



C.M.A.(MD)No.212 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 01.03.2023

Delivered On : 28.03.2023

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.212 of 2020

The Branch Manager

M/s. United India Insurance Company Limited,

Sankarankovil.

... Appellant / 2nd respondent

Vs.

1.Sivasakthi

... 1st Respondent /Petitioner

2.Kanagaraj

4.The Divisional Manager,

ICICI Lombard General Insurance Co.Ltd.,

Mumbai.

... Respondents 2 &3 /Respondents 1 & 3

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, made in M.A.C.T.O.P.No.107 of 2017, dated 22.02.2019, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge (Fast Track Court), Tenkasi.

For Appellant

: Mr.C.Jawahar Ravindran

For Respondents

: Mr.S.A.Ganapathiraman for R1

: Mr.V.Muthukamatchi for R3

: R2- given up



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.A.C.T.O.P.No.107 of 2017, dated 22.02.2019, on the file of the Motor Accidents Claims Tribunal cum Additional District Judge (Fast Track Court), Tenkasi. The appellant herein is the second respondent, the first respondent herein is the claimants and the respondents 2 & 3 herein are the respondents 1 and 3 in the original M.C.O.P. Petition.

2. A brief substance of the petition, in M.A.C.T.O.P.No.107 of 2017, is as follows:-

On 01.06.2013, when the petitioner was travelling as a pillion rider in a motorcycle bearing Registration No.TN-76-J-1149 driven by his brother-Kumaresan along the Senkottai to Kuttralam road, near Vivekananda Saw mill, keeping the left side of the road in a slow and cautious manner, a Van, bearing Registration No.TN-72-N-4453 was proceeding in front of the Motorcycle in a rash and negligent manner and the driver suddenly applied the brake and stopped the vehicle, due to which, the motorcycle hit the rear side of the van, the petitioner and his brother – Kamaresan sustained injuries. The rider of the two wheeler-Kumaresan died on his way to the hospital. The petitioner was admitted in Thenkasi Government Hospital,



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then, he was taken to Tirunelveli Medical College Hospital and he took treatment as inpatient for a period of 40 days, then, he took treatment Tiruvandram Sri Chitra Hospital as inpatient for a period of 20 days, then he was taking treatment as out patient. The petitioner was working as a driver in Fathima Lorry shed and he was earning Rs.15,000/- per month. The petitioner was disabled. The first respondent vehicle was insured with the second respondent. The two wheeler was insured with the third respondent. The policies are effective. The petitioner claimed a sum of Rs.20,00,000/- as compensation.

3. A brief substance of the counter filed by the second respondent, in M.A.C.T.O.P.No.107 of 2017, is as follows:-

The owner of the two wheeler allowed a person who was not having valid driving licence to drive the two wheeler. It was the rider of the two wheeler who hit against the parked van. The van driver was not having valid driving licence. The age, income and profession of the petitioner are to be proved. The injuries are simple in nature and the mode of treatment is denied. The claim is excessive.

4. A brief substance of the counter filed by the third respondent, in M.A.C.T.O.P.No.107 of 2017, is as follows:



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The claim is excessive. The rider of the two wheeler was not responsible for the accident. It was the van driver who was rash and negligent. No premium was paid for the pillion rider. The respondent is not liable to pay compensation.

5. Two (2) witnesses were examined and 24 documents were marked on the side of the petitioner. Two witnesses were examined and 1 document was marked on the side of the second respondent. No witness was examined and no document was marked on the side of the third respondent. After considering both sides, the Tribunal has awarded a sum of Rs.12,46,002/- as compensation, to be paid by the second respondent- insurance company on behalf of the first respondent. The third respondent was exonerated.

6. Against the award, the appellant-Insurance Company has filed this Appeal on the following grounds:-

6.1. The Tribunal is wrong in deciding that the second respondent van driver was responsible for the accident. Even as per the F.I.R, the rider of the two wheeler-Kumaresan was rash and negligent and he only dashed against the rear side of the van. The Tribunal is wrong in holding that the second respondent van driver was responsible for the accident. The Tribunal failed to consider that at the time of accident, the van was parked on the left side of the road, it was the rider of the two



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wheeler, who drove the vehicle without driving licence and he caused the accident.

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6.2. The Tribunal has awarded Rs.12,46,002/- for the injuries sustained by the claimant, which is excessive. The Tribunal is wrong in applying multiplier method. The claimant has not suffered functional disability. The Tribunal has wrongly awarded Rs.40,000/- towards on the head of discomfort and loss of expectation of life. The claimant has failed to prove his avocation and income through documentary evidence. The total award amount is excessive.

7. On the side of the appellant, it is stated that the van was parked on the extreme left side of the road. It was the two wheeler, which hit the rear side of the van. The complaint was lodged by the pillion rider-claimant. R.W.2 was the police official, he gave evidence as to the complaint lodged by the pillion rider. Ex.P3 was the M.V.I report. Applying multiplier method for assessing the loss of income is wrong. The Tribunal has admitted that it was the two wheeler that hit from the back side of the van, but, even then, the Tribunal has wrongly fixed the responsibility on the van driver, at least 50% contributory negligence is to be fixed on the rider of the two wheeler.



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8. On the side of the respondents, it is stated that it was the van stopped without any signal on the middle of the road and that was the reason for the two wheeler to hit from the back side of the van. The complaint was given by the van driver.

