



C.M.A.(MD)No.873 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 21.11.2022

Delivered On : 15.12.2022

CORAM

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

C.M.A.(MD)No.873 of 2019

Murugan

.. Appellant /claimant

Vs.

1.M/s.Lakshmi Marbles,  
Prop. V.Seethalakshmi  
No.299H & 1, Thiruchuli Road,  
Gandhi Nagar Bye-pass service road,  
Aruppukottai – 626 101.  
Virudhunagar District.

2.The Divisional Manager,  
M/s.Oriental Insurance Company Ltd.,  
K.J.R. Complex 1<sup>st</sup> Floor,  
16, North Veli Street, Madurai-625 001.

.. Respondents / Respondents

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree in M.C.O.P.No.7 of 2016, on the file of the Motor Accident Claims Tribunal – Sub Court, Aruppukottai, dated 20.08.2019.



C.M.A.(MD)No.873 of 2019

For Appellant : Mr.M.Jothi Basu  
For Respondent No. 1 : No appearance  
For Respondent No.2 : Mr.C.Jawahar Ravindran

### **JUDGMENT**

This Civil Miscellaneous Appeal has been filed against the award in M.C.O.P.No.7 of 2016, on the file of the Motor Accident Claims Tribunal – Sub Court, Aruppukottai, dated 20.08.2019. The appellant herein is the claimant and the respondents herein are the respondents in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.C.O.P.No.7 of 2016, is as follows:-

On 12.09.2015, when the petitioner was unloading the granite stones from the vehicle bearing Registration No.TN-67-BZ-2725, the driver of the vehicle, without any signal, moved the vehicle and the granite stones fell upon the petitioner and he sustained injuries. He was given first aid in a private hospital and then, he was admitted in Vimala Hospital, Aruppukkottai. The petitioner has undergone surgeries in both of his legs. He sustained permanent disability, he has to dependent on the others to fulfill his day to day affairs. Before the accident, the petitioner was working as a Labourer in Lakshmi Marbles and he was earning Rs.600/- per day. The petitioner claimed a sum of Rs.15,00,000/- as compensation.



C.M.A.(MD)No.873 of 2019

WEB COPY

3. A brief substance of the counter filed by the first respondent, in M.C.O.P.No.7 of 2016, is as follows:

The accident has happened only due to the negligence of the petitioner. The vehicle that belonged to the first respondent was insured with the second respondent and the insurance policy was effective on the date of accident. The driver of the vehicle was having valid driving licence. The amount claimed is excessive.

4. A brief substance of the counter filed by the second respondent, in M.C.O.P.No.7 of 2016, is as follows:

The accident has happened only when the petitioner was unloading the stones, hence, the employer is liable to pay compensation under the W.C. Act. F.I.R was registered 2 days after the alleged occurrence. F.I.R is suspicious. The petitioner has to prove that the vehicle was involved in the accident. The nature of injuries are denied. The age, income and profession of the petitioner are all denied. The petition to be dismissed.

5. 2 witnesses were examined and 15 documents were marked, on the side of the claimant. 1 witness was examined and 1 document was marked, on the side of the respondents. 1 document was marked as Court document (Ex.C1). After



C.M.A.(MD)No.873 of 2019

considering both sides, the Tribunal awarded a sum of Rs.2,59,850/- as compensation, to be paid by the respondents.

6. Against the order, the claimant / appellant has filed this appeal, for enhancement of compensation, on the following grounds:-

The Tribunal failed to consider that the original claim was Rs.15,00,000/-, but, only a meagre sum of Rs.2,59,850/- was awarded by the Tribunal. The Tribunal failed to consider that the appellant sustained fractures in both the legs and that he was not able to continue his work, after the accident. The Tribunal ought to have applied multiplier method. The appellant was referred to the Medical Board and the Medical Board fixed the disability at 33%. The Tribunal has awarded Rs.22,500/- towards loss of income, which is very low. The Tribunal awarded Rs.10,000/- towards extra nourishment and the same has to be enhanced to Rs.1,00,000/-. The Tribunal awarded Rs.25,000/- towards pain and sufferings and the same has to be enhanced to Rs.1,00,000/-. The Tribunal failed to award any amount towards attender charges and the compensation is to be enhanced.

