



C.M.A.No.1155 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated: 06.06.2023

Coram:

THE HONOURABLE MRS.JUSTICE N.MALA

CMA.No.1155 of 2023

and

CMP.No.11180 of 2023

M/s. The New India Assurance Co. Ltd.,
Branch Office,
No.21/2, MSC Complex, 1st Floor,
South Indian Bank Upstairs,
Dharmapuri Main Road,
Omalur, Salem-636 455.

Divisional Office
Sethukrishna Trade Centre,
No.133/31-A, Trichy Main Road,
Kugai, Salem-636 006.

...Appellant

Vs.

1.Gowri Shankar @ Gouresan
2.D.Thangaraj
3.S.Raja

4.M/s. National Insurance Co. Ltd.,
Divisional Office, Division No.10,
Flat no.101-106, N-1, BMC House,
Connaught Palace, New Delhi- 110 001.
Divisional Office No.1, LRN Building,
Saradha College Main Road,
Salem- 636 007.

...Respondents



C.M.A.No.1155 of 2023

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 praying to set aside the Judgment and Decree passed in M.C.O.P.No.2025 of 2015 dated 08.03.2019 on the file of the Learned Motor Accident Claims Tribunal (II Special Sub-Ordinate Judge) Salem.

For Appellant: Mr.J.Chandran

For R-1 : Mr.R.Navaneetha Krishnan

RR2 & 3 : Ex-parte

For R-4 : Mr.D.Bhaskaran

JUDGMENT

This appeal is filed to set aside the Award and Decree passed in M.C.O.P.No.2025 of 2015 dated 08.03.2019 on the file of the Learned Motor Accident Claims Tribunal (II Special Subordinate Judge) Salem.

2. The appeal is filed by the Insurance Company questioning both negligence and quantum of compensation.

3. For convenience sake, the rank of the parties as given before the Tribunal is taken.



C.M.A.No.1155 of 2023

4. According to the claimant, on 12.07.2015, while he was travelling along with some others in a car belonging to the first respondent, the driver of the offending lorry drove the lorry in a negligent and rash manner, applied the brake suddenly, due to which, the driver of the car could not control the vehicle and hit against the lorry. Due to the accident, the claimant suffered laceration injury over the scalp, laceration of the right side of the scalp, laceration on the left mandible bone, scalp bone fracture, head bone fracture and other grievous injuries. The claimant therefore filed the claim petition seeking compensation of Rs.30,00,000/- along with interest.

5. The first respondent/ owner of the lorry remained ex-parte and the second respondent filed counter denying quantum, negligence as well as liability.

6. Before the Tribunal, the claimant examined himself as P.W.4 and marked documents Ex.P.20 to Ex.P.25 and Ex.P.29. On the side of the respondent, R.W.1 was examined and Ex.R.1 and Ex.R.2 document were filed.

7. The Claims Tribunal, on an assessment of the entire evidence on record, rendered a finding of negligence against the driver of the lorry. On the



C.M.A.No.1155 of 2023

quantum of compensation, the Tribunal awarded Rs.4,70,812/- as compensation along with 7.5% interest.

8. Aggrieved by the Award and Decree of the Tribunal, the 2nd respondent/Insurance Company has filed the above appeal questioning both negligence as well as quantum of compensation.

9. The learned counsel for the 2nd respondent/Insurance company fairly submitted that the Hon'ble Division Bench in C.M.A.No.112 of 2022, arising out of same accident, vide order dated 28.10.2022 rendered a finding of negligence against the driver of the insured. Hence the only point to be decided in the appeal was on quantum of compensation awardable to the claimant.

10. According to the learned counsel for the 2nd respondent/Insurance company, the Tribunal erred in adopting multiplier method, as the injuries did not result in permanent disability. The learned counsel further submitted that this was a fit case for applying the unit method and not multiplier method for computing the loss towards disability.



C.M.A.No.1155 of 2023

11. The learned counsel for the respondents on the other hand submitted that the Award of the Tribunal was fair, just and reasonable and did not call for any interference in the appeal.

12. I have heard both the learned counsels and I have perused the materials placed on record.

13. The Tribunal, on the basis of medical board certificate/ Ex.C.2 and on assessment of injuries sustained by the claimant who was a mason found that the claimant had suffered 6.66% functional disability. The medical board opined that he had pain at the fracture side and that he also had difficulty in lifting heavy objects and combing. Though the claimant sustained only clavicle bone fracture injury, it cannot be said that there was no functional disability.

14. The Medical Board has opined that the claimant would have difficulty in carrying heavy loads. As the claimant was a mason, he would necessarily have to carry heavy loads. Hence I see no infirmity in the Tribunal's assessment of functional disability at 6.66%.



C.M.A.No.1155 of 2023

15. In the light of the above discussion, I am of the view the Tribunal was justified in adopting the multiplier method for assessing the loss towards permanent disability.

In view of the above discussions, the Award and decree passed by the Claims Tribunal are confirmed and the appeal is dismissed. There shall be no order as to costs. Consequentially, connected Miscellaneous Petition is closed.

06.06.2023

(2/2)

dsn

Index: Yes/No

Speaking Order: Yes/No

Neutral citation: Yes/No

To.

1. The II Special Sub-Ordinate Judge,
Motor Accident Claims Tribunal,
Salem.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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C.M.A.No.1155 of 2023

N.MALA.J.,

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C.M.A.No.1155 of 2023

06.06.2023