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C.M.A.No.1985 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2022

C O R A M

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

C.M.A.No.1985 of 2016  
and C.M.P.No.14343 of 2016

The B.M.The Oriental Insurance Co.Ltd.,  
Indian Mutual Building, 1st Floor,  
221, Cubbonpet Main Road,  
NR Square, Bangalore

... Appellant

-Vs.-

1. S.Arumugam  
2. Shama Transports,  
Rep by Prop.Sayed Ajaz,  
1/84/1, Hosur Mani Road,  
Madiwala, Bangalore

... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and decree made in M.C.O.P.No.713 of 2012 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirupur dated 06.01.2016.

For Appellant : Mr.M.Krishnamoorthy  
For Respondent-1 : Mr.M.Lokesh  
For Respondent-2 : Dispensed with.



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## **J U D G M E N T**

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The second respondent-Insurance Company before the Tribunal below has challenged the award of the Motor Accident Claims Tribunal, Chief Judicial Magistrate, Tiruppur on the ground that the adoption of a multiplier method for granting compensation under the head of "loss of disability" is totally erroneous.

### **2. The brief facts are as follows:-**

The first respondent/claimant had filed M.C.O.P.No.713 of 2012 claiming compensation for the injuries sustained by him in a road accident on 09.09.2012. It is his contention that he was a flower seller, aged about 35 years and earning a monthly salary of Rs.14,000/-. On the said date, at about 6.30 hours, when he was proceeding in his vehicle, bearing Registration No.TN 36 Q 3578, a bus belonging to the first respondent and insured with the second respondent, proceeding in the same direction, had hit the first respondent, as a result of which, he had sustained grievous injuries to his right shoulder, right chest, back side and had also sustained injuries all over his body.



3. The first respondent would contend that he has undergone treatment for over 3 months and spent considerably for medical treatment. He would contend that the accident had occurred only on account of the negligence of the driver of the first respondent and therefore, the first respondent and the insurance company were liable to compensate him to a sum of Rs.13,00,000/-.

4. The first respondent had remained *ex-parte* and it was the appellant-Insurance Company, which has contested the petition. They had denied the age, occupation and income of the first respondent. The nature of the accident was questioned and the Insurance Company had contended that the first respondent had sustained injuries elsewhere and made it appear that it is a road accident. The first respondent was put to strict proof of his income, medical expenses etc.,

5. The Tribunal, after considering the evidence, had held that the accident had occurred only on account of the rash and negligent driving of the driver of the first respondent's bus and also held that the injury sustained has resulted in disability to the first respondent, which has affected his future



prospects and consequently, it calculated the compensation by adopting multiplier method and ultimately had awarded a sum of Rs.4,35,615/-.

6. The Insurance Company is aggrieved by the fact that the Tribunal below has held that the disability suffered by the first respondent is the one that affects his future prospects, thereby granting compensation under the head of "loss of disability" by adopting a multiplier method.

7. Mr.M.Krishna Moorthy, the learned counsel appearing for the appellant-Insurance Company would contend that the injury sustained is a fracture on the left clavicle. He would submit that the first respondent has been in inpatient for only 4 days. He would submit that the disability certificate-Ex.P7 given by P.W4-Doctor is contrary to Ex.P4-Discharge summary, where the progress of the petitioner has been shown to be satisfactory. Therefore, the observations made in Ex.P7 that the disability has caused an impediment to his future prospects are absolutely without any basis. The injury is on the left clavicle. He would submit that the Doctors, who have initially given the treatment to the first respondent, have not opined that the first respondent suffered from the disabilities as set out in Ex-P4. Therefore,



he would submit that the Tribunal has erred in accepting the disability certificate, as issued by P.W4 to come to the conclusion that the future prospects have been affected. Therefore, he would seek a modification of the amount under this head by adopting percentage method.

8. Per contra, Mr.Logesh, learned counsel appearing behalf of the first respondent/claimant would submit that P.W4-Doctor has independently assessed the first respondent to come to the opinion as set out in Ex.P7-Disability Certificate. He would submit that the first respondent is a flower vendor and the disability to the neck would affect his future prospects as well as his livelihood, therefore, the Tribunal has rightly adopted the report of P.W4 as set out in Ex.P7 to come to the conclusion that the disability is a permanent one, which affects the future earning capacity of the first respondent.