7. On the side of the appellant, it is stated that P.W.2 was examined, to prove the occurrence. Copy of the F.I.R and charge sheet were filed. The lorry driver admitted his guilt and paid the fine. The Insurance company already deposited



C.M.A.(MD)No.873 of 2019

the entire amount and there is no question of liability. On the side of the second respondent – Insurance Company, it is admitted that the award amount was deposited.

8. It is seen that there is no appeal or cross objection filed on the side of the insurance company. On the basis of the evidence of P.W.2 and on the basis of Ex.P1-copy of F.I.R and Ex.P11-copy of M.V. I. Report, Ex.P12-copy of charge sheet, Ex.P12-judgment of the criminal court, it is decided that the lorry driver is responsible for the accident.

9. On the side of the appellant, it is stated that the claimant sustained fractures in both the legs and he has to depend upon the help of others to run his day to day affairs and he is permanently disabled. The Tribunal ought to have fixed the loss of income by applying multiplier method.

10. On the side of the second respondent – Insurance Company, it is stated that the claimant sustained only 33% disability and that the Tribunal has awarded Rs.3,000/- per percentage of disability, which is reasonable.



C.M.A.(MD)No.873 of 2019

11. On the side of the appellant, a judgment of this Court reported in **2022-1-TNMAC-555 (K.Bharath V. R.Narayanan)** is cited, wherein, this Court has awarded Rs.5,000/- per percentage of disability.

12. On the side of the second respondent – Insurance Company, it is stated that the disability is not a permanent or functional disability. The award of compensation fixed by the Tribunal is reasonable and there is no ground for enhancement of compensation.

13. It is seen that the appellant - claimant sustained fracture in both the legs. Accident Register copy was marked as Ex.P2. Wound certificate was marked as Ex.P3. Medical Board fixed the disability at 33% and the same was marked as Ex.C1. Considering the fact that the claimant sustained fractures in both the legs, it is decided that the claimant is entitled to compensation by applying multiplier method. The notional income of the claimant is fixed as Rs.6,000/- per month. For 33% disability, the loss of monthly income is calculated as Rs.1,980/- (Rs.6,000/- X 33/100 = Rs.1,980/-). The age of the claimant, at the time of accident is 26 years, hence, multiplier '17' is applicable. After applying multiplier '17', the loss of income is calculated as Rs.4,03,920/-(Rs.1,980/- X 12 X 17= Rs.4,03,920/-) as compensation.



C.M.A.(MD)No.873 of 2019

14. The Tribunal has awarded Rs.22,500/- towards interim loss of income.

Since multiplier method is adopted to fix the loss of income, there is no necessity to grant any amount for temporary loss of income.

15. The Tribunal has awarded Rs.1,000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.1,02,350/- towards medical expenses, Rs.25,000/- towards pain and sufferings, which are all reasonable. In addition to that amount, it is decided that the claimant is entitled to Rs.17,730/- towards attender charges.

16. The total compensation is calculated as follows:-

|                     |   |                                  |
|---------------------|---|----------------------------------|
| Loss of income      | : | Rs. 4,03,920/-                   |
| Medical expenses    | : | Rs. 1,02,350/-                   |
| Transport expenses  | : | Rs. 1,000/-                      |
| Extra nourishment   | : | Rs. 10,000/-                     |
| Pain and sufferings | : | Rs. 25,000/-                     |
| Attender charges    | : | Rs. 17,730/-                     |
| Total compensation  | : | .....<br>Rs. 5,60,000/-<br>..... |

17. This appeal is partly allowed and the compensation is enhanced from Rs.2,59,850/- to Rs.5,60,000/-.



C.M.A.(MD)No.873 of 2019

**WEB COPY** (i) The claimant / appellant is entitled to Rs.5,60,000/- as compensation.

(ii) The second respondent herein - Insurance Company, is directed to deposit the amount of Rs.2,59,850/- (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 with costs, and for Rs.3,00,150/- with 7.5% interest from the date of this order, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the appellant / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The Claimant is not entitled for interest for the default period, if there is any default. No costs.

**15.12.2022**

Index : Yes/No

Internet : Yes/No

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C.M.A.(MD)No.873 of 2019

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- To
- 1.The Sub Judge,  
Motor Accident Claims Tribunal  
Aruppukottai.
  - 2.The Section Officer,  
V.R. Section,  
Madurai Bench of Madras High Court,  
Madurai.



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C.M.A.(MD)No.873 of 2019

**R. THARANI, J.**

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Pre-delivery Judgment made in  
C.M.A.(MD)No.873 of 2019

**15.12.2022**