



C.M.A(MD)No.18 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.02.2023

Pronounced on : 17.04.2023

**CORAM**

THE HONOURABLE MRS.JUSTICE **R.THARANI**

**C.M.A(MD)No.18 of 2020**

The National Insurance Company Ltd.,  
Through its Divisional Manager,  
No.3, North Veli Street,  
Madurai District.

... Appellant /Respondent No.2

Vs.

1.Pandi

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

2.M/s.Chakiat Agencies,  
Type B, Plot No.11,  
World Trade Avenue,  
Harbour Estate,  
Tuticorin.

... 2<sup>nd</sup> Respondents/1<sup>st</sup> Respondent

**PRAYER :-**

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, to set aside the judgment and decree passed by the Motor Accident Claims Tribunal / Special Sub Court, Madurai in M.C.O.P.No.882 of 2016, dated 13.08.2018.

For Appellant : Mr.D.Sivaraman

For Respondents : No Appearance



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## **JUDGMENT**

This appeal is filed against the order made in M.C.O.P.No.882 of 2016, dated 13.08.2018 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Madurai.

2.The appellant herein is the second respondent, the first respondent herein is the claimant and the second respondent herein is the first respondent in the claim petition.

3.Brief substance of the claim petition in M.C.O.P.No.882 of 2016 is as follows:

On 14.05.2016 at about 6.15 a.m., when the petitioner was travelling as a load man in a goods carrier bearing Registration No.TN-69-Q-5575, the driver of the lorry drove the vehicle in a rash and negligent manner and dashed against a Tamarind tree. Due to that, the petitioner sustained injuries. He sustained fracture in the right leg and the right hand index finger was amputated. He was given first aid in Usilampatti Government Hospital and then he was admitted in a Preethi Hospital, Madurai and he took treatment as in-patient. The petitioner was earning Rs.15,000/- per month. The petitioner



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claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation.

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4.Brief substance of the counter filed by the second respondent is as follows:

The petitioner travelled as a gratuitous passenger in a goods vehicle, which is against the policy conditions. The accident did not happened due to the rash and negligent driving of the driver of the vehicle. The age, income, profession, nature of injuries and mode of treatment are all denied. The claim is excessive.

5.Two (2) witnesses were examined and sixteen (16) documents were marked on the side of the petitioner. Two (2) witnesses were examined and two documents were marked on the side of the respondents. One document was marked as Court document. The Tribunal awarded a sum of Rs.4,73,000/- (Rupees Four Lakhs and Seventy Three Thousand only) as compensation.

6.Against that order, the appellant/second respondent has preferred this appeal on the following grounds:

The Tribunal failed to consider that the claimant was an



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unauthorized/gratuitous passenger in the goods carrier. The claimant has not proved that he travelled as a load man. The complaint given by the wife of the claimant clearly establishes the fact that the claimant was not an employee or load man working under the owner of the vehicle. The claimant was an employee in S.R.Mill, Theni and not an employee of M/s.Chakiat Agency. The vehicle was loaded with coffee beans to be unloaded in Tata Coffee Ltd., Jeyamangalam Village, Periyakulam Taluk, Theni District. The claimant was not even an employee of the Tata Coffee Ltd. The Tribunal awarded a sum of Rs.1,28,000/- (Rupees One Lakh and Twenty Eight Thousand only) for 32% partial permanent disability, which is excessive. The total compensation is excessive.

7.On the side of the appellant, it is stated that the claimant travelled only as a gratuitous passenger and that the appellant is not liable to pay compensation and that an order for pay and recover is not proper. To substantiate this claim, the appellant cited a judgment of this Court reported in **2010 (2) TN MAC** in the case of ***Bharati AXA General Insurance Co.Ltd., rep. by its Manager Vs. Aandi and another.***

*"33.Thus, the law came to be settled to the effect*



*that the Insurance Company is not bound to indemnify the insured for the Loss or Injury caused to a person, who had travelled as a passenger in a Goods Vehicle.*

