



C.M.A(MD).No.1292 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.06.2023

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THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.1292 of 2016

Arumugam

... Appellant/Claimant

vs.

1.K.Arumugam

2.M/s.National Insurance Company Ltd.,
Branch Office,
No.63, Rasi Plaza,
West Pradhakshinam Road,
Karur-639 002.

...Respondents/Respondents

PRAYER:- Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgement and decree passed in M.C.O.P.No.21 of 2008, dated 10.08.2009 on the file of the Motor Accident Claims Tribunal/Sub Court, Kulithalai, Karur District for enhancement of compensation and to fix the liability on the Insurance Company.

For Appellant : Mr.V.Balaji

For R1 : No appearance

For R2 : Mr.J.S.Murali



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JUDGMENT

The present appeal has been filed by the claimant seeking enhancement of the compensation and also for fixing the liability upon the insurance company.

2. According to the claimant, while he was travelling in a tractor on 14.04.2006, at about 05.00 p.m., the driver of the said tractor drove the same in a rash and negligent manner and in an uncontrollable speed which resulted in capsizing of the said vehicle. Due to the said impact, the claimant had sustained grievous injuries. According to the claimant, he is an agriculturist and also doing milk vending business, he is earning a sum of Rs.4,500/- per month. He has prayed for compensation of Rs.3,00,000/-.

3. The insurance company of the tractor has filed a counter contending that the injured claimant was an unauthorized passenger in the said tractor and there is no insurance coverage for the claimant. Therefore, they are not liable to pay any compensation.

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4. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has taken place only due to the rash and negligent driving on the part of the tractor driver. The tribunal further found that the claimant had sustained 35% of disability and awarded a sum of Rs.70,000/- towards loss of income. The tribunal has further awarded a sum of Rs.45,100/- towards medical expenses, a sum of Rs.5,000/- towards pain and suffering, a sum of Rs.1,000/- towards extra nourishment, a sum of Rs.500/- towards transport expenses. Totally, a sum of Rs.1,21,600/- was awarded. The tribunal further found that at the time of the accident, there was no load in the tractor and therefore, the claimant was an unauthorized passenger in the said vehicle and proceeded to hold that the owner of the tractor alone is liable to pay the compensation. The said award is under challenge in the present appeal.

5. According to the learned counsel appearing for the appellant, he had contended that his monthly income was Rs.4,500/- and the tribunal has taken the notional income at Rs.3,000/- for an accident that has taken



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place in the year 2006. The learned counsel for the appellant had relied upon a judgment of the Hon'ble Supreme Court reported in **2014 1 TN MAC 459 SC (Syed Sadiq & Others Vs. The Divisional Manager, United India Insurance Company Limited)** in which the notional income was fixed at Rs.6,500/- for an accident that has taken place in the year 2008. Therefore, he prayed for considering the monthly income at Rs.4,000/-. The learned counsel for the appellant further contended that as per Exhibit P.9/disability certificate, the claimant has sustained 45% disability. But the tribunal has fixed the liability only at 35%. He further contended that as per the evidence of the doctor, plates and screws have been implanted and therefore, he has to undergo a second surgery for the exit of the same. However, no amount has been awarded for future medical expenses. The learned counsel for the appellant had further prayed for enhancement of compensation under the heads of transportation charges and pain and suffering.

6. Per contra, the learned counsel for the respondent insurance company had contended that the tractor is having seating capacity of one



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which is meant for the driver. Therefore, the claimant who is said to have travelled in the tractor is only an unauthorized passenger. The policy does not cover unauthorized passenger and therefore, the award of the tribunal in mulcting the liability upon the owner of the tractor is correct and the liability cannot be shifted. He relied upon the judgment of High Court of Madhya Pradesh reported in **2020 ACJ 594 (National Insurance Company Ltd., Vs. Ram Murti Bai & Others)** and also the judgment of our High Court reported in **2014 (1) TN MAC 436 (New India Assurance Co.Ltd., Vs. Raman & Others)** to impress upon the Court that travelling in a mudguard is an unauthorized way of travelling which does not covered by the insurance policy.

7. The learned counsel for the respondent had further contended that there is no contention of functional disability and therefore, the question of adopting the multiplier method would not arise. He further contended that there is no proof to the effect that the claimant is likely to incur future medical expenses. Hence, he prayed for confirming the award passed by the tribunal.



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8. I have carefully considered the submissions made on either side.

9. As far as the contention of the learned counsel for the appellant that the tribunal should have directed the insurance company to satisfy the award and to recover the same from the owner is concerned, he had relied upon the judgment of the Hon'ble Supreme Court reported in **2018 (10) SCC 432 (Shivaraj Vs. Rajendra & Another)**. In the said judgment, the Hon'ble Supreme Court after arriving at a finding that the coolie had travelled in a tractor, has directed the insurance company to satisfy the award and thereafter, recover the same from the owner of the tractor. Therefore, this Court is of the view that the tribunal was not right in exonerating the insurance company. On the other hand, the tribunal should have directed the insurance company to satisfy the award and thereafter, recover the same from the owner of the tractor.

10. A perusal of Exhibit P.9 disability certificate indicates that the injured sustained disability to an extent of 45%. However, without



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assigning any reasons, the tribunal has reduced the said disability to an extent of 35%. Therefore, this Court is inclined to award a compensation under the head of disability fixing Rs.2,000/- per percentage, which would come at $45 \times 2000 = \text{Rs.}90,000/-$. Considering the injury sustained by the claimant, the compensation under the head of pain and suffering could be enhanced to Rs.15,000/-. The award under the head of transport expenses could be enhanced to Rs.2,000/-. Considering the fact that he was in the hospital for a period of 16 days, a sum of Rs.3,000/- could be awarded towards attender charges. The records indicate that plates and screws have been implanted in the leg. Therefore, for future medical expenses, a sum of Rs.25,000/- is awarded.

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

Partial permanent disability (45x2,000)	: Rs.90,000/-
Pain and suffering	: Rs.15,000/-
Extra nourishment	: Rs. 1,000/-
Transport expenses	: Rs. 2,000/-



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Attender charges	: Rs. 3,000/-
Medical bills	: Rs.45,100/-
Future medical expenses	: Rs.25,000/-

Total	: Rs.1,81,100/-

12. In view of the above said deliberations, the award of the tribunal is enhanced from Rs.1,21,600/- to Rs.1,81,100/-. The award amount shall carry interest at 7.5% from the date of claim petition. The company is directed to deposit the enhanced award amount within a period of eight (8) weeks from the date of receipt of a copy of this order. The appeal has been filed with a delay of 930 days. Therefore, the said period shall be excluded at the time of calculating interest. After satisfying the award amount, the insurance company is entitled to file execution proceedings in the claim petition following **2004 (1) TN MAC (SC) 211 (Oriental Insurance Co.Ltd., Vs. Shri Nanjappan & Others).**



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13. In view of the above said deliberations, this Civil
Miscellaneous Appeal stands allowed. No costs.

27.06.2023

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

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To

- 1.The Motor Accident Claims Tribunal,
Sub Court,
Kulithalai, Karur District.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Order made in
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