



C.M.A(MD)No.282 of 2009

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.10.2022

Pronounced on : 09.12.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

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and

M.P.(MD)No.1 of 2009

National Insurance Company Limited,
Through its Manager,
having office at
No.10, Anuradha Complex, 3rd Floor,
No.333, Bangalore Road,
Behind Raahaa Theatre,
Krishnagiri.

...Appellant /2nd respondent

Vs

1.M.Ramprasad

... 1st respondent / Petitioner

2.Murugan

...2nd Respondent/1st Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the order and decree dated 16.04.2008, passed in MACOP No.550 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tirunelveli.



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For Appellant : Mr.D.Sivaraman
For R1 : Mr.V.Kannan
For R2 : No appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MACOP No.550 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tirunelveli. The appellant herein is the second respondent, first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

2.Brief substance of the claim petition is as follows:

On 24.07.2004, while the petitioner was travelling in a motorcycle bearing registration number KA 03 EH 4759, along the Bangalore-Krishnagiri highways, near Markkandeya river bridge, keeping the extreme left side of the road, a lorry bearing registration number TDY 7256 driven by its driver in a rash and negligent manner, dashed against the motorcycle from behind. The petitioner was working as an Assistant Manager in Micobox Company and was earning a sum of Rs.3,60,000/- per year. The left hand of the petitioner was amputated and the petitioner sustained permanent



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disability. The petitioner claimed a sum of Rs.1 Crore as compensation. The first respondent was set exparte.

3.Brief substance of the counter filed by the second respondent is as follows:

The lorry was driven by its driver in a slow and cautious manner. It was the petitioner who drove the vehicle without observing the road traffic, entered the national highways all of a sudden, and that he lost his control and met with the accident. The accident did not take place due to the negligence of the first respondent. The first petitioner's driver was not having valid driving licence. The lorry driver was not having license to drove heavy motor vehicles. The owner of the vehicle has violated the policy conditions. The second respondent is not liable to pay compensation.

4.Brief substance of the additional counter filed by the second respondent is as follows:

As per the letter dated 03.05.2006, the petitioner is still doing the same job. There was no income loss. The medical expenses were taken care of by the company itself. The petitioner is still working as an Assistant Manager



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and he is still attending his duties and pray the petition to be dismissed.

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5.Two(2) witnesses were examined and thirteen(13) documents were marked on the side of the petitioner. One witness was examined and six(6) documents were marked on the side of the respondent. The Tribunal awarded a sum of Rs.15,70,000/-, to be paid by the respondent with interest at the rate of 8% per annum.

6.Against the award, the second respondent filed this appeal on the following grounds:

The Tribunal is wrong in placing the entire liability on the appellant. The owner of the lorry violated the terms and conditions of the policy by entrusting a person who was not holding valid driving licence to drive the lorry. The driver of the lorry was not having licence to drive heavy motor vehicles. The Tribunal failed to consider Ex.R3, the letter given by the RTO, Krishnagiri, stating that the driver was not having license to drive heavy goods vehicle. The Tribunal failed to consider that the burden is on the claimants to prove that the driver was having valid driving licence. Neither the claimant nor the owner of the vehicle has discharged the burden. The



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Tribunal is wrong in awarding Rs.15,70,000/- as compensation. The Tribunal is wrong in awarding compensation towards loss of expectations of life. The Tribunal failed to consider that the claimant is continuing the previous job without any reduction in the salary. The amount fixed for loss of earning capacity, is excessive. The interest rate is excessive.

7.On the side of the appellant, it is seen that the lorry hit the two wheeler from behind and ran over the petitioner. Hence, it is decided that the lorry driver is responsible for the accident.

8.On the side of the appellant it is stated the lorry driver was not having valid driving licence and that he can drive only heavy passengers vehicle and not heavy goods vehicle. Before the amendment in the year, 1990, all the heavy goods vehicle, heavy passenger vehicle are categorized under the head 'transport vehicles'. A perusal of the records proves that the driver of the vehicle was not having endorsement in his licence and R.W.3 has deposed to that effect. A judgment of the Hon'ble Supreme Court reported in **2017 (2) TN MAC 145(SC)** in the case of **Mukund Dewangan vs. Oriental Insurance Co.Ltd.**, is cited, wherein it is held that there was no necessity for holder of LMV to obtain specific endorsement to drive Transport Vehicle.



