



C.M.A.No.2863 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

Civil Miscellaneous Appeal No.2863 of 2017

The Branch Manager,
M/s.The Oriental Insurance Company Limited,
Gopal Rao Library Building, Town Hall Road,
Kumbakonam Town & Munsif ... Appellant/ 2nd respondent

Vs.

1.Veeraiyan ... Respondent / Petitioner
2. Manigandan
3. Chitravel
4. The Branch Manager
National Insurance Company Limited,
62, T.S.R. Big Street,
Kumbakonam Town & Munsif. ... Respondents/Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 13.04.2016 made in M.C.O.P.No.149 of 2014 on the file of the Motor Accident Claims Tribunal, Subordinate Court, Mannargudi.

For Appellant	: Mr. K. Vinod For Mr. Elveera Ravindran
For R1	: Mr. D. Lakshmipathy
For R2	: Ex-parte
For R3	: Dispensed with
For R4	: M/s. N. B. Surekha



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J U D G M E N T

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This Civil Miscellaneous Appeal has been filed by the Insurance Company, challenging the quantum of compensation awarded to the claimant in M.C.O.P.No.149 of 2014, dated 13.04.2016, by the Motor Accident Claims Tribunal, Subordinate Judge, Mannargudi.

2. The parties are referred to hereunder according to litigative status and ranking before the Trial Court.

3. The case of the petitioner in brief is as follows:

On 11.09.2013 at about 6.00 hours, the petitioner as a pillionaire, travelled in a two-wheeler bearing Registration No.TN 50 U 3721, driven by the third respondent-Chitravel, on Edayarnatham Main Road, near Katteri Vaikal, at that time, a Tractor, bearing Registration No.TN 49 T 8133, came in the opposite direction and hit against the two-wheeler, resulting, causing injuries to the claimant. Immediately, he was taken to the Government Hospital at Mannargudi, after giving first aid he was admitted as in-patient for six days, thereafter, he was admitted as in-



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patient in Thanjavur Aadithya Medical Centre, for better treatment and after discharged from the Hospital, filed a Claim Petition, claiming a sum of Rs.6,00,000/- as compensation for the injuries sustained by him.

4. The first respondent -owner of the Tractor remained ex-parte before the Tribunal has not contested the case. The second respondent- Insurance Company of the Tractor filed counter, contended that the driver of the two-wheeler is responsible for the accident, no serious injury was sustained by the petitioner, resulting in any disability caused to the claimant and claim made by him before the Tribunal is also excessive, prays to dismiss the claim petition.

5. The owner of the two-wheeler in which, the claimant was travelled, has also not contested the claim and remained ex-parte. The fourth respondent/Insurance Company of the two-wheeler has contended that the driver of the tractor is responsible for the accident and the owner of the two-wheeler shall not be made liable to pay compensation and the compensation claimed is also excessive and prays to dismiss the claim petition.



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6. Before the Tribunal, the claimant has examined himself as

WEB COPY P.W.1 and Doctor, who has issued Disability Certificate has examined as P.W.2 and Exs.P1 to P11 were marked. On the side of the second respondent, R.W.1 was examined and Exs.R1 and R2 were marked.

7. The Tribunal after considering the evidence held that the driver of the Tractor is responsible for the accident and that the driver of the Tractor was not having valid driving licence at the time of accident. Hence, ordered payment of compensation by adopting the principle of “Pay and Recover”. The Tribunal has also adopted multiplier method for the injuries sustained by the claimant and totally awarded a sum of Rs.4,50,128/- as compensation along with interest at the rate of 7.5% per annum.

8. Aggrieved over the quantum of compensation, the second respondent-Insurance Company filed this appeal, on the ground that the injuries sustained by the claimant is not the functional permanent disability and without properly appreciating the nature of injuries and disability sustained by the claimant, multiplier method adopted by the Tribunal, which



is unwarranted and prays to interference of this Court to modify the same.

He has also submitted that the compensation awarded on other heads also on the higher side and prays to modify the same.

9. The learned counsel for the claimant submitted that based on the severe injuries sustained and based on the evidence recorded, the Tribunal has rightly fixed the compensation, after adopting multiplier method and there is no necessity for modifying the award. Hence prays to dismiss the appeal.

