



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2021

Delivered on : 10.08.2021

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD) No.1109 of 2013

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Iffco Tokyo General Insurance Company Ltd.,
No.28, North Usman Road,
T.Nagar, Chennai - 600 017.

... Appellant

Vs.

1.J.Jeyakumar
2.M.Lawrance
3.P.Sivanammal

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehilces Act, 1988, to set aside the fair and decreetal order, dated 30.08.2012, made in M.C.O.P.No.48 of 2010, on the file of the Motor Accidents Claims Tribunal (Special Court / Forest Cases), at Nagercoil and allow this Civil Miscellaneous Appeal.

For Appellant : Mr.S.Srinivasa Raghavan
For R1 : Mr.I.Robert Chandrakumar
R2 : Dispensed with(Vide order of this
court dated 15/02/2018)
R3 : Exparte(Vide order of this
court dated 15/02/2018)

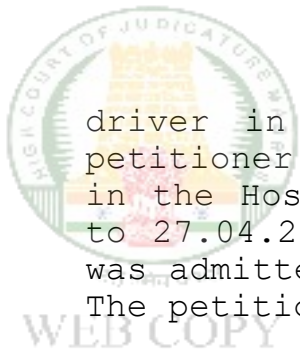
JUDGMENT

This Civil Miscellaneous Appeal is filed against the order, dated 30.08.2012, made in M.C.O.P.No.48 of 2010, on the file of the Motor Accidents Claims Tribunal (Special Court / Forest Cases), at Nagercoil.

2.The appellant herein is the third respondent, the first respondent is the claimant and the respondents 2 and 3 are the first and second respondents in the original petition.

3.Brief substance of the petition in M.C.O.P.No.48 of 2010 is as follows:-

The petitioner is a Diploma holder and worked as a Supervisor in the Aerodynamic Adventure Services and he in-charge of supervising 13 employees, who are working in a wind-mill Company and he is in-charge of maintaining the two wheelers and four wheelers that belonging to the respondent. On 11.04.2009, at about 20.45 hours, when the petitioner was riding his two wheeler, a TATA Scarpio car, that belongs to the first respondent was driven by its



driver in a rash and negligent manner and dashed against the petitioner. The petitioner sustained injuries and he was admitted in the Hospital and he took treatment as inpatient from 11.04.2009 to 27.04.2009 and he has undergone surgery. Again, the petitioner was admitted as inpatient on 03.07.2009 and the plates were removed. The petitioner claimed a sum of Rs.9,00,000/- as compensation.

4.Brief substance of the counter filed by the first and second respondents in M.C.O.P.No.48 of 2010 is as follows:-

The petitioner in a drunken mood has invited the accident. The first respondent is having valid driving licence. The vehicle was insured with the third respondent and the claim is excessive.

5.Brief substance of the counter filed by the third respondent in M.C.O.P.No.48 of 2010 is as follows:-

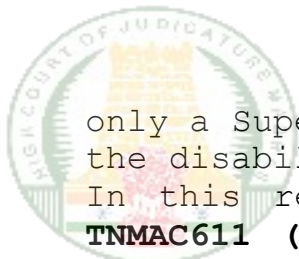
The accident took place only due to the negligence of the petitioner. The first respondent drove the vehicle in a moderate speed, observing the road rules. The petitioner without noticing the TATA sumo Car, suddenly crossed the road and he invited the accident. The owner of the two wheeler and the insurer of the two wheeler were necessary parties and the petitioner is bad for non-joinder of necessary parties. The place of accident, mode of accident, time of accident, policy particulars are to be proved and the claim is excessive.

6.Three witnesses were examined and Eighteen documents were marked on the side of the petitioner. No witness was examined and no document was marked on the side of the respondents.

7.The trial Court, after hearing both sides, has awarded a sum of Rs.7,16,000/- as compensation to the claimant. Against the same, the appellant / Insurance Company has filed this Civil Miscellaneous Appeal.

8.On the side of the appellant, it is stated that the Tribunal is not justified in applying multiplier formula. The disability is only 30%. The disability is not a functional disability or a total disablement. There is no concrete medical evidence to show that the claimant suffered total disablement or functional disability. There is no proof that the injured has lost his avocation, restricting him for the rest of his life. Granting Rs.4,32,000/- for 30% partial permanent disability is unacceptable and grant of Rs.2,00,000/- for medical expenses, and Rs.50,000/- towards pain and sufferings and Rs.25,000/- for future medical expenses are all excessive.

9.On the side of the appellant, it is stated that the fracture is only in the left hip and leg and the disability is only 30%. There is no proof that the claimant is unable to carry out the same job. There is no proof for loss of job and the claimant is



only a Supervisor and the nature of the work will not be affected by the disability and there is no necessity to apply multiplier method. In this regard, the judgments of this Court reported in **2012(1) TNMAC611 (DB)** [New India Assurance Company Limited Vs. Kannayiram] and **2013 (1) TNMAC 47** are cited.

