



C.M.A.(MD)No.1081 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 30.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A.(MD)No.1081 of 2022

United India Insurance Company Limited,
No.2, Bhuvaneswari Complex,
Dr.Sankaran Road, Namakkal.

...Appellant/Petitioner

Vs.

1.Arulkumar
2.M.Sasikumar

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

PRAYER: This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award passed in M.C.O.P.No.33 of 2022 dated 12.07.2022 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Tiruchirappalli and allow the appeal with costs.

For Appellant	: Mr.J.S.Murali
For R1	: Mr.K.P.Narayanakumar
For R2	: No Appearance



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JUDGMENT

This Civil Miscellaneous Appeal has been filed challenging the quantum of compensation and the negligence fixed by the Tribunal.

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)while the claimant was walking behind the TATA ACE vehicle near Jembunathapuram Muthuraja Street on Thuraiyur to Musiri Road, the container lorry of the first respondent bearing Registration No.TN-88-8875, driven in a rash and negligent manner in the same direction, dashed against the claimant and as a result, the claimant sustained multiple injuries all over his body. Hence, the compensation of Rs.50,00,000/- was claimed by the claimant.



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(ii)The second respondent before the Tribunal took a stand that the petitioner was travelling as an unauthorized passenger in the goods vehicle bearing Registration No.TN-48-C 2129 and the petitioner was sitting on the wooden plank, which was extended and protruded beyond the right side body and rear side of the above said vehicle, where goods alone should be loaded. He denied the age, occupation of the claimant, income and nature of injuries sustained by the claimant. The manner of accident was also specifically denied.

4. Before the Tribunal, on the side of the claimant, the claimant himself was examined as P.W.1 and Ex.P1 to Ex.P7 were marked. On the side of the respondent R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R2 were marked. Ex.C1 was also marked.

5.The tribunal on appreciation of entire evidence available on record had fixed the negligence on the part of the offending container lorry and awarded the compensation as indicated below:



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S.No.	Description	Amount
1.	Disability compensation (Grievous injury)	Rs.13,42,656/-
2.	Medical Bills	Rs. 3,06,345/-
3.	Loss of income	Nil
4.	Loss of amenities	Rs. 50,000/-
5.	Loss of Expectation of Life	Rs. 50,000/-
6.	Attender Charges	Rs. 30,000/-
7.	Pain and Sufferings	Rs. 75,000/-
8.	Transportation Charges	Rs. 5,000/-
9.	Extra Nourishment	Rs. 10,000/-
10.	Damages to cloths and other valuables	Rs. 2,000/-
	Total	Rs.18,71,001/-

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 for the appellant would submit that the very accident itself is denied. The claimant had stated three different



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submissions before the Medical Officer, at the time of admission in the hospital and before the Police Officials and thereafter, even before the Court. The Tribunal had not appreciated the evidence properly. The Tribunal ought to have deducted 50% of compensation towards contributory negligence to meet the ends of justice.

8.The learned counsel for the respondent would submit that the Tribunal had rightly assessed the evidence and fixed the liability on the part of the offending vehicle.

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

(1) Whether the Tribunal is right in fixing the entire negligence on the part of the offending vehicle?

10.The very evidence of R.W.1, Doctor, clearly indicates that P.W.1, claimant fell from TATA ACE vehicle, while carrying the Lord Vinayagar Idol and this statement had been supported by Ex.R2. When



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the claimant was admitted in the hospital, statement had been recorded by the Investigation Officer, wherein the claimant had clearly stated that he sat in the wooden plank fixed in the rear side of the vehicle and fell down from that accidentally. Therefore, the contention that the claimant sustained injuries only because of the impact caused by the offending vehicle is highly doubtful. It is to be noted that the investigation was also proceeded against the offending vehicle. Such view of the matter, this Court is of the view that fixing the entire negligence on the part of the offending vehicle by the Tribunal is not proper.

11.The claimant had given a different evidence before the Court as if he was walking on the road. This Court is unable to believe the said statement and the contention that the entire accident was due to the rash and negligent driving of the offending vehicle. Hence, taking note of the fact that the investigation was proceeded against the offending vehicle and final report had also been filed, this Court fixes 60% negligence on the part of the offending vehicle and 40% negligence on the part of the claimant.



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12.As far as the income fixed by the Tribunal at Rs.11,100/-, this Court is of the view that no evidence had been produced to show that the claimant is totally immobilised. Except, the claimant had sustained 40% disability, no other evidence were adduced to substantiate the same. Hence, in the absence of any evidence, this Court is not inclined to accept the method adopted by the Tribunal in fixing the income of the injured claimant. However, taking note of the injuries found in the disability certificate that the claimant had sustained crush injury left loin and back, open fracture left ilium with sacrum fracture and SI joint disruption and weakness both lower limb with plexus involvement, this Court is inclined to fix the income of the injured claimant at Rs.9,000/-. Accordingly, the income of the injured claimant is fixed at Rs.9,000/-. In the result, the claimant is entitled to the compensation as stated below:

S.No.	Description	Amount
1.	Disability compensation (Grievous injury)	Rs. 7,77,600/-
2.	Medical Bills	Rs. 3,06,345/-
3.	Loss of income	Nil
4.	Loss of amenities	Rs. 50,000/-
5.	Loss of Expectation of Life	Rs. 50,000/-



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6.	Attender Charges	Rs. 30,000/-
7.	Pain and Sufferings	Rs. 75,000/-
8.	Transportation Charges	Rs. 5,000/-
9.	Extra Nourishment	Rs. 10,000/-
10.	Damages to cloths and other valuables	Rs. 2,000/-
	Total	Rs.13,05,945/-

13.In fine, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal is reduced as stated above. Since contributory negligence is fixed on the part of the claimant, 40% (i.e., Rs.5,22,378/-) from the total compensation is deducted. Accordingly, the claimant is entitled to the compensation of Rs.7,83,567/- (Rs.13,05,945-Rs.5,22,378=Rs.7,83,567/-) (Rupees Seven Lakhs Eighty Three Thousand Five Hundred and Sixty Seven only).

14.The appellant/Insurance Company is directed to deposit the compensation amount as modified by this Court i.e., Rs.7,83,567/- (Rupees Seven Lakhs Eighty Three Thousand Five Hundred and Sixty Seven only) 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.33 of



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2022, on the file of the Motor Accident Claims Tribunal /Sub Court, Turichirappalli 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 said amount, less the amount if any already withdrawn, by making necessary application before the Tribunal. No costs.

30.03.2023

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

- 1.The Motor Accident Claims Tribunal/
Sub Court, Thiruchirappalli.
- 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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