



C.M.A.(MD)No.529 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

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The Branch Manager,
ICICI Lombard General Insurance Company Limited.,
Office at Second and Third Floor,
Chottabhai Centre, Nungambakkam High Road,
Chennai. ...Appellant/2nd respondent

Vs.

1.M.Karthik ...1st Respondent/Petitioner (Claimant)
2.Krishnamurthy ...2nd Respondent/1st Respondent

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to call for the records pertaining to the fair and decreetal order passed by the Motor Accident Claims Tribunal Chief Judicial Magistrate, Karur in M.C.O.P.No.73 of 2019 dated 08.12.2021, set aside the same by allowing the appeal.

For Appellant : Mr.P.Pethu Rajesh
For R1 : J.Madhan
For R2 : No Appearance



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JUDGMENT

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Challenging the award passed by the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Karur in M.C.O.P.No.73 of 2019 dated 08.12.2021, the present Civil Miscellaneous Appeal is filed.

2.For the sake of convenience, the parties are referred to herein, as per their rank before the Trial Court.

3.The brief facts, leading to the filing of this Civil Miscellaneous Appeal, are as follows:-

(i)on 30.01.2019, when the injured claimant was proceeding in the Karur-Coimbatore main road in a TVS Moped as a pillion rider along with the rider namely, Venugopal in a slow and steady manner by keeping extreme left side of the road, a Maruti Alto 800 Car bearing Registration No.TN-37-CV-6673 came in the opposite direction in a rash and negligent manner and in a high speed without observing the traffic rules, dashed against the moped and as a result, the rider and the pillion rider were thrown out from the vehicle and sustained injuries.



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(iii)The claimant was working as a labour and earning a sum of Rs.25,000/- per month. The claimant also spent a sum of Rs.2,00,000/- towards treatment. Hence, the claim petition was filed by the claimant seeking compensation.

(iv)The second respondent before the tribunal has filed a counter affidavit stating that the rider of the two wheeler who drove the vehicle was only negligent in driving the vehicle. While he was trying to cross the road all of a sudden, he lost the control and invited the accident. Further, the rider of the two wheeler did not have any valid license at the relevant point of time. He also denied the medical expenses for the alleged injuries.

4. Before the Tribunal, on the side of the claimant P.W.1 to P.W.3 were examined and Ex.P1 and Ex.P31 were marked. On the side of the respondents no oral and documentary evidence had been marked.

5.The tribunal on appreciation of entire evidence available on record had fixed the negligence on the part of the driver of the car and awarded the compensation as follows:



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S.No.	Description	Amount
1.	Permanent disability	Rs.7,09,632/-
2.	Pain and suffering	Rs. 50,000/-
3.	Transport Expenses	Rs. 10,000/-
4.	Attendant Charges	Rs. 10,000/-
5.	Nutrition	Rs. 10,000/-
6.	Medical Bills	Rs.1,11,906/-
7.	Loss of Amenities	Rs. 10,000/-
8.	Loss of damage to clothes	Rs. 2,000/-
9.	Future Treatment	Rs. 40,000/-
	Total	Rs.9,53,538/-

Challenging the same, the present Civil Miscellaneous Appeal has been filed by the Insurance Company.

6.I have heard the learned counsel appearing on either side and also perused the materials available on record.

7.The learned counsel appearing for the appellant would submit that the claimant has not established the permanent disability. He was not subjected to medical board, whereas he was examined by a private doctor. The Tribunal has



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rightly disbelieved the permanent disability calculated by P.W.3. However, the Tribunal had erred in applying the multiplier method in the absence of any evidence to show that the injuries sustained by the claimant in the accident incapacitated the claimant from doing any other work.

8.Despite service of notice, none appeared on behalf of the second respondent.

9.In view of the above submission, now the point arises for consideration in this appeal is:

(1) Whether the Tribunal is right in adopting the multiplier method in the absence of any evidence to prove the loss of total earning capacity?

10.It the case of the claimant that the claimant was admitted as an inpatient from 30.01.2019 to 12.02.2019. Though P.W.3 was examined in this regard and Ex.P28 was filed to show that the claimant had suffered serious injuries, it is to be noted that P.W.3 has not treated the claimant at the time when he was admitted as an inpatient. He has just given an opinion on the basis of some



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x-rays taken after two years of the accident and the scars in the body of the claimant. In the cross examination, P.W.3 himself admitted that he has not treated the claimant at any point of time and he is not an expert.

11.The claimant was treated as an inpatient only for 15 days. Further, he has not subjected himself to medical board to assess the disability. Hence, the evidence given by P.W.3 merely on the basis of some x-rays taken after two years cannot be certain and the trial Court had rightly rejected the disability calculated by P.W.3 and fixed the permanent disability at 22%. However, the Tribunal had wrongly adopted the multiplier method. In the absence of any evidence to show that there was total permanent disability, which incapacitated the person from doing any other work, the multiplier method cannot be applied automatically. The multiplier method has to be calculated only when the total earning capacity is obstructed and the person is obstructed from doing any other work due to the injuries sustained in the accident. In no other cases, the multiplier method can be adopted. Such view of the matter, this Court is of the view that the multiplier method adopted by the Tribunal for the disability said to have been suffered by the claimant is not correct. Accordingly, the same is set aside. Considering the disability sustained by the claimant Rs.5,000/- (Rupees Five Thousand only) per



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percentage is awarded by this Court.

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12.In the result, the Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is reduced as given below:

S.No.	Description	Amount
1.	Permanent disability	Rs.1,10,000/-
2.	Pain and suffering	Rs. 50,000/-
3.	Transport Expenses	Rs. 10,000/-
4.	Attendant Charges	Rs. 10,000/-
5.	Nutrition	Rs. 10,000/-
6.	Medical Bills	Rs.1,11,906/-
7.	Loss of Amenities	Rs. 10,000/-
8.	Loss of damage to clothes	Rs. 2,000/-
9.	Future Treatment	Rs. 50,000/-
	Total	Rs.3,63,906/-

13.The appellant is directed to deposit the compensation amount i.e., Rs.3,63,906/- (Rupees Three Lakhs Sixty Three Thousand Nine Hundred and Six only) as modified by this Court with interest at the rate of 7.5% per annum from the date of petition till the date of realization to the credit of M.C.O.P.No.73 of 20119, on the file of the Motor Accident Claims Tribunal/Chief Judicial



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Magistrate Court, Karur within a period of one month from the date of receipt of a copy of this judgment, less the amount, if any already deposited. On such deposit, the claimant is permitted to withdraw the said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

23.03.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court, Karurs.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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N.SATHISH KUMAR, J.

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