



C.M.A.No.3716 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**C.M.A.No.3716 of 2012
and M.P.No.1 of 2012**

The New India Assurance Company Limited,
No.1360, Amman Complex, E.V.N.Road,
Erode. ... Appellant / 2nd Respondent

Vs.

1. Mahendran ... 1st Respondent / Petitioner

2. Sri Meenakshi Bus Transport,
M.S.K.Nilayam,
No.4, Komarasami Street,
Erode. ... 2nd Respondent / 1st Respondent

(CMA which was dismissed against the first respondent on 13.02.2023 is restored vide order dated 28.04.2023 made in C.M.P.No.10187 of 2023 in C.M.A.No.3716 of 2012 by AANJ)

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 11.11.2011 made in M.C.O.P.No.396 of 2008 on the file of the Motor Accidents Claims Tribunal, Sub Court, Sankari.



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For Appellant : Mr.J.Chandran
For Respondents : No appearance for R1
R2 - Ex-parte

J U D G M E N T

Aggrieved by the compensation awarded by the Tribunal in M.C.O.P.No.396 of 2008 filed by the claimant, the appellant / Insurance Company has come before this Court challenging the same by filing the present civil miscellaneous appeal.

2. The petitioner alleged to be earning a sum of Rs.10,000/- per month, met with an accident. On 19.12.2007 when the petitioner was going near Alamara Bus Stop, VEDIYARSAMPALYAM as a pillion rider in a motor cycle bearing Registration No.TN-28-P-9568 (M80), a bus bearing Registration No.TN-33-AK-8989 driven by its driver in a rash and negligent manner, dashed against the petitioner in which the petitioner suffered injuries for which he was admitted in the hospital and due to the loss suffered on account of the accident, the claimant, claiming compensation for



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the injuries suffered and also for loss of income, had filed the claim petition.

The said claim was resisted by the appellant / Insurance Company. The second respondent is the owner of the bus.

3. The claimant has filed the claim petition claiming compensation of a sum of Rs.5,00,000/-. Before the Tribunal, on the side of the claimant, P.W.1 and P.W.2 were examined and Exs.P1 to P10 were marked. The Insurance Company did not let in any evidence either orally or documentary. The Tribunal, after analysing the oral and documentary evidence available on record, awarded compensation of Rs.6,25,000/- and directed the respondents 1 and 2 jointly and severally are liable to pay the same.

4. The learned counsel for the appellant / Insurance Company drew the attention of this Court to the impugned award and would submit that despite the fact that the first respondent / claimant has not suffered permanent disability on account of injuries sustained by him, the Tribunal



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has erroneously adopted the multiplier method and has also fixed the disability of the first respondent / claimant at 51%. According to them, the nature of injuries sustained by the first respondent / claimant do not legally entitle him to get compensation based on the multiplier method. Further, the Tribunal went wrong in finding that the claimant was suffering from disability of 51% for the alleged fracture of both bones of right leg. He further submitted that if the claimant establishes that he has suffered with permanent disability and he is not able to avocate even after the accident and if it is established by way of oral or documentary evidence, then this Court can adopt the multiplier method for permanent disability. The compensation awarded by the Tribunal under the other heads are also excessive, hence the learned counsel prays for setting aside the award.

5. The second respondent remained ex-parte before the Tribunal.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing for the appellant and perused the



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materials available on record.

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7. The nature of injuries sustained by the first respondent / claimant has not been disputed by the appellant / Insurance Company. However, the only dispute they are raising is that the nature of injuries do not entitle the first respondent / claimant to get the compensation for the loss of earning capacity by adopting the multiplier method.

8. Admittedly, as seen from the evidence available on record, the first respondent / claimant was hospitalised only for seven days, i.e., from 19.12.2007 to 25.12.2007 as a result of the injuries sustained by him caused by the insured vehicle. He has also underwent surgeries as seen from the evidence available on record. The said fact was also not disputed by the learned counsel for the Insurance Company before this Court. P.W.2-Doctor who examined the first respondent / claimant has assessed the permanent disability of the first respondent / claimant at 56% based on the injuries sustained by him on the various parts of his body. Though P.W.2-



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Doctor has assessed the disability at 56%, he has not given treatment to the claimant and there is no follow up records for the treatment. In such circumstances, the disability assessed by P.W.2-Doctor is too high and in any event considering the nature of injury, the Tribunal has fixed the disability at 51%.

