



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

|                     |            |
|---------------------|------------|
| Date of Reservation | 11.02.2021 |
| Date of Judgment    | 12.05.2021 |

CORAM

**THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

C.M.A(MD)No.762 of 2016

P.Packiam : Appellant/Petitioner

Vs.

1.S.Valarmathi

2.Royal Sundaram Alliance Insurance Company Limited,

No.44, 4<sup>th</sup> Floor,

Thirumalai Towers,

No.723, Avinashi Road,

Coimbatore-641 018.

: Respondent/Respondents

**PRAYER:-** Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 25.04.2015 made in M.C.O.P.No. 745 of 2013, on the file of the Motor Accident Claims Tribunal/ Special Subordinate Judge, Tiruchirapalli.

For Appellant : Mr.R.Subramanian  
For 1<sup>st</sup> Respondent : No appearance  
For 2<sup>nd</sup> Respondent : Mr.M.Jerin Mathew

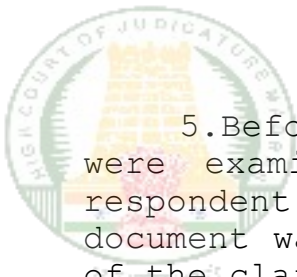
### J U D G M E N T

This Civil Miscellaneous Appeal has been filed challenging the award passed by the Motor Accident Claims Tribunal (Special Subordinate Court), Tiruchirappalli, in so far as the quantum of compensation is concerned.

2.The short facts of the case is that on 19.07.2009 at about 10.45 pm, the injured claimant took the Corporation Bus TN-01-N-7218 from Trichy Junction and when the Bus was nearing Erungalur Kaikatti, the Lorry TN-30-M-6575 came from the opposite direction in a rash and negligent manner and dashed against the Bus, resulting which, the claimant had sustained injuries and due to it, the claimant become handicapped person. The injured claimant filed a claim petition seeking compensation of Rs.15,00,000/- on the ground that the offending vehicle caused the accident.

3.The claimant has stated that he was 34 years at the time of accident and he was working as a Driver in the State Transport Corporation, thereby he was earning Rs.9,000/- per month.

4.In the counter filed by the 2<sup>nd</sup> respondent Insurance Company, they disputed the manner of accident and their liability to pay compensation.



5. Before the tribunal, on the side of the claimant, 3 witnesses were examined and marked 6 documents. On the side of the 2<sup>nd</sup> respondent Insurance Company, no witness was examined and no document was marked. Besides, Exs.C1 and C2 were marked on the side of the claimant.

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6. The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.6,77,240/- together with interest @ 7.5% p.a.

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

8. The dispute is in respect of quantum. The learned counsel appearing for the appellant/claimant argued that the compensation towards loss of income cannot be rejected on the ground that the claimant was given alternative job and the salary earned in the job appointed under persons with disabilities Act is not deductible in calculating motor accident compensation and the disability was not correctly calculated for the injured and the compensation awarded by the tribunal is on the lower side and prays that this Civil Miscellaneous Appeal has to be allowed. For that, the learned counsel appearing for the appellant submitted the ruling reported in **2017 ACJ 2051 (National Insurance Company Limited Vs. Rekhaben and others)**. In that case, it has been held in para 19 as follows:-

*"19. In the cases before us, compensation is claimed from the owner of the offending vehicle who is different from the employer who has offered employment on compassionate grounds to the dependants of the deceased/injured. The source from which compensation on account of the accident is claimed and the source from which the compensation employment is offered, are completely separate and there is no correlation between these two sources. Since the tortfeasor has not offered the compassionate appointment, we are of the view that an amount which a claimant earns by his labour by offering his services, whether by reason of compassionate appointment or otherwise, is not liable to be deducted from the compensation which the claimant is entitled to receive from a tortfeasor under the Act. In such a situation, we are of the view that the financial benefit of the compassionate employment is not liable to be deducted at all from the compensation amount which is liable to be paid either by the owner/the driver of the offending vehicle or the insurer."*

9. On the other hand, it is argued on the side of the 2<sup>nd</sup> respondent Insurance Corporation that the compensation awarded by the tribunal is on the higher side and not in consonance with the injuries sustained by the claimant and the claimant was given



alternative job and hence, there is no loss of income for the claimant and prays for dismissal of the Civil Miscellaneous Appeal.

