



C.M.A(MD)No.345 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **05.06.2023**

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THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.345 of 2020

and

Cros.Obj(MD)No.3 of 2021

and

C.M.P(MD)No.2753 of 2022

C.M.A(MD)No.345 of 2020:

M/s.New India Assurance Company Limited,
Represented by its Branch Manager,
BSNL Buildings, 70 Feet Road,
Ellis Nagar,
Madurai District.

... Appellant/2nd Respondent

Vs.

1.K.Palanisamy

... Respondent/Petitioner

2.R.Balaji

... Respondent/1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the judgment and decree in M.C.O.P.No.445 of 2017, dated 09.01.2020 on the file of the Motor Accidents Claims Tribunal, Special Subordinate Court, Madurai and allow the appeal with costs.

For Appellant : Mr.J.S.Murali



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For R1 : Mr.K.Mahendran

For R2 : No Appearance

Cros.Obj(MD)No.3 of 2021:

K.Palanisamy ... Cross Objector/1st Respondent/
Petitioner

Vs.

1.New India Assurance Private Limited,
Represented by its Branch Manager,
BSNL Buildings, 70 Feet Road,
Ellis Nagar,
Madurai District.

... Respondent/Appellant/
2nd Respondent

2.R.Balaji

... Respondent/2nd Respondent/
1st Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Order 41, Rule 22 of Code of Civil Procedure, to set aside the judgment and decree, dated 09.01.2020 in M.C.O.P.No.445 of 2017 on the file of the learned Motor Accidents Claims Tribunal, Special Subordinate Court, Madurai.

For Appellant : Mr.K.Mahendran

For R1 : Mr.J.S.Murali



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JUDGMENT

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The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Madurai in M.C.O.P.No.445 of 2017 challenging quantum and liability.

2. The injured claimant was a building contractor who sustained grievous injuries in an accident that has taken place on 19.07.2016. The disability certificate has been issued as per Exhibits C.1 and C.2. As per the disability certificate, the claimant had sustained disability at 38%. The tribunal has awarded a sum of Rs.3,500/- per percentage and arrived at a compensation of Rs.1,33,000/- towards partial permanent disability. The tribunal has further awarded a sum of Rs.30,000/- towards pain and suffering, a sum of Rs.5,000/- towards extra nourishment, a sum of Rs.20,000/- towards attender charges, a sum of Rs.60,000/- towards loss of income during treatment, a sum of Rs.2,000/- towards loss of estate, a sum of Rs.15,000/- towards transport expenses and a sum of Rs.7,35,000/- towards medical expenses based upon various medical bills, totalling a sum of Rs.10,00,000/- has been awarded. Challenging the said award, the present appeal has been filed by the insurance company.



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3. The learned counsel appearing for the insurance company had contended that the injured claimant was riding a bike and a car which was coming from the opposite direction had dashed against the bike and the claimant had sustained grievous injuries. The car was owned by the 1st respondent in the claim petition and the driver of the car was not having any valid and effective driving license at the relevant point of time. Therefore, there was a clear violation of policy conditions and the tribunal ought to have awarded pay and recovery.

4. A perusal of Exhibit X.2 which is annexed to page 19 of typed set of papers clearly indicates that the driver of the offending vehicle had taken LMV license only on 28.06.2017. Therefore, it is clear that on the date of accident, the car was driven by a driver who was only having a two wheeler license. Therefore, this Court is inclined to accept the contentions of the learned counsel for the appellant that there is a violation of policy conditions and the tribunal ought to have awarded pay and recovery.