9. Considering the nature of injuries sustained by the claimant though the doctor assessed the disability of the first respondent / claimant at 56%, the Tribunal had erroneously assessed the disability at 51%. Hence, this Court is inclined to fix the disability of the claimant at 56% as per Ex.P8 as assessed by P.W.2-Doctor. In the absence of any material, this Court is of the considered view that the Tribunal has erroneously adopted the multiplier method for the purpose of assessing the loss of earning capacity of the first respondent / claimant as he has not suffered any permanent disability. The Tribunal ought to have fixed the loss of earning capacity of the first respondent / claimant on percentage basis, but instead has adopted the multiplier method, which is not correct.



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10. The accident happened on 19.12.2007. This Court is of the considered view that it will be a just compensation, if the loss of earning capacity of the first respondent / claimant is calculated at Rs.4,000/- per percentage of disability. This Court, therefore, accepts the disability assessed by the Doctor before the Tribunal at 56% but it can only be treated as a partial and permanent disability and not as permanent disability. Therefore, the loss of earning capacity fixed by the Tribunal under the impugned award to the first respondent / claimant is reduced to Rs.2,24,000/-, calculated for 56% disability at Rs.4,000/- per percentage of disability, instead of Rs.4,68,180/- fixed by the Tribunal.

11. In view of the above facts and circumstances, this Court is of the considered view that there is no ground for interference with regard to the compensation awarded by the Tribunal under various other heads viz., Rs.25,000/- towards pain and sufferings; Rs.1,00,000/- towards medical



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bills; Rs.20,000/- towards extra nourishment; Rs.5,000/- towards attender charges; Rs.5,000/- towards transportation and Rs.5,000/- towards loss of amenities, if the nature of the injuries and the avocation of the first respondent / claimant is taken into consideration. Though the Tribunal has arrived at compensation in a sum of Rs.6,28,180/-, only a sum of Rs.6,25,000/- has been awarded.

12. For the foregoing reasons, the award of the Tribunal is hereby reduced in the following manner :

<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>
1	Disability	Rs.4,68,180/-	Rs.2,24,000/-
2	Pain and Sufferings	Rs.25,000/-	Rs.25,000/-
3	Medical Bills	Rs.1,00,000/-	Rs.1,00,000/-
4	Extra Nourishment	Rs.20,000/-	Rs.20,000/-
5	Attender Charges	Rs.5,000/-	Rs.5,000/-
6	Transportation	Rs.5,000/-	Rs.5,000/-
7	Loss of Amenities	Rs.5,000/-	Rs.5,000/-
	Total Awarded	Rs.6,28,180/- Rs.6,25,000/-	Rs.3,84,000/-



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<i>S.No</i>	<i>Head of Compensation</i>	<i>Amount awarded by the Tribunal</i>	<i>Amount awarded by this Court</i>

13. In the result, the Civil Miscellaneous Appeal stands partly allowed by reducing the compensation from Rs.6,25,000/- to Rs.3,84,000/-, as indicated above. The appellant / Insurance Company is directed to deposit the entire award amount (reduced amount) as assessed by this Court together with interest at 7.5% p.a. from the date of claim petition till the date of realization, less the amount, if any, already deposited to the credit of M.C.O.P.No.396 of 2008 on the file of the Motor Accident Claims Tribunal, Sub Court, Sankari, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the first respondent / claimant, through RTGS, within a period of two weeks thereafter. It is made clear that the appellant / Insurance Company is permitted to withdraw excess award amount, if any deposited by them before the Tribunal. No costs. Consequently, connected M.P. is closed.



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

1. The Motor Accidents Claims Tribunal,
Sub Court,
Sankari.
2. The Section Officer,
V.R. Section,
High Court, Chennai.



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M.DHANDAPANI, J.

vji

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