



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.09.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.M.A. (MD)No.734 of 2021

and

C.M.P. (MD)No.6708 of 2021

National Insurance Company Ltd.,
No.74-A, Paramathi Road,
Namakkal,
Tamilnadu - 637 001.

...Appellant/2nd Respondent

Vs.

1.M.Kalanchiyam
2.K.Palanisamy

...1st respondent/petitioner
...2nd respondent/1st respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of M.V.Act, 1988, to allow this appeal and set aside the Judgment and decree, dated 12.09.2019 made in M.CO.P. No.4 of 2015 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Thoothukudi.

For Appellant : Mr.A.S.Mathialagan
For R-1 : Mr.S.Sivathilagar

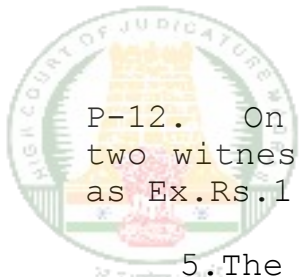
O R D E R

This Civil Miscellaneous Appeal has been preferred by the appellant/insurance company against the pay and recovery award and decree, dated 12.09.2019 made in M.CO.P. No.4 of 2015 on the file of the Motor Accident Claims Tribunal, Sub Court, Thoothukudi.

2. It is a case of fatal accident, which took place on 06.10.2014 at about 06.50 p.m., at Thoothukudi Samuvelpuram Road, near Johnson School. When the injured was walking on the left side of the road from west to east, the lorry belonging to the second respondent bearing Registration No. TN-58-M-8888 came from the opposite side and dashed against the injured and caused injuries.

3. The claimant has filed a petition in M.C.O.P.No.04 of 2015 on the file of the Motor Accident Claims Tribunal/Subordinate Court, Thoothukudi, seeking compensation.

4.Before the Tribunal, the first respondent herein/claimant examined himself as P.W.1 and marked twelve documents as Exs.P-1 to



P-12. On the side of the appellant and second respondent herein, two witnesses were examined as R.Ws.1 & 2 and marked two documents as Ex.Rs.1 and 2.

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the appellant and claimant and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the lorry and directed the appellant/insurance company to pay a sum of Rs.4,00,800/-as compensation and the same shall be recovered from the second respondent. The sum awarded by the Tribunal is as follows:

Sl.No.	Name of the Head	Amount awarded by the Tribunal
1	For permanent disability	Rs.1,00,800/-
2	Towards Loss of Income for a period of two months.	Rs. 30,000/-
3	Towards extra nourishment	Rs. 30,000/-
4	Expenses for Attendant	Rs. 40,000/-
5	For pain and suffering	Rs.1,00,000/-
6	For loss of amenities	Rs. 50,000/-
7	For future expenses	Rs. 50,000/-
	Total	Rs .4,00,800/-

6.Against which, the appellant/Insurance Company has filed this present appeal challenging the liability as well as quantum of compensation awarded by the Tribunal.

7. Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the first respondent and perused the materials available on record.

8. The learned counsel appearing for the appellant would submit that the tribunal ought not to have awarded pay and recovery award of Rs.4,00,800/-, as compensation. He would further submit that the claimant has not suffered any functional disability or total loss of earning capacity. He would further submit that the award and decree passed by the tribunal is liable to be modified and the appeal filed by the appellant is to be allowed.

9. The learned counsel appearing for the appellant questioning the liability and very much objection raised is only for the quantum of compensation. It is argued by the learned counsel appearing for the appellant that when there is a disability of 7%, but the tribunal has awarded a sum of Rs.1,00,800/-is very much high. Further, the tribunal has awarded a huge sum for loss of amenity and towards pain and sufferings. He further argued that at the time of



accident the second respondent/owner of the lorry was not having valid certificate and hence the second respondent is liable to pay compensation.

10.The learned counsel appearing for the first respondent/claimant argued that the claimant was doing by profession as fisherman. He would further argued that since the claimant has sustained fracture injuries he could not conduct his business as fisherman. He would further argued that the claimant is a senior citizen who is aged about 62 years.

11. On hearing both sides and considering the age of the claimant this Court is inclined to modify the award amount of compensation passed by the Tribunal.

12.Accordingly, the claimant is entitled for compensation as follows:

S. No	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For permanent disability at 7%	Rs.1,00,800/-	Rs.35,000/-	granted
2.	For loss of Income (2 months)	Rs. 30,000/-	Rs.20,000/-	granted
3.	For extra nourishment	Rs. 30,000/-	Rs.20,000/-	granted
4.	For attendant charges	Rs. 40,000	Rs.10,000	granted
5.	For pain and sufferings	Rs.1,00,000/-	Rs.50,000/-	granted
6.	For loss of amenities	Rs.50,000/-	Rs.35,000/-	granted
7.	Towards future medical expenses	Rs.50,000/-	Rs.20,000/-	granted
8.	Transport to the Hospital		Rs.10,000/-	granted
Total		Rs.4,00,800/-	Rs.2,00,000/-	

with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

14.In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, awarded the compensation of Rs.2,00,000/-. The appellant/insurance company is directed to deposit the aforesaid award of compensation before the Tribunal and the appellant is liable to recover the said compensation amount from the second respondent/owner of the lorry. After depositing the amount, the first respondent/claimant is permitted to withdraw the compensation



amount with accrued interest and costs, by filing necessary application before the Tribunal. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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

1. The Motor Accident Claims Tribunal/
Subordinate Court, Thoothukudi.
2. The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

+1 CC to M/s.A.S.MATHIALAGAN, Advocate (SR-28253[F]
dated 06/09/2021)

**C.M.A. (MD) No.734 of 2021
06.09.2021**

GC(07.09.2021) 4P 5C