9. On the side of the respondents, it is stated that two vehicles involved in the occurrence and the liability is to be fixed 50% : 50%. Both the hands of the petitioner are not functioning, even after physiotherapy treatment. There is no chance for deduction of percentage of disability. On the side of the claimant, a judgment of the Hon'ble Supreme Court reported in **2020-2-TNMAC-303(SC)** (*Erudhaya Priya V. State Express Transport Corporation Ltd.,*) is cited, wherein, it is held that for the age of group “15 to 25 years“ multiplier '18' is to be adopted and for a disability of 31%, the Hon'ble Apex Court has applied multiplier method by adding 50% future prospects.

10. On the side of the appellant, it is stated that the disability assessed by the Doctor was not assessed for the whole body. Percentage of permanent disability cannot be taken as the percentage for calculating the loss of earning capacity.



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11. A judgment of this Court **2011-2-TNMAC-174 (National Insurance Company Limited, V. B.Rayappan)** is cited on the side of the appellant, wherein, it is stated as follows:-

“Normally in a case of injury, multiplier method cannot be adopted. Only in case of injury, if percentage of disability is 90% or 100% or it results in total deprivation of earning capacity resort to multiplier method is justified.”

12. Copy of the F.I.R was marked as Ex.P1. Copy of M.V.I report was marked as Ex.P3. Observation Mahazer was marked as Ex.P22. Rough sketch was marked as Ex.P23. In the evidence of P.W.1 and P.W.2, it mentioned that the injured was working as a Conductor in the corporation bus. Complaint lodged by the petitioner was marked as Ex.P15. Photographs were marked as Ex.P16. Rent receipt for the vehicle were marked as Ex.P17. Scan report issued in Thenkasi Government Hospital was marked as Ex.P19. It is seen that the van was parked, without any parking lights. It is seen that the two wheeler hit in the rear side of the van. In the above circumstances, it is decided that the rider of the two wheeler is also responsible for the accident. The rider of the two wheeler is 30% responsible for the accident and the driver of the van is 70% responsible for the accident.



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13. On the side of the appellant, it is stated that the award fixed by the Tribunal is excessive. On the side of the respondents, it is stated that the claimant sustained injury in the accident. Medical report issued by Trivandrum Medical College Hospital was marked as Ex.P4. Case summary and discharge summary issued by the Trivandrum Sri Chitra Hospital was marked as Ex.P5. Case particulars issued by Galaxy hospital was marked as Ex.P7. Scan pictures were marked as Ex.P13 (8 numbers). Complaint lodged by the petitioner was marked as Ex.P14. Acknowledgment receipts were marked as Ex.P15 . Photographs were marked as Ex.P16. Disability certificate was marked as Ex.P24.

14. On the side of the claimant, it is stated that the claimant was working as a driver and he was earning Rs.15,000/- and that he took treatment at Tenkasi Government Hospital, Tirunelveli Medical college hospital, Trivandram Sri Chitra hospital and at Galaxy Hospital. The petitioner sustained multiple injuries. In Ex.P4, it is stated that the petitioner sustained grievous injury. P.W.2 was examined and he has deposed that the disability is assessed as 70%, and that both the hands of the petitioner become useless. The Tribunal has decided that the petitioner is having functional disability and applied multiplier method, which is reasonable.



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15. The Tribunal has fixed functional disability as 60% and has fixed the notional income as Rs.7,000/- per month. Considering the age of the petitioner, ie.26 years, the Tribunal has applied multiplier 17 and calculated the loss of income as Rs.8,56,800/- (Rs.7,000/- X 60/100 X12 X17), which is reasonable.

16. It is seen that the Tribunal has awarded Rs.35,000/- as temporary loss of income and for the period of treatment. Since multiplier method was adopted to fix the loss of income, there is no necessity to award and compensation for temporary loss of income.

17. On the side of the claimant, medical expenses were marked as Ex.P6, Ex.P8, and Ex.P9 are the medical bills. On the basis of the documents, the Tribunal has awarded Rs.2,19,202/- towards medical expenses, which is reasonable. The Tribunal has awarded Rs.20,000/- towards future medical expenses, Rs.50,000/- towards pain and sufferings, Rs.40,000/- towards loss of amenities, Rs.25,000/- towards extra nourishment, which are all reasonable.

18. The total compensation is calculated as follows:-



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Loss of income	:	Rs. 8,56,800/-
Medical expenses	:	Rs. 2,19,202/-
Future medical expenses	:	Rs. 20,000/-
Pain and sufferings	:	Rs. 50,000/-
Loss of amenities	:	Rs. 40,000/-
Extra nourishment	:	Rs. 25,000/-
Total compensation	:	Rs.12,11,002/-
		

19.The rider of the two wheeler is responsible for 30% contributory negligence and the third respondent - ICICI Lombard General Insurance Company has to pay 30% (ie.Rs.3,63,300/-) of the compensation amount and 70% (ie. Rs.8,47,702/-) of the compensation amount to be paid by the appellant – United India Insurance Company, on behalf of the owner of the Van.

20. This Appeal is partly allowed.

(i) The compensation is reduced from Rs.12,46,002/- to **Rs.12,11,002/-**.

(ii) The appellant herein - Insurance Company, is directed to deposit the 70% of compensation ie. **Rs.8,47,702/-** (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with costs, within a period of eight weeks from the date of receipt of a copy of this order. Excess amount, if any, shall be refunded to the appellant.



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(iii) The third respondent herein - ICICI Lombard General Insurance Company, is directed to deposit the 30% of compensation ie. Rs.3,63,300/- together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with proportionate costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made, the first respondent herein / claimant is permitted to withdraw the entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any. No costs.

28.03.2023

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

1.The Motor Accidents Claims Tribunal

Additional District Judge, Tenkasi.

2.The Section Officer,

V.R. Section, Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
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