9. Heard the learned counsel on either side and perused the materials available on record.



10. Ex.P4 is the discharge summary, which has been issued by the hospital, which had given the initial treatment. A perusal of the same would show that the first respondent had sustained an injury to his left shoulder joint. The first respondent has undergone ORIF with plate Osteosynthesis on 11.09.2012. The first respondent has been discharged on 13.09.2012 with instructions to return for review for four days. The records would indicate that the first respondent has gone for the review on 22.09.2012 and on 13.10.2012. The records would indicate that an X-ray has been taken and an examination of the X-Ray would show the satisfactory progress of his injuries. The first respondent has also been taught physiotherapy exercises, as evidenced in physiotherapy progress notes in Ex.P4. However, two years later, P.W4 has issued the disability certificate-Ex.P7. A perusal of this would indicate that the only document that has been perused for assessing the disability is the discharge summary, which is dated 13.09.2012. P.W4-Doctor has, on the basis of the perusal of this discharge summary, given the opinion that the first respondent has suffered a partial permanent disability and the movement on the left shoulder has been reduced. It is rather strange that a person, who claims to be an Orthopaedic Doctor, has not deemed it fit to take an X-Ray and thereafter, issue the disability certificate. This omission is sought to be covered



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by the oral evidence of P.W4. However, when considering Ex.P4, the report on 13.10.2012 indicates a satisfactory progress of the first respondent, which has permitted the Doctors to start physiotherapy exercises. Therefore, the adoption of a multiplier method by the Tribunal, relying upon Ex.P7 is *per se* erroneous. The accident is of the year 2012. Therefore, a sum of Rs.3,000/- per percentage can be adopted. Therefore, the amount under the head of "loss of disability" would be Rs.3,000 x32% = 96,000/-. Therefore, the re-worked compensation would be as follows:-

| <i><b>Heads</b></i>    | <i><b>Amount by the<br/>Tribunal<br/>in Rs.</b></i> | <i><b>Amount Awarded<br/>by this Court<br/>in Rs.</b></i> |
|------------------------|-----------------------------------------------------|-----------------------------------------------------------|
| Loss of Disability     | <b>3,45,000</b>                                     | <b>96,000</b>                                             |
| Medical Expenses       | 26,015                                              | 26,015                                                    |
| Loss of Income         | 24,000                                              | 24,000                                                    |
| Transportation Charges | 15,000                                              | 15,000                                                    |
| Pain and Sufferings    | 25,000                                              | 25,000                                                    |
| <b>Total</b>           | <b>4,35,615</b>                                     | <b>1,86,015</b>                                           |

11. Therefore, this Civil Miscellaneous Appeal is partly allowed and the compensation of **Rs.4,35,615/-** awarded by the Tribunal is hereby reduced to a sum of **Rs.1,86,015/-** together with interest @ 7.5 % per annum from the date of petition till the date of deposit. The appellant-Insurance Company is



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directed to deposit the said amount **Rs.1,86,015/-** to the credit of M.C.O.P.No.713 of 2012 together with interest @ 7.5% per annum from the date of claim petition till the date of deposit and costs as awarded by the Tribunal, less, the amount, if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgement. On such deposit being made, the first respondent/claimant is permitted to withdraw the amount now determined by this Court, along with interest and costs, after adjusting the amount if any already withdrawn by the first respondent/claimant. The Insurance Company is permitted to withdraw any excess amount, if any deposited by them. The first respondent/ claimant is directed to pay the Court fee for the compensation amount as awarded by this Court. The Tribunal below shall not disburse the compensation amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimants. In other respects, the impugned Award of the Tribunal is hereby confirmed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Index:Yes/No  
Speaking Order : Yes/No  
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To

1. The Motor Accident Claims Tribunal (Chief Judicial Magistrate) at Tirupur
2. The Section Officer, V.R.Section, High Court of Madras, Chennai.



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**P.T.ASHA.J**

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