

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	05.03.2021
Date of Judgment	14.06.2021

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THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A(MD)No.396 of 2013

and

MP(MD)No.2 of 2013

The Branch Manager,
United India Insurance Company Limited,
Ambasamuthiram.

: Appellant/4th Respondent

Vs.

1.Sahul Hameed
2.Karuppasamy
3.Lakshmi Agency,
1/93, North Bye Pass Road,
Vannarapettai,
Tirunelveli.
4.ICICI Lambard General Insurance Company,
Mahalakshmi,
Mumbai-400 034.

: R1/Petitioner

: R2to R4/Respondents 1 to 3

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi, in MCOP No.80 of 2010, dated 23.01.2012.

For Appellant : Mrs.Vijayakumari Natarajan

For 1st Respondent : Mr.M.Saravanan

For R2 and R3 : Ex-parte

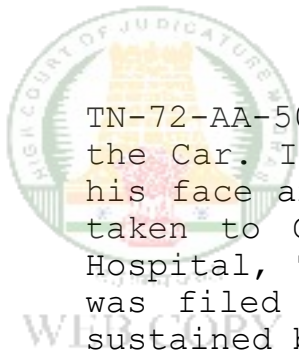
For 4th Respondent : No appearance

J U D G M E N T

This Civil Miscellaneous Appeal is directed against the award passed by the Motor Accident Claims Tribunal (Principal Sub Court), Tenkasi, in MCOP No.80 of 2010, dated 23.01.2012.

2.The short facts of the case is that on 26.11.2009 at 10.30 am, on Tenkasi-Elanji Main Road, near TNEB Office the claimant drove a Car TN-07-M-5711 and at that time, the Tanker Lorry

<https://hdservices.mca.gov.in/hdservices/>



TN-72-AA-5099 came in a rash and negligent manner and hit against the Car. In that process, the claimant sustained severe injuries on his face and other parts of the body and after the accident, he was taken to Government Hospital, Tenkasi and then admitted in Shifa Hospital, Tirunelveli, where he underwent surgery. A claim petition was filed seeking compensation of Rs.10,00,000/- for the injuries sustained by him in the alleged accident.

3.In the counter filed by the appellant Insurance Company and the 4th respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.

4.The Tribunal, on consideration of the oral and documentary evidence adduced by the parties, came to the conclusion that the drivers of the Tanker Lorry as well as the Car were equally responsible for the accident and awarded compensation of Rs.4,24,200/- together with interest @ 7.5% p.a and directed the appellant Insurance Company and the 4th respondent Insurance Company to pay the compensation amount at the ratio of 50:50. Challenging the award of the tribunal, the appellant Insurance Company is before this court with this Civil Miscellaneous Appeal.

5.Heard both sides and perused the materials available on record.

6.The main contention raised on the side of the appellant/2nd respondent is that only due to the rash and negligent driving of the Tanker Lorry Driver, the accident occurred and there is no negligence on the part of the driver of the Maruthi Car.

7.In this case, the injured was examined as PW1. PW1 deposed that on the date of the accident, he drove his Car with normal speed and only the driver of the Tanker Lorry drove his vehicle in rash and negligent manner and dashed against his Car. In this case, FIR was registered against the driver of the Tanker Lorry. It is pertinent to note here that the driver of the Tanker Lorry has not chosen to give the complaint stating that the accident took place only due to the rash and negligent driving of the driver of the Car. Further, the driver of the Tanker Lorry has not sent any petition opposing registration of the criminal case against him.

8.In this case, Ex.P4 rough sketch is carefully perused. On perusal of the rough sketch, it is seen that the injured drove his Maruthi Omni Car TN-07-M-5711 from east to west on Tenkasi to Ilanji Road and the driver of the Tanker Lorry drove his vehicle from west to east in the opposite direction. Further perusal of Ex.P4, rough sketch, it reveals that the injured came on his left side and the Tanker Lorry came to the wrong side and dashed against the Car of the injured. But the tribunal wrongly came to the conclusion that there was head on collision of the above two vehicles. On careful perusal of the records, it reveals that only due to the negligence



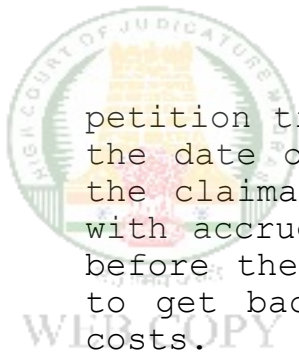
on the part of the driver of the Tanker Lorry, the accident occurred.

9.The next contention of the appellant/2nd respondent is that there is no functional disability on the injured and hence, for arriving loss of income, the multiplier method can not be adopted and the compensation awarded by the tribunal is on the higher side and prays that the Civil Miscellaneous Appeal has to be allowed.

10.On the other hand, the learned counsel appearing for the 1st respondent/claimant, it is argued that due to the accident, the injured sustained multiple grievous injuries and for that, surgery was done and hence, it is not possible for him to do any work and he had permanent disability and hence, the tribunal, for arriving loss of income has correctly adopted the multiplier method and prays that he is entitled to the compensation as claimed.

11.PW1 during his evidence stated that due to the accident, he sustained fracture on his right frontal bone and left clavicle bone and due to it, it is not possible for him to do the work. The Doctor, who determined the disability of the injured was examined as PW2. PW2 deposed that due to the fracture on his right leg frontal fracture and clavicle fracture bone, it is not possible for the injured to do the work as before the accident and determined the disability as 80%. But the tribunal without any cause, has determined 20% as functional disability and for that, adopted multiplier method. It is not correct. PW1 in his petition itself stated that due to the injured sustained by him, it is not possible for him to do his work as before the accident. He has not specifically stated that it is not possible for him to do the work permanently. Further, on perusal of the Disability Certificate Ex.P20, it was not stated that the injuries had functional disability. Hence, for arriving loss of income, the multiplier method cannot be adopted. Therefore, it is held that the claimant is entitled to Rs.3,000/- for 1% disability. Hence, this court finds that the injured claimant is entitled to Rs.2,40,000/- (Rs.3,000/- x 80%) under the head of partial permanent disability and accordingly, the award of Rs.2,59,200/- under the head of loss of earning capacity is set aside. In respect of other heads, the award of the tribunal is confirmed. As this court fixed the entire negligence on the part of the Tipper Lorry driver, the appellant Insurance Company is exonerated from paying the liability to the claimant at the ratio of 50%.

12.In the result, this Civil Miscellaneous Appeal is allowed. The liability fixed on the the appellant Insurance Company/4th respondent is set aside. The award of the tribunal is reduced to Rs.4,06,000/- from Rs.4,25,200/-. The respondents 3 and 4/R2 and R3 are jointly and severally liable to pay the compensation to the claimants and they are directed to deposit the modified amount of Rs.4,06,000/- along with interest @ 7.5% p.a from the date of claim



petition till the date of deposit, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the modified amount together with accrued interest and costs, without filing any formal petition before the tribunal. The appellant Insurance Company is at liberty to get back the amount deposited by them before the tribunal. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/ litigant concerned.

To,

The Motor Accident Claims Tribunal/
The Sub Court, Tenkasi.

Copy to

The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.NATARAJAN, Advocate (SR-19246[F] dated 14/06/2021)

CMA(MD)No.396 of 2013
14.06.2021

RK (17.08.2021) 4P 5C