*51.No doubt true that in many cases the Claimants may not be able to realise the Award amount from the owners of the vehicles involved in the accident. But, the said factual situation alone cannot impel us to do something against the provisions of the Statute and the decisions of the Larger Benches of the Hon'ble Supreme Court of India.*

*52.In fine, all the appeals will stand allowed only in respect of the question of liability of the Insurance Company to pay the compensation. The quantum of compensation is affirmed and there will be an award only against the owner of the vehicle.....".*

8.On the basis of evidence of PW1 and Ex.P1 - copy of F.I.R, the Tribunal fixed the responsibility on the lorry driver. Considering that no other vehicle was involved in the accident, the decision of the Tribunal fixing the driver of the lorry as responsible for the accident is reasonable.



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9.A delivery order addressed to Raja Agency, Thoothukudi was marked as Ex.P12.

10.On the side of the appellant, it is stated that the FIR was given by the wife of the claimant. From her wording, it is clear that the claimant did not travel in the vehicle as a load man. In Ex.P1- F.I.R, it is stated that the claimant was a load man and that he went to work as a load man on the date of accident. RW1 was an Official from the Insurance Company. The private Investigation Officer's report was marked as Ex.R2. The Insurance Policy was marked as Ex.R1. The claim of claimant is that he was working in S.R.Mill, Theni. But it is seen that RW2 has not enquired the owner or official from the Mill. Admittedly, there was goods in the vehicle at the time of accident and in the grounds of appeal, it is stated that the goods of the vehicle are to be delivered in the Tata Coffee Ltd., who was the owner of the goods was not narrated in the counter. The claimant was an employee in S.R.Mill, Theni. There is no document to prove that the owner of the goods was not the S.R.Mills and the owner of the goods at the time of accident was Tata Coffee Ltd. Except the driver and the claimant, no other person has travelled in the vehicle. Hence, it is decided that the claimant has travelled as



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a load man and as an employee of S.R.Mill.

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11.On the side of the appellant, it is stated that for 32 % partial permanent disability, the Tribunal has awarded a sum of Rs.1,28,000/-, which is excessive. The discharge summary were marked as Ex.P2 to Ex.P4. A copy of case sheets were marked as Ex.13 and Ex.14 and the disability certificate was marked as Court document. The disability certificate was issued by the Medical Board. Considering the date of accident i.e. 14.05.2016, the Tribunal has awarded Rs.4,000/- for 1% of disability, which is reasonable.

12.The Tribunal has awarded Rs.30,000/- towards pain and suffering, Rs.5,000/- towards extra nourishment, Rs.5,000/- towards medical attendant charges, Rs.20,000/- towards temporary loss of income, Rs.2,000/- towards loss of articles and Rs.3,000/- towards Transport Expenses, which are all reasonable. The documents regarding the medical expenses were marked as Ex.P5, Ex.P6 and Ex.P7. On the basis of above said documents, the Tribunal has awarded a sum of Rs.2,80,000/- towards medical expenses. Considering the nature of injuries and considering the period of treatment and considering the case sheet and discharge summary, it is decided that the amount awarded



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by the Tribunal is reasonable.

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13.As per the above discussions, it is decided that the award of the Tribunal is reasonable and there is no reason sufficient enough to interfere with the order.

14.In the result, the Civil Miscellaneous Appeal is **dismissed**.

(i) The claimant is entitled to a compensation of Rs.4,73,000/- with interest and costs.

(ii) The appellant / Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., Rs.4,73,000/- (less the amount 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 cost to the credit of MCOP.No.882 of 2016 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made, the first respondent / claimant is permitted to withdraw the entire award amount, along with accrued interest and cost, less any amount already withdrawn by him. The claimant is not



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entitled for interest for the default period, if there is any.

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

17.04.2023

To

- 1.The Motor Accident Claims Tribunal / Special Sub Court,  
Madurai.
- 2.The Record Keeper,  
Vernacular Records,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.THARANI, J.**

vsd

Pre - Delivery Judgment made in  
C.M.A(MD)No.18 of 2020

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