10. I have considered the rival submissions on both sides and also perused the records available on record.

11. The only point urged by the Insurance Company with regard to the assesment of disability made on the claimant based on the injuries sustained by him. To prove the disability, the claimant has examined P.W.2-Doctor, who has stated that, based on the records produced before him, and after taking X-ray, he has assessed the disability of the injured at



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30%. But he has not stated that those permanent disabilities causing hindrance to the avocation of the claimant. He has noted the following injuries “(1) Degloving injury left thigh & leg (2) Abrasion all over body”. He has also noted the fracture on the left leg, right knee and ankle joint and compounding both injuries.

12. The case of the petitioner is that he is a Mason, aged about 52 years at the time of accident and suffered injury on his knee and ankle. The injury in the knee and ankle has prevented him from doing his earlier avocation. Those injuries prevented him from doing any manual work. Even though, the injuries have been healed, still the injured was not able to lift any weight or heavy objects. As a Mason, he requires good physiq, otherwise he cannot continue his mason work. Hence, I am of the view that these injuries i.e., fracture in ankle as well as knee had incapacitated form doing his earlier work i.e., earlier manual work, which consequently resulted in causing loss of earning capacity. Considering his age and the injuries sustained, I am of the view that percentage of disability of loss of earning is to be fixed only as 20%. As per the Judgment of the Hon'ble Apex Court in



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Jagdish vs. Mohan and Others reported in (2018) 4 SCC 571 and

Erudhaya Priya vs. State Express Transport Corporation Ltd., reported in

2020 INSC 466 SC Website the injured also entitled for future prospects.

The age of the injured is about 52 years, future prospects 10% to be added.

The Tribunal has fixed notional income of the injured as Rs.6,000/- per

month. Accordingly, loss of earning capacity is assessed as Rs.1,74,240/-

[6000 + 600 (10% of 6000) 6,600 x 12 x '11' x 20% disability]. Since this

Court has awarded compensation for the loss of earning capacity for

disability sustained, the compensation awarded under the head permanent

disability is rejected.

13. Accordingly, the award passed by the Tribunal under various heads are hereby modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
1	Loss of earning	Rs.3,00,960/-	Rs.1,74,240/-	Reduced
2	Permanent Disability	Rs.25,000/-	-----	Rejected
*3	Pain and Sufferings	Rs.40,000/-	Rs.40,000/-	Confirmed



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S. N o	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or reduced
4	Loss of income during treatment period	Rs.18,000/-	Rs.18,000/-	Confirmed
5	Attender Charges	Rs.18,000/-	Rs.18,000/-	Confirmed
6	Medical Expenses	Rs.77,168/-	Rs.77,168/-	Confirmed
7	Nutrition Charges	Rs.6,000/-	Rs.6,000/-	Confirmed
8	Transport Charges	Rs.5,000/-	Rs.5,000/-	Confirmed
	Total	Rs.4,50,128/-	Rs.3,38,408/-	Reduced by Rs.1,11,720/-

***[Under the head of 'Pain and Sufferings' a sum of Rs.40,000/- has been awarded by the Tribunal but the same has not been included in the claim amount. In total, a sum of Rs.4,90,128/- should have been awarded.]**

14. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,50,128/- is hereby reduced to Rs.3,38,408/- [Rupees Three Lakhs Thirty Eight Thousand Four Hundred and Eight only] together with interest at the rate of



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7.5% per annum from the date of filing of Claim Petition till the date of deposit. The appellant - Insurance Company is directed to deposit the award amount now determined by this Court, along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment to the credit of M.C.O.P.No.149 of 2014, on the file of the Motor Accidents Claims Tribunal, Subordinate Court, Mannargudi. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court along with proportionate interest and costs, less the amount if any, already withdrawn. The appellant - Insurance Company is permitted to withdraw the amount lying in the credit of M.C.O.P.No.149 of 2014 if any, already deposited. The Tribunal shall disburse the amount now awarded by this Court by directly giving credit to the Savings Bank Account of the claimant. In other aspects, the award of the Tribunal shall stand confirmed. There shall be no order as to costs in the present appeal.

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Index : Yes / No

Speaking Order: Yes / No

Neutral Citation Case : Yes/No

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To

1.The Subordinate Judge,
Motor Accident Claims Tribunal,
Mannargudi.

2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR,J.

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