

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED :18.01.2021****CORAM:****THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**C.M.A(MD)No.755 of 2016

Aruldhass : Appellant/Petitioner

Vs.

1.K.Mahesh

2.Kalkulam Special Officer,
Vilavancode Taluk Agricultural Producers,
Co-operative No.285,
Marthandam,
Kanyakumari District.

3.Iffco Tokiya General Insurance Company Ltd.,
Office at 335/1A, V.V Complex,
North Bye Pass Road,
Vannarpettai,
Tiruneveli.

: Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173(1) of Motor Vehicles Act, against the award, dated 17.02.2016 made in MCOP No.62 of 2011 on the file of Motor Accident Claims Tribunal (Sub Court), Kuzhithurai.

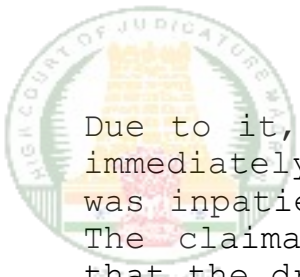
For Appellant : Mr.M.Punitha Deva Kumar

For R1 and R2 : No appearance

For 3rd Respondent : Mr.V.Sakthivel**JUDGMENT****(Thro' VC)**

Challenge made in this appeal is to the award, dated 17.02.2016 made in MCOP No.62 of 2011 on the file of Motor Accident Claims Tribunal (Sub Court), Kuzhithurai.

2.The brief facts of the case are that on 19.10.2010 at about 6.00 pm, the claimant, who was working as a load man in Lorry TN-74-C-2745 sitting on the back side of the driver in the cabin. At that time, the driver of the Lorry drove it in a rash and negligent manner towards southern side in the inside of the KVTCMS godown at Pammam and the Lorry's back side was dashed in one jack fruit tree.



Due to it, the claimant right middle finger was crushed and he was immediately taken to Ramakrishna Hospital at Marthandam, where he was inpatient for 3 days and his right middle finger was amputated. The claimant, sought compensation of Rs.4,00,000/- on the ground that the driver of the Lorry was responsible for the accident.

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3.The claimant has stated that at the time of accident, he was working as a load man, thereby he was getting Rs.15,000/- per month and in the alleged accident, his middle finger was crushed and he sustained 14% permanent disability and only due to rash and negligent driving of the Lorry Driver, the accident occurred and in this regard, a criminal case in Crime No.816 of 2010 was registered against the driver of the Lorry by the Marthandam Police.

4.The claim was opposed by the 3rd respondent Insurance Company disputing the manner of accident and their liability to pay compensation.

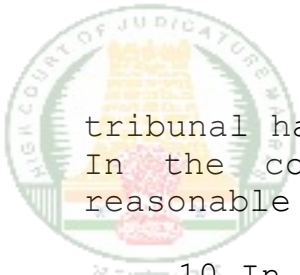
5.The Tribunal, upon consideration of oral and documentary evidence, came to the conclusion that the driver of the Lorry was responsible for the accident and awarded compensation of Rs.96,600/- together with interest @ 7.5% p.a.

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

7.The learned counsel appearing for the appellant/claimant argued that the tribunal has failed to consider that the claimant is earned Rs.15,000/- per month and erroneously decided that the claimant earned only Rs.6,000/- per month and the tribunal has not awarded any amount towards future medical treatment and hence, the award of the tribunal has to be enhanced. On the other hand, the learned counsel for the 3rd respondent Insurance Company submitted that the award of the tribunal is based on the evidence and it is also reasonable and hence, it has to be confirmed.

8.PW1 is the injured as well the eye witness to the accident. A criminal case was registered against the driver of the Lorry. Ex.P1 FIR stands registered based on the complaint given by PW1. PW1 has given evidence stating that due to crush injury, he lost his finger and he did not do any work. Exs.P7 to P9 are medical bills. Ex.P10 is the disability certificate.

9.It is seen that PW2/Doctor has deposed that the claimant had sustained 14% permanent disability. The tribunal, based on the evidence of PW2 and Exs.P5, P6 and P10 has determined the disability of the claimant at 14% and awarded Rs.42,000/- for permanent disability. Based on the reliable documents, the tribunal has awarded Rs.9,072/- towards medical expenses. Further, the tribunal has awarded Rs.25,000/- towards pain and suffering, Rs.18,000/- towards loss of income for three months, for extra nourishment at Rs.2,000/- and Rs.500/- towards transportation. In total, the



tribunal has awarded **Rs.96,572/-** together with interest @ 7.5.% p.a. In the considered view of this court, the award is fair and reasonable and therefore, it is confirmed.

10. In fine, the Civil Miscellaneous Appeal is dismissed and the award of the Tribunal is confirmed. The 3rd respondent Insurance Company is directed to deposit the entire amount with accrued interest and costs within a period of eight weeks from the date of receipt of a copy of this order, if not deposited already. On such deposit, the claimant is permitted to withdraw the entire amount without filing any formal application before the Tribunal. No costs.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To,

1. The Motor Accident Claims Tribunal/
Subordinate Court,
Kuzhithurai. Kanyakumari District.
2. The Record Keeper, (2 copies)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to SPL GP (SR-1080[F] dated 19/01/2021)

Judgment made in
CMA(MD) No.755 of 2016
18.01.2021

VB (05.03.2021) 3P 5C