



C.M.A.(MD).No.343 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 18.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.343 of 2020

and

C.M.P(MD) No.4484 of 2020

M/s. Oriental Insurance Company Limited,
Dwarka, No.79, N.H. Road,
Chennai – 34.

... Appellant/2nd Respondent

-vs-

1.Saravanakumar (Died)

... 1st Respondent/Petitioner

2. S.N.R.Joshwa Rathnaraj

... 2nd Respondent/1st Respondent

3. Narayanan

... 3rd Respondent/3rd Respondent

4. The National Insurance Company Limited,
Vigneswara Building,
Near Over Bridgem 7,
Pudukottai Road,
Tiruchirapalli – 20.

... 4th Respondent/4th Respondent

(Respondents 2 to 4 given up)

5. R.Kanagambal

... 5th Respondent

(5th Respondent is brought on record
as Legal Heir of the deceased 1st
Respondent vide order of this Court
dated 12.04.2024 made in C.M.P(MD)
Nos.2124, 2125 and 2128 of 2024 in
C.M.A(MD) No.343 of 2020)



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PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicle Act, 1988, against the judgment and decree passed in M.C.O.P.No. 124 of 2008, dated 21.08.2019 on the file of the Motor Accident Claims Tribunal cum III Additional Subordinate Court, Thiruchirapalli.

For Appellant : Mr.C.Jawahar Ravindran

For R5 : Mr.K.K.Senthil

For R2 to R4 : given up
R1 : died

J U D G M E N T

The present Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company challenging the award passed by the Motor Accident Claims Tribunal cum III Additional Sub Court, Thiruchirapalli, in M.C.O.P.No.124 of 2008 primarily on the ground of quantum.

2. The first respondent herein as injured claimant had claimed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation towards injuries sustained by him in a road accident on 20.07.2005. As per the claim petition he was working as a Machinist and he was drawing a monthly salary of Rs.6,000/-. He had further contended that in view of the disability sustained by him he had incurred loss of income.



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3. The Insurance Company had filed a counter disputing the avocation and the monthly income of the injured claimant and they questioned the quantum also.

4. The Tribunal after considering the submissions made on either side, has arrived at a finding that the accident has taken place only due to the negligence on the part of the offending vehicle which was insured with the appellant herein. The Tribunal has taken into consideration the notional income of the claimant at Rs.5,000/- and added 40% towards future prospectus. Thus, the notional income was arrived at Rs.7,000/-. The Tribunal had applied multiplier of “18” and arrived at a sum of Rs.7,56,000/- towards loss of future income. In total a compensation of Rs.10,10,400/- has been awarded. This award is under challenge in the present Civil Miscellaneous Appeal.

5. According to the learned counsel appearing for the appellant, two Disability Certificates, which were issued by the Private Doctors, ought not to have been relied upon by the Tribunal, especially, when the Medical Board has issued Disability Certificate Ex.X1. As per Ex.X1, the permanent disability of the claimant is less than 20%. Therefore, the Tribunal ought not



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to have taken 50% as the permanent disability. He further contended that there is no evidence to the effect that the permanent disability has resulted in functional disability. Therefore, the Tribunal made error in applying the multiplier method. On the other hand, the Tribunal ought to have relied only on the Government Doctor's opinion for arriving at the permanent disability. He further questioned the quantum of compensation awarded by the Tribunal under the head of pain and suffering and loss of amenities also.

6. Per contra, the learned counsel appearing for the 5th respondent/ claimant had relied upon the Ex.X1 and contended that the Medical Board has assessed the physical disability at 20%. However, the Medical Board has given a specific opinion that the hand of the injured claimant is clumsy and he was unable to write. The Medical Board has also given an opinion that the grip of the claimant is poor in strength. Therefore, in such circumstances, the claimant cannot continue to work as a Machinist. In such circumstances, the Tribunal was right in following the multiplier method. The accident having taken place in the year 2005, the notional income fixed by the Tribunal at Rs.5,000/- per month is not excessive. Hence, he prayed for sustaining the award passed by the Tribunal.



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7. I have carefully considered the submissions made by the learned counsel on either side.

8. The primary contention of the appellant/Insurance Company is on the percentage of disability taken into consideration by the Tribunal and the application of multiplier method. A perusal of Ex.X1, Medical Board Report issued by the Government Hospital, Thiruchirapalli, clearly shows that the claimant hands are very clumsy and he will be unable to work. The grip of the claimant is poor in strength and has not having sensation. They have assessed physical disability of the claimant less than 20% due to Neurological problem. The fact that the claimant was working as a Machinist is not seriously disputed.

9. Considering the fact that the claimant is a Machinist, and due to the accident he had suffered very poor grip and hand was clumsy, in such a way, that he will not be able to work, then it certainly would result in functional disability. Therefore, I find that the Tribunal was right in adopting multiplier method.



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10. The learned counsel appearing for the appellant had further contended that even assuming that the multiplier method would be adopted, the percentage of permanent disability at 50% taken by the Tribunal is not correct. Relying upon Ex.X.1 he contended that as per the Medical Report, the disability is less than 20%. The private Doctors opinion under Ex.P.15 and Ex.P.17 were issued by the Orthopedic Surgeon and Neuro Surgeon. As per Ex.P.15 Disability Certificate issued by the Orthopedic Surgeon, disability was assessed at 68%. As per Ex.P.17- Disability Certificate issued by the Neuro Surgeon the disability was assessed at 30%. Considering the fact that the claimant as Machinist and the Medical Board has assessed the physical disability at 20%, and the Disability Certificates issued by the Private Doctors, this Court is of the considered opinion that the functional disability could be fixed at 45% instead of 50%.

11. In view of the above said fact the future loss on income of the petitioner would be calculated as follows:

Future Loss of income: Rs.7000 x 18 x 12 x 45/100 = Rs.6,80,400/-.

12. In view of the above said discussions, the award of the Tribunal is reduced from Rs.10,10,400/- (Rupees Ten Lakhs Ten Thousand and Four



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Hundred only) to Rs.9,24,800/- (Rupees Nine Lakhs Twenty Four Thousand and Eight Hundred only). In other respects, award passed by the Tribunal stands confirmed.

13. In the result, this Civil Miscellaneous Appeal stands partly allowed to the extent as stated above. If any excess amount has been deposited by the Insurance Company, the same shall be refunded along with accrued interest. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

18.04.2024

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

1. The Motor Accident Claims Tribunal
cum III Additional Sub Court,
Thiruchirapalli.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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