



*C.M.A(MD)No.408 of 2016*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM

**THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR**

**C.M.A(MD)No.408 of 2016**

M/s.The Oriental Insurance Company Limited,  
Represented by its Branch Manager,  
3217, East Main Street,  
Pudukkottai.

... Appellant/2<sup>nd</sup> Respondent

Vs.

1.S.Natarajan

... Respondent/Petitioner

2.Rajendiran

... Respondent/1<sup>st</sup> Respondent

**PRAYER:** Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award of Rs.5,69,148/-(Rupees Five Lakh Sixty Nine Thousand One Hundred and Forty Eight only) passed in M.C.O.P.No.3864 of 2013, dated 28.09.2015 on the file of the Motor Accident Claimst Tribunal cum Special Sub Judge, Trichirappalli.

For Appellant : Mr.C.Jawahar Ravindran

For R1 : Mr.N.Sudhagar Nagaraj

For R2 : No Appearance



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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, Trichirappalli in M.C.O.P.No.3864 of 2013 on the ground of quantum.

2. According to the injured claimant, he was employed as a fitter in BHEL, Trichirappalli and drawing a salary of Rs.15,000/- per month. When he was riding his motor bike on 09.01.2006 from east to west direction in Trichirappalli-Thanjavur road and he had stopped for crossing the central divider, Champion pickup commercial vehicle belonging to the 1<sup>st</sup> respondent had come from the east to west direction and it dashed against the two wheeler. The said vehicle was driven by the driver in a rash and negligent manner and dashed against the rear side of the petitioner's two wheeler. In the said accident, the petitioner is said to have sustained grievous and multiple injuries all over the body including left color bone fracture, spinal cord at the neck portion, back side of the head, right leg tow crushed and fleshes were removed in the accident. Hence, he had prayed for a compensation of Rs.7,00,000/-. Though originally the claim petition was filed under Section 163-A of the Motor Vehicles Act, the same was amended to Section 166 of the Motor Vehicles Act by an order, dated 02.06.2015 in I.A.No.517 of 2015.



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3. The owner of the vehicle had remained ex parte and the insurance company had filed a counter contending that the accident has happened only due to the rash and negligent driving of the claimant and therefore, they are not liable to pay any compensation whatsoever. They have further contended that F.I.R was registered only as against the claimant. He had further contended that it was a hit and run case and the vehicle of the 1<sup>st</sup> respondent was not at all involved in the accident. They have also questioned the quantum of compensation.

4. The tribunal after considering the oral and documentary evidence, arrived at a conclusion that the accident has happened only due to the rash and negligent driving on the part of the 1<sup>st</sup> respondent herein. The tribunal further arrived at a conclusion that the petitioner has sustained disability at 54% and calculating Rs.3,000/- for every percentage, the loss of permanent partial disability was calculated at Rs. 1,62,000/-. Since the petitioner was on leave for nearly 311 days on loss of pay, the income of the said period was calculated at Rs.2,34,108/-, a sum of Rs.50,000/- has been awarded towards pain and suffering. The tribunal has further awarded a sum of Rs.53,040/- on the ground that the petitioner has lost all his promotional opportunities in view of the disability sustained in the accident. The tribunal has further awarded a



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sum of Rs.50,000/- towards loss of amenities and a sum of Rs.10,000/- was awarded towards attender charges and a sum of Rs.10,000/- was awarded towards extra nourishment and transport expenses. Totally, a sum of Rs.5,69,148/- has been awarded. Challenging the said award, the present appeal has been filed by the insurance company.

5. According to the learned counsel appearing for the insurance company, the 1<sup>st</sup> respondent's vehicle was not at all involved in the accident and only some unknown vehicle was involved in the said accident. Since it was a hit and run case, the vehicle belonging to the 1<sup>st</sup> respondent was stage managed in order to claim compensation. He further contended that the petitioner has not established his loss of income during the leave period and he has also not established the loss of promotional opportunities due to the alleged injuries sustained by him. Hence, he prayed for allowing the appeal.

6. Per contra, the learned counsel appearing for the respondent has contended that the driver of the offending vehicle had lodged an F.I.R on 09.01.2006 in Crime No.18 of 2006 as against the injured claimant alleging that he had caused the accident. Therefore, it is clear that there is no dispute with regard to the accident which has happened on 09.01.2006



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but it was an accident caused by the rash and negligent driving of the driver of the 1<sup>st</sup> respondent vehicle. He further contended that the loss of promotional opportunities has been proved by the claimant by examining the Human Resource Manager of the employer as P.W.2. Therefore, he prayed for confirming the award passed by the tribunal.

7. I have carefully considered the submissions made on either side and perused the records.

8. The primary contention of the learned counsel appearing for the appellant insurance company is that the vehicle was not involved in the accident. But the learned counsel appearing for the claimant has contended that the accident has happened at 9.00 a.m on 09.01.2006. A perusal of F.I.R which is marked as Exhibit P.1 discloses that the driver of the offending vehicle had lodged a police complaint at 08.30 p.m on 09.01.2006 before Thiruverumbur police station alleging that the accident has taken place only due to the rash and negligent driving on the part of the injured claimant. Therefore, it is clear that the vehicle belonging to the 1<sup>st</sup> respondent was involved in the accident.

9. As far as the quantum of compensation is concerned, the



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However, the Court has taken the percentage of disability at 54% and arrived at a compensation of Rs.1,62,000/- for partial permanent disability. The tribunal has further awarded a sum of Rs.2,34,108/- for loss of income due to the leave taken by the injured claimant for 311 days. The tribunal has further awarded a sum of Rs.50,000/- towards pain and suffering. As far as the award under these heads are concerned, this Court does not find that they are excessive or unreasonable.

10. The tribunal has awarded a sum of Rs.53,040/- under the head of loss of promotional opportunities based upon the evidence of P.W.2, who is the Human Resource Manager of BHEL, Trichirappalli. A perusal of cross-examination of P.W.2 will clearly indicate that the injured claimant continues to receive the same salary and there is no proof that he was not granted promotion in view of the disability sustained by the injured claimant. Therefore, this Court is of the view that the tribunal ought not to have awarded a sum of Rs.53,040/- towards loss of promotional opportunities. The tribunal was right in awarding a sum of Rs.10,000/- towards extra nourishment and transport charges and a sum of Rs.50,000/- towards loss of amenities and a sum of Rs.10,000/- towards attender charges.



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11. In view of the above said deliberations, this Court is setting aside the award of Rs.53,040/- which was granted under the head of loss of promotional opportunities. In other aspects, the award of the tribunal is hereby confirmed. The total award amount is reduced from Rs. 5,69,148/- to Rs.5,16,108/-.

12. With the above said observations, this Civil Miscellaneous Appeal stands allowed to the extent as stated above. No costs.

**24.04.2023**

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

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To

- 1.The Motor Accident Claimst Tribunal  
cum Special Sub Judge,  
Trichirappalli.
- 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  
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