



C.M.A.(MD)Nos.233 and 234 of 2019

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.10.2023

Pronounced on : 12.12.2023

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.M.A.(MD)Nos.233 and 234 of 2019

Divisional Manager
M/s.The Oriental Insurance Co. Limited
Divisional Office, 16-KJR Complex
North Veli Street
Madurai – 625 001.

... Appellant in
both appeals

Vs.

1. Shanmugaraja

... 1st Respondent in
CMA(MD)No.233
of 2019

1. Sathyamoorthi

... 1st Respondent in
CMA(MD)No.234
of 2019

2. A.Jalli

... 2nd Respondent in
both appeals



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COMMON PRAYER : These Civil Miscellaneous Appeals filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Motor Accidents Claims Tribunal cum Chief Judicial Magistrate, Madurai made in M.C.O.P.Nos.1684 and 1685 of 2015 dated 13.08.2018 and allow these appeals.

(in both appeals)

For Appellant	: Mr.E.Chandrasekaran
For R1	: Mr.N.Sudhagar Nagaraj
For R2	: Mr.S.Ayyanar Prem Kumar

COMMON JUDGMENT

These two Civil Miscellaneous Appeals are directed against the common award passed in M.C.O.P.Nos.1684 and 1685 of 2015 dated 13.08.2018 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai.

2. The appellant/insurer, who was made liable to pay compensation of Rs.7,12,000/- (Rupees Seven Lakhs and Twelve Thousand only) with interest at 7.5% per annum to the first respondent in C.M.A.(MD)No.233 of 2019 and Rs.3,08,000/- (Rupees Three Lakhs and Eight Thousand only)



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with interest at 7.5% per annum to the first respondent in C.M.A.(MD)No. 234 of 2019 for the disability suffered by them, consequent to an accident occurred on 10.05.2015, challenged the quantum of compensation awarded at, by the Tribunal.

For the sake of convenience and brevity, the parties herein after will be referred to as per their status/ranking in the Tribunal.

3. The case of the claimants is that on 10.05.2015 at about 19.00 hours, when the claimant Shanmugaraja was riding a two wheeler bearing Registration No.TN-58-D-0679 with the claimant Sathyamoorthi as a pillion rider in Alagarkovil Main Road, near Kallampatty M.A.V.M.M. College, the first respondent's vehicle bearing Registration No.TN-59-BN-4071 had dashed against the two wheeler bearing Registration No.TN-58-D-0679 and as a result of which, both the claimants had sustained serious injuries all over their body and that the accident was occurred only due to the rash and negligent driving of the first respondent's vehicle rider.



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4. It is the further case of the claimant Shanmugaraja that immediately after the accident, he was taken to Madurai Government Rajaji Hospital and after inpatient treatment, he was discharged, that he had sustained permanent disability due to grievous injuries and amputation of right leg, he is not able to sit, stand, walk or squat and not able to climb stairs and is not in a position to do his normal avocation, that he was hale and healthy at the time of accident, that he was aged 32 years at that time and that he was doing coolie work and was earning a sum of Rs.3,000/- per month.

5. It is the further case of the claimant Sathyamoorthi that immediately after the accident, he was taken to Madurai Government Rajaji Hospital and after inpatient treatment, he was discharged, that he had sustained permanent disability and due to grievous injuries in right leg, he is not able to sit, stand, walk or squat and not able to climb stairs and is not in a position to do his normal avocation, that he was hale and healthy at the time of accident, that he was aged 27 years at that time and that he was doing coolie work and was earning a sum of Rs.3,000/- per month.



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6. The defence of the second respondent is that the accident had occurred only due to the negligence of the claimant Shanmugaraja himself, that three persons had travelled in the first respondent's bike at the time of accident and the rider of that bike was not possessing valid driving licence at the time of accident and that since the first respondent has violated the policy conditions, the second respondent is not liable for the claim.

7. During enquiry, the claimant in both the claim petitions have examined themselves as P.W.1 and P.W.2 respectively and the officials attached to Government Rajaji Hospital, Madurai and Jayam Hospital, Madurai as P.W.3 and P.W.4 respectively and the Special Inspector of Police, Chatrapatti Police Station as P.W.5 and exhibited 12 documents as Ex.P.1 to Ex.P.12 and 3 witness documents as X1 to X3. The first respondent had remained *ex parte*. The second respondent has examined the staff attached to Regional Transport Office (RTO), Melur, as R.W.1 and the second respondent as R.W.2 and exhibited 4 documents as Ex.R.1 to Ex.R.4.