5. The claimant has filed Cross Objection(MD)No.3 of 2021 seeking enhancement of compensation. Along with the cross objection,



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the claimant had filed C.M.P(MD)No.2753 of 2022 to receive certain medical bills and discharge summary so as to indicate that he has undergone further treatment in consequence of the injury sustained by him at the time of accident. This Court was pleased to pass an order on 31.03.2022 directing the Motor Accident Claims Tribunal to verify the genuineness of the medical bills and discharge summary after cross-examination of the claimant and submit a report. The Motor Accident Claims Tribunal was pleased to receive all medical bills and discharge summary and after conducting cross-examination of the claimant, has filed a report before this Court on 24.06.2022 to the effect that medical bills that is Exhibit X.2 to X.4 are relevant, admissible and genuine and the claimant is entitled for the treatment expenditures covered under those documents that is for a sum of Rs.2,45,900/-. Therefore, this Court is of the view that additional evidence has been properly adduced and the documents have been properly marked before the tribunal and the tribunal has also arrived at a finding after cross-examination of the claimant to the extent that the claimant is entitled to an additional amount of Rs.2,45,900/-. Therefore, this Court has no hesitation to accept the said report and add the said amount to the medical expenses incurred by the claimant.



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6. The learned counsel appearing for the cross-objector has contended that the claimant has incurred grievous injuries which would affect his professional career and therefore, multiplier method ought to have adopted by the tribunal in view of the fact that there is functional disability. This Court is not in a position to accept the same in view of the report of the medical board under Exhibit C.1 and C.2. A perusal of the report indicates that the claimant has not sustained any permanent disability whatsoever.

7. In view of the fact that the claimant has undergone another surgery after the delivery of the judgment by the tribunal, this Court is inclined to enhance the award amount from Rs.30,000/- to Rs.50,000/- towards pain and suffering. The award of Rs.5,000/- towards extra nourishment is enhanced to Rs.10,000/-. The award of Rs.20,000/- towards attender charges is enhanced to Rs.25,000/-.

8. Considering the fact that the claimant was again admitted in the hospital for a week time and has undergone another surgery, a sum of Rs.60,00/- towards loss of income during the period of treatment can be enhanced to Rs.80,000/-. A sum of Rs.15,000/- awarded towards transportation charges can be enhanced to Rs.25,000/-. The medical



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expenses that were awarded as Rs.7,35,000/- shall be increased to Rs.9,80,900/- (adding a sum of Rs.2,45,900/- which was incurred by the claimant after the delivery of the judgment).

9. In view of the above said deliberations, the award of the tribunal is modified as follows:

Permanent disability 38x3,500	: Rs.1,33,000/-
Pain and suffering	: Rs. 50,000/-
Extra nourishment	: Rs. 10,000/-
Attender charges	: Rs. 25,000/-
Loss of income during treatment	: Rs. 80,000/-
Damage to articles	: Rs. 2,000/-
Transportation expenses	: Rs. 25,000/-
Medical expenses	: Rs.9,80,900/-

Total	: Rs.13,05,900/-

The award of the tribunal is modified from Rs.10,00,000/- to Rs.13,05,900/-. The enhanced amount will carry interest 7.5% from the date of claim petition.



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10. C.M.A(MD)No.345 of 2020 is allowed and the award of the tribunal is modified to the extent that the appellant insurance company shall satisfy the award and thereafter, recover the same from the 1st respondent in the claim petition following **2004 (1) TN MAC (SC) 211 (Oriental Insurance Co.Ltd., Vs. Shri Nanjappan & Others)**. The appellant company shall deposit the award amount within a period of eight (8) weeks from the date of receipt of a copy of this order. On such payment, the claimant shall be entitled to withdraw the amount.

11. Cros.Obj(MD)No.3 of 2021 stands allowed to the extent as stated above enhancing the compensation amount from Rs.10,00,000/- to Rs.13,05,900/-. C.M.P(MD)No.2753 of 2022 stands allowed.

12. C.M.A(MD)No.345 of 2020, Cros.Obj(MD)No.3 of 2021 and C.M.P(MD)No.2753 of 2022 stand allowed to the extent as stated above.

No costs.

05.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note : Registry is directed to return Exhibits X.1 to X.4 that are subject matter of the report of the



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**Special Subordinate Judge, Madurai for M.C.O.P
cases, dated 16.06.2022 along with other E.B
records.**

To

- 1.The Motor Accidents Claims Tribunal,
Special Subordinate Court,
Madurai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
C.M.A(MD)No.345 of 2020

05.06.2023