



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2020

CORAM:

THE HONOURABLE **MRS. JUSTICE R. THARANI**

C.M.A. (MD) No. 515 of 2011

and

M.P. (MD) No. 3 of 2011

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The Oriental Insurance Co. Ltd,  
represented through its Branch Manager,  
First Floor, T.T.I.Center,  
Opp. of Vadaseri Bus Stand,  
Nagercoil.

... Appellant /Second Respondent

Vs.

1.Mohan  
2.Srikumar

... Respondent No.1/Petitioner  
...2<sup>nd</sup> Respondent/1<sup>st</sup> Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P. No.103 of 2008 dated 07.01.2010 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Tirunelveli.

|               |                          |
|---------------|--------------------------|
| For Appellant | : Mr.C.Jawahar Ravindran |
| For R1        | : No appearance          |
| R2            | : Given up               |

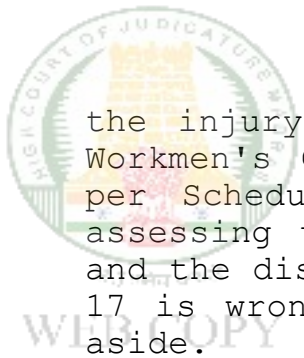
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### **JUDGMENT**

This Civil Miscellaneous Appeal is filed against the judgment and decree passed in M.C.O.P. No.103 of 2008 dated 07.01.2010 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Tirunelveli.

2. M.C.O.P.No.103 of 2008 was filed, by the claimant, praying compensation for the injuries sustained by the claimant, in the accident, that took place on 03.03.2008. At about 11.00 am, when the claimant was travelling in a Mini-lorry bearing Registration No.TN 21 E 8344 as a loadman, the driver of the mini-lorry was driving the vehicle in a rash and negligent manner, dashed the mini-lorry against a bus bearing Registration No.TN 72B 1485 and due to the accident, the claimant sustained injuries and has undergone surgery. The Tribunal fixed the liability upon the appellant and awarded a sum of Rs.3,01,640/- as compensation. Against which, the appellant preferred this Civil Miscellaneous Appeal.

3. On the side of the appellant, it is stated that the Tribunal has fixed disability without considering the real nature of



the injury and the Tribunal failed to consider that under the Workmen's Compensation Act even for amputation below the knee, as per Schedule 1, Part II, the permanent partial disability for assessing the loss of earning capacity is to be fixed only as 50% and the disability fixed by the Tribunal is excessive and multiplier 17 is wrongly applied and hence, prayed that the award to be set aside.

4. There is no representation on behalf of the first respondent / claimant.

5. It is seen that the Tribunal has fixed the disability at 58% on the basis of medical certificate, discharge summary, X-ray report and case sheet etc. A perusal of the records reveals that there is nothing wrong in fixing the disability by the Tribunal. Only notional income was fixed by the Tribunal. There is nothing wrong in fixing the income.

6. In the above circumstances, there is nothing sufficient enough to interfere in the order of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed and the award passed in M.C.O.P. No.103 of 2008 dated 07.01.2010 on the file of the Motor Accident Claims Tribunal cum Principal Subordinate Judge, Tirunelveli, is confirmed.

7. The appellant / Oriental Insurance Company Ltd., is directed to deposit the award amount along with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and cost within a period of four weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant / first respondent herein is permitted to withdraw the amount after deducting amount, if any, already received by him. No costs. Consequently, connected Miscellaneous Petition is closed. Claimant is not entitled for interest for the default period if there is any default.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ls

To

The Motor Accident Claims Tribunal cum  
Principal Subordinate Judge, Tirunelveli.

<https://hcservices.ecourts.gov.in/hcservices/>



COPY TO

The Section Officer, ( 2 COPIES)  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.C.JAWAHAR RAVINDRAN, Advocate (SR-6955 [F] dated  
18/02/2020 )

C.M.A. (MD) No. 515 of 2011  
14.02.2020

VB(21.05.2020) 3P 5C