8. The learned trial Judge, taking note of the fact that the claim petitions were filed under Section 163A of the Motor Vehicles Act and that



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the claimants have claimed that they were getting salary at Rs.3,000/- per month, has mulcted liability on the second respondent for the first respondent and directed them to pay the award amount with interest and costs. Aggrieved by the impugned common award, the second respondent has preferred the present appeals.

9. The learned counsel appearing for the second respondent would submit that Section 163A of the Motor Vehicles Act has undergone a change with effect from 22.05.2018 and the second schedule of the said Act has been completely repealed and that since the appeals are pending, the trial Court ought to have invoked the new provision of 163A of the Motor Vehicles Act.

10. The learned counsel appearing for the second respondent would further submit that the amount granted under the various heads is very much against the provisions of the Motor Vehicles Act and Rules.

11. The main contention of the learned counsel appearing for the second respondent is that the second schedule to the Motor Vehicles Act has been amended and the same was brought into force from 22.05.2018



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and that the amended second schedule can be applied in the cases that are pending before the Tribunal as well as before the appellate Court.

12. The learned counsel appearing for the second respondent has relied on the judgment of the Division Bench of the Calcutta High Court in ***Urmila Halder Vs. New India Assurance Co. Ltd. and others*** reported in **(2018) 5 CHN 52** and the relevant passages are extracted hereunder:

“117. Now, if such a claim application comes up before a tribunal for consideration post May 22, 2018 where all the five conditions as in the preceding paragraph are fulfilled, proceeding by our reasoning it can award only a lump-sum amount of Rs.5,00,000.00, which would obviously be lesser than what could have been determined under the old schedule. Considering the language in which sub- section (1) of Section 163-A is couched, the Second Schedule as on date of the award invariably has to be looked into and a lesser sum, if required, would have to be determined as payable to the legal heirs of such a victim. It is, therefore, not correct to contend that since the new schedule intends to provide greater relief compared to the relief available under the old schedule, following the new schedule would be onerous for the insurance companies in all cases.

Conclusion



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118. Therefore, the conclusion seems to be inescapable that while deciding pending claim applications/appeals post May 22, 2018, the new schedule ought to be applied by the tribunals/this Court for determining compensation payable to the legal heirs of an accident victim or to the victim himself regardless of whether the new schedule is beneficial to them or not. The issue framed in paragraph 12 is, accordingly, answered.”

13. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Ramkhiladi and another Vs. United India Insurance Company Ltd., and another*** reported in **2020 (2) SCC 550,**

“5.8 However, at the same time, even as per the contract of insurance, in case of personal accident the owner-driver is entitled to a sum of Rs.1 lakh. Therefore, the deceased, as observed hereinabove, who would be in the shoes of the owner shall be entitled to a sum of Rs.1 lakh, even as per the contract of insurance. However, it is the case on behalf of the original claimants that there is an amendment to the 2 nd Schedule and a fixed amount of Rs.5 lakh has been specified in case of death and therefore the claimants shall be entitled to Rs.5 lakh. The same cannot be accepted. In the present case, the accident took place in



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the year 2006 and even the Judgment and Award was passed by the learned Tribunal in the year 2009, and the impugned Judgment and Order has been passed by the High Court in 10.05.2018, i.e. much prior to the amendment in the 2nd Schedule. In the facts and circumstance of the present case, the claimants shall not be entitled to the benefit of the amendment to the 2nd Schedule. At the same time, as observed hereinabove, the claimants shall be entitled to Rs.1 lakh as per the terms of the contract of insurance, the driver being in the shoes of the owner of the vehicle.”

14. Section 163A was in the nature of a beneficial legislation enacted with a view to confer the benefit of expeditious payment of a limited amount by way of compensation to the victims of an accident arising out of the use of a motor vehicle on the basis of no fault liability. In the matter of interpretation of a beneficial legislation the approach of the courts is to adopt a construction which advances the beneficent purpose underlying the enactment in preference to a construction which tends to defeat that purpose. Moreover, the present appeal was preferred by the Insurance Company and as such, this Court is not inclined to accept the version of the learned counsel appearing for the second respondent/insurer.



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15. Considering the above, the contention of the learned counsel appearing for the second respondent that the amended second schedule alone has to be applied to the case on hand, is devoid of substance and is liable for rejection.

16. Now turning to the quantum of compensation, it is evident from the records that the claimant Shanmugaraja was admitted in Government Rajaji Hospital, Madurai on 10.05.2015 and was discharged on 31.07.2015. It is also not in dispute that he suffered amputation on right leg below knee level. The claimants have summoned and exhibited the medical records from the Government Rajaji Hospital, Madurai and also from Jayam Hospital, Madurai, where, the claimant Sathyamoorthi was admitted. The Medical Board attached to Government District Head Quarters Hospital, Usilampatti, on examining the claimant Shanmugaraja has assessed the disability at 70%. The Medical Board attached to Government District Head Quarters Hospital, Usilampatti, on examining the claimant Sathyamoorthi has assessed the disability at 40%.

