



CMA Nos.761 & 762 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE **R.SUBRAMANIAN**

and

THE HONOURABLE MR.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

CIVIL MISCELLANEOUS APPEAL Nos.761 and 762 of 2020
and CMP Nos.4698, 4702 & 4706 of 2023

The Divisional Manager,
United India Insurance Co. Ltd.,
T.K.M. Complex, 2nd Floor,
No.46-51, Katpadi Road, Vellore. ... Appellant in both the Appeals

-VS-

1. T.Elumalai ...1st Respondent in CMA 761/2020
2. V.Sekar ... 2nd Respondent in both the Appeals
J.Ammaiyappan ...1st Respondent in CMA 762/2020

Civil Miscellaneous Appeals filed under Section 19 of Family Court Act, against the Judgment and decree dated 07.07.2017 made in MCOP Nos. 377 and 378 of 2014 respectively on the file of the Motor Accidents Claims Tribunal, Special Sub Judge, Tiruvannamalai.

For Appellant : Ms.S.Arun Kumar
(in both the Appeals)

For Respondents : R1- served – No appearance
(in both the Appeals)
R2 – Unclaimed



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COMMON JUDGMENT

[Judgment of the Court delivered by R.SUBRAMANIAN,J.]

The Insurance Company is on Appeal aggrieved by the awards for a sum of Rs.24,30,772/- in MCOP No.377 of 2014 and Rs.20,000/- in MCOP No.378 of 2014, for injuries suffered by the respective claimants, who figure as first respondent in these Appeals.

2. The claimants sought for compensation for the injuries suffered by them in a road accident that occurred on 14.03.2013 at Kiliyanoor Kizkoothappakkam Junction, on Tindivanam - Pondicherry National Highway. Contending that while the claimants were travelling in the car belonging to the claimant in MCOP No.377 of 2014 bearing Registration No.TN-31-AC-5369 driven by the petitioner in MCOP No.378 of 2014, the Tractor owned by the second respondent herein and insured with Appellant Insurance Company driven in a rash and negligent manner hit against the car causing severe injuries to the claimants. Contending that the claimant in MCOP No.377 of 2014 had suffered fractures in his right hand and ribs and other injuries resulting in a functional disability having a direct impact on his earning power, the claimant sought for a sum of



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Rs.33,00,000/- as compensation and in MCOP No.378 of 2014, the claimant sought for a compensation of Rs.5,00,000/- for the injuries suffered by him.

3. The Insurance Company resisted the claim contending that the accident did not occur in the manner suggested and there was some negligence on the part of the Car driver. The Insurance Company further contended that the claimant in MCOP No.377 of 2014 had suffered earlier road accident as a result of which, he had incurred certain disability. Since it was found that the disability incurred by him in the earlier accident that occurred in the year 2012 i.e. 06.08.2012 did not result in any functional disability, the Tribunal had awarded a fixed percentage as compensation. According to the Insurance Company, the said claimant had now combined the disability suffered by him in the earlier accident and the percentage of disability has been increased to enable him to claim higher compensation. It was the further contention of the Insurance Company that there was no functional disability as a result of the accident that took place on 14.03.2013.

4. Before the Tribunal, the claimants were examined as P.Ws. 1



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and 2. M/s. Ramalingam and Rajendran were examined as R.Ws. 1 and 2.

Exhibits P1 to P14 were marked on the side of the petitioners and Exhibits R1 to R9 were marked on the side of the respondent Insurance Company. The Report of the Medical Board was marked as Ex.C1.

5. The Tribunal upon a consideration of the evidence found that the Medical Board has certified the disability at 75%, it also recorded a conclusion that the injuries caused by both the accidents differ and therefore, the disability evidenced under Ex.C1 is the disability caused by the injuries suffered in the accident that took place on 14.03.2013. Upon such finding, the Tribunal arrived at the functional disability at 60%, applied multiplier method and awarded a sum of Rs.22,17,600/- towards loss of earning power, it added a sum of Rs.1,16,452/-, 36,720/-, 50,000/- and 10,000/- towards medical expenses, transportation expenses, pain and suffering and extra nourishment. Thus it arrived at a total compensation of Rs.24,30,772/- for the claimant in MCOP No.377 of 2014. As far as the claimant in MCOP No.378 of 2014 is concerned, the Tribunal fixed the compensation at Rs.20,000/- as he had suffered very minor injuries and he failed to attend the Medical Board also.



