



C.M.A.(MD).No.86 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.86 of 2021
and C.M.P.(MD).No.744 of 2021

M/s.United India Insurance Company Ltd.,
Rep. by its Branch Manager,
Office at 213/18,
Nattamai Complex,
Odakarai Street,
Cumbum,
Theni District.

... Appellant/Respondent No.3

Vs.

1.Arjunan ... 1st Respondent/Petitioner
2.Marimuthu ... 2nd Respondent/1st Respondent
3.Rajapandi ... 3rd Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate's Court, Theni, made in M.C.O.P.No.29 of 2018 dated 04.08.2020.

For Appellant : Mr.C.Jawahar Ravindran

For Respondents : Mr.N.Ramil Mani for R1

For R2 & R3 – Given Up.



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JUDGMENT

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This appeal has been directed against the order of the Tribunal of Motor Accidents Claims Tribunal Cum Chief Judicial Magistrate's Court, Theni, made in M.C.O.P.No.29 of 2018 dated 04.08.2020.

2.The facts in brief:

On 13.10.2017, the claimant along with his family members went to Velankanni and on 14.10.2017, while returning from Velankanni, in the midnight at about 2.00 a.m. on 15.10.2017 on the Dindigul to Vathalakundu Road, the vehicle was driven by the first respondent in a rash and negligent manner and capsizing on the left side of the road near Veerakkal Pirivu Road. The claimant suffered injury and took treatment in Government Hospital, Dindigul and later DMS Hospital, Vathalagundu. A case was registered in Crime No.367 of 2017 under Sections 279 and 337 of IPC on the file of the Sembatti Police Station. At the time of accident, the claimant was conducting grocery shop and earning a sum of Rs.30,000/- per month. Claiming compensation amount of Rs.6,00,000/- for the injuries, disabilities, he filed the petition.



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3. That was resisted by the respondent namely the appellant herein stating that against the permit and insurance conditions, the vehicle was carrying on more than 13 people. When there is violation of policy conditions under the permit insurance company is not liable to pay the compensation amount.

4. Before the Tribunal, the petitioner himself was examined as PW1 and 10 documents were marked on his side. On the side of the respondents no witness was examined and no documents were marked. Ex.C1 & Ex.C2 were also marked.

5. Regarding the first issue of negligence, the Tribunal recorded a finding that it took place, because of the rash and negligent driving on the part of the first respondent. Regarding the compensation it fixed 15% on the basis of the Ex.C2, Disability Certificate issued by the Medical Board. The loss of income was calculated on the basis of the age by adopting multiplier method and finally awarded the compensation amount as noted below.



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Monthly Income = Rs.13,302 + 5,321 = 18,623/-

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Age of the victim is 36. Hence, 15 multiplier was taken.

Disability was fixed as 15%.

$15 \times 18,623 \times 12 \times 15\% = \text{Rs.}5,02,821/-$

Loss of income for 6 months was calculated as

$6 \times 13,302 = \text{Rs.}79,812/-$.

Totally the award was fixed as follows:

1.Pain and sufferings	- Rs. 50,000
2.Attendant charges	- Rs. 3,500
3.Nutrition	- Rs. 10,000
4.Transport Expenses	- Rs. 10,000
5.Damages of dress and ornaments	- Rs. 2,000
6.Future prospects	- Rs.5,02,821
7.Loss of income	- <u>Rs. 79,812</u>
Total award amount	<u>Rs.6,58,133</u>

Against which, this appeal is preferred by the Insurance Company.

6.Perusal of the records shows that Ex.C2 the Disability Certificate issued by the Medical Board is not satisfying the requirement of law.



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Cyclostyle format was used by the Medical Board to fill up the certificate. It shows that proper assessment of Disability was not made by the Medical Board.

7.On that sole ground, the matter is remitted back to the Tribunal with a direction to the Tribunal to refer the claimant to the Medical Board once again. The Medical Officer shall assess the disability of the claimant properly in scientific manner and file a Report before the Tribunal. On the basis of the above said Medical Report a fresh order shall be passed by the Tribunal. The parties are at liberty to give evidence only on the aspect of disability. Other evidences shall remain on record. Let the entire process shall be completed within a period of three months from the date of receipt of a copy of this order.

8.With the above said directions, this civil miscellaneous petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

05.06.2024

Index : Yes / No
Internet : Yes / No
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To

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1.The Chief Judicial Magistrate, (Motor Accidents Claims Tribunal),
Theni,

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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