17. In M.C.O.P.No.1684 of 2015, the Tribunal, taking note of the medical evidence available, has accepted the disability percentage at 70%



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fixed by the Medical Board. The Tribunal, taking note of the age of the claimant at 32 years, has applied the multiplier 17, but as rightly contended by the learned counsel appearing for the second respondent, the Tribunal though fixed the disability at 70%, has fixed the disability compensation for 100%. As rightly contended by the learned counsel appearing for the claimants, it is only a mistake by oversight. Hence, the claimant is entitled to get the disability compensation at Rs.4,28,400/- ($\text{Rs.3,000/-} \times 12 \times 17 \times 70\%$). The Tribunal has also awarded Rs.50,000/- towards pain and suffering, Rs.25,000/- towards extra nourishment, Rs.9,000/- towards loss of income, Rs.3,000/- towards transport expenses, Rs.12,000/- towards attendant charges and Rs.1,000/- towards loss of articles. But as rightly contended by the learned counsel appearing for the second respondent, since the claim petition is filed under Section 163A of the Motor Vehicles Act, the claimant is entitled to only a sum of Rs.15,000/- towards medical expenses and Rs.5,000/- towards pain and suffering, but the Tribunal, without considering the above provisions, awarded excess amount under various heads and as such, the same are liable to be set aside. Considering the above, the claimant is entitled to get total compensation of Rs.4,48,400/-.



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18. In M.C.O.P.No.1685 of 2015, the Tribunal, taking note of the medical records available, has accepted the disability percentage at 40% fixed by the Medical Board. Considering the nature of the injuries suffered and the consequent disability, the Tribunal has rightly applied the percentage method and granted disability compensation at Rs.1,20,000/- (Rs.3,000/- x 40%). But the Tribunal has awarded Rs.1,00,000/- towards medical expenses under Ex.P.7 to Ex.P.10, Rs.40,000/- towards pain and suffering, Rs.20,000/- towards extra nourishment, Rs.12,000/- towards loss of income, Rs.3,000/- towards transport expenses, Rs.12,000/- towards attendant charges and Rs.1,000/- towards loss of articles, totalling Rs.3,08,000/-. The Tribunal, taking note of the judgment of the Hon'ble Supreme Court in *Sapna Vs. United India Insurance Company Limited* reported in **2008 ACJ 2148** has granted Rs.1,00,000/- towards medical expenses and the same cannot be found fault with. But at the same time, as already pointed out, since the claim petition is filed under Section 163A of the Motor Vehicles Act, the claimant is entitled to only a sum of Rs.5,000/- towards pain and suffering, but the Tribunal, without considering the above provisions, awarded excess amount under various heads and as



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such, the same are liable to be set aside. Considering the above, the claimant is entitled to get total compensation of Rs.2,25,000/-.

19. Considering the other facts and circumstances of the case, this Court further decides that the parties are to be directed to bear their own costs.

20. In the result,

(i) the Civil Miscellaneous Appeal in C.M.A.(MD)No.233 of 2019 is partly allowed and the compensation awarded by the Tribunal at Rs.7,12,000/- (Rupees Seven Lakhs and Twelve Thousand only) is hereby reduced to **Rs.4,48,400/- (Rupees Four Lakhs Forty Eight Thousand and Four Hundred only)**. The appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1684 of 2015 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is permitted to



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withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer.

(ii) the Civil Miscellaneous Appeal in C.M.A.(MD)No.234 of 2019 is partly allowed and the compensation awarded by the Tribunal at Rs.3,08,000/- (Rupees Three Lakhs and Eight Thousand only) is hereby reduced to **Rs.2,25,000/- (Rupees Two Lakhs and Twenty Five Thousand only)**. The appellant/Insurer is directed to deposit the modified amount with interest at 7.5% per annum from the date of claim petition till the date of deposit to the credit of M.C.O.P.No.1685 of 2015 on the file of Motor Accident Claims Tribunal/Chief Judicial Magistrate Court, Madurai, after deducting the amount already deposited if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent is permitted to withdraw the award amount with interest and costs, less amount already withdrawn, if any, on due application before the Tribunal. If the amount was already deposited, the balance amount shall be withdrawn by the appellant/insurer.



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(iii) Parties are directed to bear their own costs.

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12.12.2023

NCC : Yes/No
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To:

1. The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Madurai.
2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

esm

Pre-Delivery Order made in
C.M.A.(MD)Nos.233 and 234 of 2019

Dated :12.12.2023