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6. Despite service, the claimants are not appearing either in person or through counsel duly instructed.

7. Mr.Arun Kumar, learned counsel appearing for the appellant Insurance Company would vehemently contend that the Tribunal had not considered the documents in the proper prospective. According to him, the Report of the Medical Board takes into account the injuries suffered by him in the earlier accident that took place on 06.08.2012. Relying upon Ex.P3, the Accident Register issued by JIPMER Hospital, Pondicherry, which describes the injuries suffered by the claimant in MCOP No.377 of 2014 as follows:

Abrasion in the Forehead 5 x 4 cm;

Laceration near canthus of right eye;

Deformity the right upper arm; and

Old sutured wound near right elbow;

Mr.Arun Kumar, learned counsel would submit that the injuries are not very serious and the nature of injuries cannot result in any kind of disability whatsoever. He would also draw our attention to Ex.C1, the Report of the Medical Board which takes into account a fracture in C5



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and C6 Bones of the Vertebrae and the fracture in the right distal humerus bone which were injuries suffered in the accident that took place on 06.08.2012. This contention of the learned counsel is supported by Exhibit R9, which is the Discharge Summary issued by Miot Hospital on 29.08.2012, even before the accident in the present case occurred. Therefore, the fractures referred to in the report of the Medical Board filed as Ex.C1 in the case on hand are referable to the accident that occurred on 06.08.2012 and not the accident that occurred on 14.03.2013. Therefore, the disability if at all suffered are referable old accident and not the subsequent accident. The Disability Certificate issued by the Medical Board does not refer to any test that had been conducted. The Tribunal has overlooked all these and has gone on the footing that the injuries are different.

8. We find considerable force in the submissions of the learned counsel for the appellant. Ex.P3 is the Accident Register issued by the JIPMER Hospital, Pondicherry on 14.03.2013, as rightly pointed out by the learned counsel for the appellant it only refers to an Abrasion in the Forehead, Laceration near canthus, as injuries which were caused in the accident that took place on 14.03.2013. A reference is made to a



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deformity in the right upper arm and Old sutured wound near right elbow,

which are referable to the accident that took place on 06.08.2012.

Ex.R9, the discharge summary issued by Miot Hospital for the accident that occurred on 06.08.2012, refers multiple Rib Fractures and Fracture on the Right Scapula, fracture in the Manubrium Sterni, fracture of the right distal radius bone etc. These injuries which are suffered in the accident dated 06.08.2012 were compensated by the award made in MCOP No.1045 of 2013. Therefore, the claimant cannot seek any further compensation for the said accident in the MCOP that is filed by him seeking compensation for the accident that occurred on 14.03.2013.

9. As regards the accident that happened on 14.03.2013, the injuries that were suffered are Abrasion and Laceration, which cannot result in any disability much less 40% or 60% disability as found by the Tribunal. The Medical Board's report also takes into account the old injuries and not the injuries that occurred in the accident for which the compensation has been claimed by the claimant. We are therefore unable to up hold the award of the Tribunal, the award in MCOP No.377 of 2014 has to be set aside and it is accordingly set aside.



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12. Adverting to MCOP No.378 of 2014, the Tribunal has awarded only a sum of Rs.20,000/- and the injuries are also simple injuries.

Therefore, we do not see any reason to interfere with the award in the said Original Petition.

13. The Appeal in CMA No.761 of 2020 will stand partly allowed as indicated above and the Appeal in CMA No.762 of 2020 will stand dismissed. The Tribunal is directed to pay out the excess amount that has been deposited by the Insurance Company forthwith. There shall be no order as to costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.) (K.GOVINDARAJAN THILAKAVADI, J.)
09.02.2023

jv

Index : No

Internet : Yes

Speaking order

Neutral Citation: No



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To

1. The Special Subordinate Judge
Motor Accidents Claims Tribunal,
Tiruvannamalai.
2. The Section Officer,
V.R. Section,
Madras High Court, Chennai 104.



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