10. The main contention of the appellant/claimant is that the loss of income arrived by the tribunal is not correct. But at the time of admission, this court passed the following order:-

"Therefore, it is evident that the appellant/claimant has not lost his job as claimed by him. In fact, the said fact has been suppressed before the Tribunal. Without taking note of the aforesaid material facts, the Tribunal also without properly appreciating the facts, took the monthly income at Rs.4,500/- (Rupees Four Thousand Five hundred only) per month and adopted the multiplier '9' and awarded a sum of Rs.3,64,500/- (Rupees Three Lakhs Sixty Four Thousand and Five Hundred only) towards loss of income, fixing the disability at 75% based on the evidence of PW2-Doctor. The said amount should not have been awarded to the appellant/claimant as the appellant has not lost his job and his job is secured under the Disabilities Act, a sum of Rs.3,64,500/- (Rupees Three Lakhs Sixty Four Thousand and Five Hundred only) awarded by the tribunal under the head 'loss of income' is set aside. In that case, the appellant/claimant is entitled to compensation towards 75% disability sustained by him.

11. It is to be noted that no appeal against the above order was preferred by the appellant herein. Hence, the order passed by this court has become final. On perusal of the order passed by this court, it reveals that the claimant is entitled to compensation towards 75% disability. Hence, it is held that the claimant is entitled to Rs.3,000/- for 1% of disability. Accordingly, the claimant is entitled to Rs.2,25,000/- (Rs.3,000/- x 75%) towards permanent disability. Hence, the ruling cited by the learned counsel appearing for the appellant/claimant reported in **2017-ACJ-2051 (National Insurance Company Limited Vs. Rekhaben and others)** is not applicable to the case on hand. In respect of all other heads, there was no objection on the side of the 2<sup>nd</sup> respondent Insurance Company. Hence, in respect of all other heads, the award passed by the tribunal is confirmed. Accordingly, the award of the tribunal is re-calculated as under:-

| Nature of Head       | Award of the tribunal | Award of this Court |
|----------------------|-----------------------|---------------------|
| Permanent disability | -                     | Rs.2,25,000/-       |
| Medical Bills        | Rs. 83,740/-          | Rs. 83,740/-        |
| Transportation       | Rs. 10,000/-          | Rs. 10,000/-        |
| Nutrition            | Rs. 10,000/-          | Rs. 10,000/-        |

|                                 |               |                |
|---------------------------------|---------------|----------------|
| Attendant charges               | Rs. 5,000/-   | Rs. 5,000/-    |
| Loss of Amenities               | Rs.1,00,000/- | Rs.1,00,000/-  |
| Loss of income during treatment | Rs. 54,000/-  | Rs. 54,000/-   |
| Loss of future earnings         | Rs.3,64,500/- | Nil            |
| Pain and Sufferings             | Rs. 50,000/-  | Rs. 50,000/-   |
| Total                           | Rs.6,77,240/- | Rs. 5,37,740/- |

12. In the result, this Civil Miscellaneous Appeal is disposed of as indicated above. The award of the tribunal is reduced to Rs.5,37,740/- from Rs.6,77,240/-. The interest awarded by the tribunal is maintained. The 2<sup>nd</sup> respondent Insurance Company is directed to deposit the modified award amount together with accrued interest and costs, less the amount already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such compliance, the appellant/claimant is permitted to withdraw the entire amount, less the amount already withdrawn without filing any formal petition before the tribunal. Excess amount if any, shall be refunded to the 2<sup>nd</sup> respondent Insurance Company. No Costs.

Sd/-

Assistant Registrar (CSIII)

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/ /2021

Sub Assistant Registrar (CS)

To,

1. The Motor Accident Claims Tribunal/  
Special Sub Court, Tiruchirappalli.

2. The Record Keeper, (2C)  
VR Section,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.R.SUBRAMANIAN, Advocate ( SR-18538[F] dated 13/05/2021 )

CMA (MD) No.762 of 2016  
12.05.2021

KB (09.06.2021) 4P 5C