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"Held, 'LMV' under Section 2(21) includes Transport Vehicles of that category as per weight prescribed in Section 2(21) read with 2(15) and 2(48) - Therefore, no separate endorsement required to be obtained by holder of LMV Licence to drive Transport Vehicle - Decisions in Prabhu Lal, Roshanben and Angad Kol taking contra view, overruled - Decision in Annappa partly overruled."

Under Section 10(2)(e) of the MV Act, Transport vehicles would include mini vehicle, mini passenger motor vehicle, heavy vehicle and heavy passenger motor vehicle. Only at the time of filing this appeal, the decision was differed and badge endorsement is not necessary as per the dictum of the Hon'ble Supreme Court.

9. On the side of the appellant, it is stated that the claimant was 33 years old, and that he was working as an Assistant Manager in a private company and the entire medical expenses was reimbursed to him, through the medical insurance. From the letter received from the company Ex.P5, it is stated that the medical insurance for the accident was paid to the claimant and that there was no loss of pay for the petitioner and he is still continuing the same work. There was no salary deduction. Only partial disability that leads to loss of



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income has to be taken into consideration. A judgment of the Hon'ble Supreme Court in the case of **RajKumar Vs Ajay Kumar and another**, reported in **(2011) 1 Supreme Court Cases 343**, is cited on the side of the appellant.

10.On the side of the respondent it is stated that there was no loss of earning but there was loss of earning capacity. The Tribunal has failed to consider the future prospects. The petitioner is a 32 years old Engineer who was a meritorious student, earning Rs.24,000/- per month. But the Tribunal has fixed the monthly income as Rs.10,000/- and the same has to be enhanced. It is stated that the petitioner's left hand was amputated. He was just 17 years at the time of accident. He could not get a bride and his marriage prospects was affected by the accident. All the friends of the petitioner went to abroad and were earning money, but the petitioner has to stick on the company in Bangalore and he could not get the opportunity to go abroad and his future prospects was completely affected.

11.It is seen that the Tribunal has marked the pay slip of the claimant as Ex.P.9. The educational certificates were marked as Ex.P11 and Ex.P12.



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Ex.R5 and Ex.R6 are letters from the institution, wherein the claimant was working. Form the above said documents, it is clear that the claimant is still working in the same company and the petitioner was not sent out of service after the accident. As he was still continuing the same job, his salary was not reduced. The Tribunal fixed the monthly income only at Rs.10,000/- per month. After considering the disability as 70%, fixed a sum of Rs.12,60,000/- as loss of income.

12.It is seen that the petitioner was not removed from service due to the accident. Since, the petitioner is still continuing the service, his salary was not reduced. At the same time, considering the fact that the left hand of the petitioner was amputated and considering that no future prospects was given by the Tribunal. There is possibility of the petitioner to get more income, unless his hand is amputated.

13. It is decided that the loss of income fixed by the Tribunal is reasonable. The Tribunal has awarded Rs.70,000/- towards pain and sufferings, Rs.70,000/- towards loss of amenities. Rs.70,000/- towards loss of expectations of life and mental agony and Rs.1 Lakh towards loss of



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prospects of marriage, which are all reasonable. The respondent has not filed any cross objection. From Ex.R5 and Ex.R6, it is decided that the claimant is still continuing the same job.

14.In the above circumstances, it is decided that the claimant is not entitled for any enhancement of compensation. The interest awarded by the Tribunal as 8% per annum, alone is modified as 7.5% per annum.

15.For the reasons stated above, it is decided that the compensation fixed by the Tribunal is reasonable. There is nothing sufficient enough to interfere with the orders of the Tribunal, except the interest awarded by the Tribunal.

16.Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is confirmed as Rs.15,70,000/- (Rupees Fifteen Lakhs Seventy Thousand only) which shall carry interest at the rate of 7.5% per annum.



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(ii) The appellant / insurance company is directed to deposit the entire compensation of Rs.15,70,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of MACOP No.550 of 2005 on the file of the Motor Accidents Claims Tribunal, Principal Sub Court, Tirunelveli, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the first respondent herein/ claimant is permitted to withdraw the entire award amount of Rs.15,70,000/- with proportionate interest. Consequently, connected miscellaneous petition is closed.

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Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal, Principal Sub Court, Tirunelveli.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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