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10. On the side of the respondents, it is stated that the age of the claimant at the time of accident is 34. The claimant is a Diplomo holder and he worked as a Supervisor and was earning Rs.8,250/- per month, he has to supervise 13 workers, who were all working in the wind mill and he has to maintain the two wheelers and the four wheelers. To supervise the workers, who were working in the wind mill, he has to climb the wind mill for a height of 65 feet. Now, the injured cannot climb or stand inside the wind mill. Each wind mill will be situated at a considerable distance, the petitioner can reach the wind mill only by riding a two wheeler. Due to fracture in the left hand and in the middle of the left finger, he is not in a position to ride a two wheeler, since the claimant did not continue the supervising work, there is functional disability.

11. In this regard, the learned counsel for the claimant would rely upon the judgments of the Hon'ble Supreme Court reported in 2014(1) TNMAC 459 (SC) [Syed Sadiq Vs. Divisional Manager, United India Insurance Company Limited], wherein, it is stated as follows:-

"7. Further, the appellant claims that he was working as a vegetable vendor. It is true that a vegetable vendor might not require mobility to the extent that he sells vegetables at one place. However, the occupation of vegetable vending is not confined to selling vegetables from a particular location. It rather involves procuring vegetables from the whole-sale market or the farmers and then selling it off in the retail market. This often involves selling vegetables in the cart which requires 100% mobility. But even by conservative approach, if we presume that the vegetable vending by the appellant/claimant involved selling vegetables from one place, the claimant would require assistance with his mobility in bringing vegetables to the market place which otherwise would be extremely difficult for him with an amputated leg. We are required to be sensitive while dealing with manual labour cases where loss of limb is often equivalent to loss of livelihood. Yet, considering that the appellant/claimant is still capable to fend for his livelihood once he is brought in the market place, we determine the disability at 85% to determine the loss of income."

12. A judgment of this Court reported in 2012(2) TNMAC 253 (DB) [The Manager, New India Assurance Company Limited Vs. S.Ummal
<https://hcservices.ecourts.gov.in/hcservices/>



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Marjuna Beevil] is cited. Another judgment of this Court reported in 2014(2) TNMAC 6 (SC) [V.Mekala Vs. M.Malathi and another] is also cited, wherein, it is stated as follows:

..."12. Therefore, the Tribunal has to first decide whether there is any permanent disability and, if so, the extent of such permanent disability. This means that the Tribunal should consider and decide with reference to the evidence:

i) whether the disablement is permanent or temporary;

ii) if the disablement is permanent, whether it is permanent total disablement or permanent partial disablement;

iii) if the disablement percentage is expressed with reference to any specific limb, then the effect of such disablement of the limb on the functioning of the entire body, that is, the permanent disability suffered by the person.

If the Tribunal concludes that there is no permanent disability then there is no question of proceeding further and determining the loss of future earning capacity. But if the Tribunal concludes that there is permanent disability then it will proceed to ascertain its extent. After the Tribunal ascertains the actual extent of permanent disability of the claimant based on the medical evidence, it has to determine whether such permanent disability has affected or will affect his earning capacity."

14. The High Court on the basis of medical evidence on record with reference to the fractures sustained by the appellant to both the legs, rightly arrived at the conclusion that she has suffered 70% of permanent disablement and therefore she was awarded the compensation under the head of loss of earning in the impugned judgment taking into account monthly notional income of [pic]6,000/- in the absence of any document on record as she was a student.

13. The claimant was working as a supervisor in the wind mill company. This fact was not disputed by the appellant. For supervising the workers, who were employed in maintaining the wind mill, the claimant has to visit the wind mills. Naturally, there will be considerable distance between each wind mill. There is a chance for the claimant to claim stairs inside the wind mill to do his supervising work.



14. In the above circumstances, though there is only 30% disability the same can be considered as functional disability. The claimant has not filed any appeal for enhancement of the compensation. The compensation amount awarded by the Tribunal under various heads is very reasonable.

15. There is nothing sufficient enough to interfere in the orders of the Tribunal. Hence, this Civil Miscellaneous Appeal is dismissed. The appellant is directed to deposit the entire compensation of Rs.7,16,000/- along with interest at the rate of 7.5% p.a from the date of petition till the date of deposit and with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the claimant is permitted to withdraw the entire amount, after deducting the amount, if any, already received by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

To

1. The Motor Accidents Claims Tribunal
(Special Court / Forest Cases),
Nagercoil

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

+1 CC to M/s.I. ROBERT CHANDRAKUMAR, Advocate (SR-25941[F] dated 11/08/2021)

C.M.A(MD)No.1109 of 2013
10.08.2021

RD(19.08.2021) 5P 5C