,000/-	Confirmed
8.	Damage to articles	2,000/-	2,000/-	Confirmed
9.	Loss of amenities	-	25,000/-	Granted
10.	Fixing artificial leg	-	1,00,000	Granted
	Total	4,00,000/-	5,60,000/-	Enhanced by Rs.1,60,000/-

17. In the result, C.M.A.No.1847 of 2018 filed by the second respondent/Insurance Company is dismissed and C.M.A.No.3047 of 2017 filed by the claimant is partly allowed. The compensation awarded by the Tribunal at Rs.4,00,000/- is hereby enhanced to Rs.5,60,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The second respondent/Insurance Company is directed to deposit the enhanced award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment at the first instance and recover the same from the first respondent. On such deposit, the claimant is permitted to withdraw the enhanced award amount, along with interest and

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costs, less the amount if any, already withdrawn by making necessary application before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

vkrr

To

1.The Subordinate Judge
(Motor Accident Claims Tribunal),
Sankari.

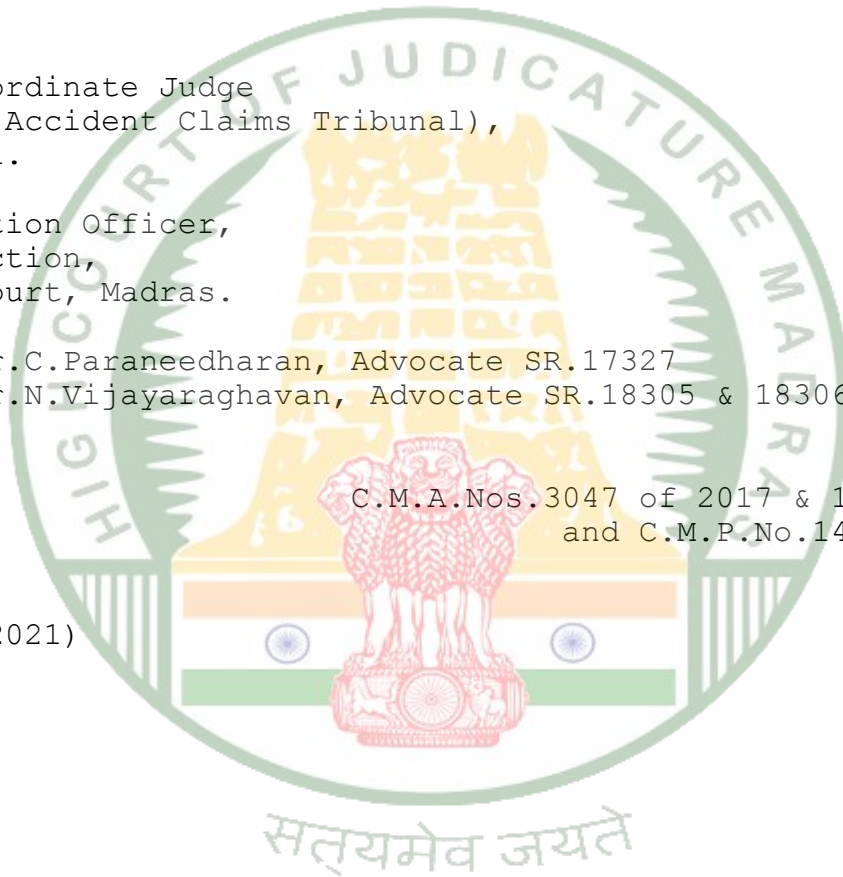
2.The Section Officer,
V.R Section,
High Court, Madras.

+2cc to Mr.C.Paraneedharan, Advocate SR.17327

+2cc to Mr.N.Vijayaraghavan, Advocate SR.18305 & 18306

C.M.A.Nos.3047 of 2017 & 1847 of 2018
and C.M.P.No.14311 of 2018

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