



C.M.A.(MD).No.665 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 20.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.665 of 2024
and C.M.P(MD).Nos.7890 & 9524 of 2024

United India Insurance Company Ltd.,
Through its Branch Manager,
D.No.5/1, Alagu Bagavathy Complex,
Kailasapuram,
Tirunelveli Junction.

... Appellant/2nd Respondent

Vs.

1.K.Mariappan

... 1st Respondent/Petitioner

2.M.A.Shaul Hameed

... 2nd Respondent/1st Respondent

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order passed by the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, dated 22.08.2023 in M.C.O.P.No.801 of 2019, as against the appellant.

For Appellant : Mr.N.Dilipkumar

For Respondents : Mr.A.Sivasubramanian for R1
No Appearance for R2



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JUDGMENT

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This appeal has been filed to set aside the order passed by the Motor Accident Claims Tribunal/Special Sub Court, Tirunelveli, dated 22.08.2023 in M.C.O.P.No.801 of 2019, as against the appellant.

2.The facts in brief:

On 11.08.2018 at about 06.30 p.m., the petitioner was riding a motor cycle bearing Registration No.TN 72 AK 7025 on the Tirunelveli to Thiruchendur Main Road. At that time a jeep bearing registration No.TN 72 BW 3137 was driven by its driver in rash and negligent manner came in the opposite direction, hit the two wheeler. As a result of which, the petitioner was thrown out of the motor cycle and sustained grievous injuries. He was admitted in the Government Hospital, Srivaikundam and later taken to Tirunelveli Medical College Hospital, Tirunelveli and thereafter, to Karthik Nursing Home, Tirunelveli, underwent the surgery on 12.08.2018 and continuing the treatment till now.

3.He was aged about 44 years at the time of occurrence. Because



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of the accidental injuries, he is unable to continue his work as before as Painter. He was earning not less than Rs.15,000/- per month. Claiming compensation amount of Rs.15,00,000/-, claim petition was filed.

4.That was resisted by the Insurance Company by filing counter stating that the first respondent's vehicle driver did not possess any proper driving licence. There was no Fitness certificate for the vehicle. Other customary denials were made.

5.At the conclusion of enquiry the Tribunal, with regard to the first aspect of negligence, recorded the finding that because of the rash and negligent driving on the part of the first respondent's driver, the occurrence took place.

6.Regarding the compensation, 50 % partial permanent disability was fixed due to the accidental injuries. Multiplier method was adopted. Loss of future earning capacity was fixed at Rs.9,45,000/- . To that other customary amounts were added including the medical expenses, which supported by bills. Totally the Tribunal awarded compensation as



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Rs.12,71,835/-.

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7.Against which this appeal is preferred by the Insurance Company. The learned counsel for the appellant would submit that only 22% disability suffered by the injured namely the claimant as per Medical records. So the functional disability was not correctly assessed and the multiplier method adopted by the Tribunal is also not proper.

8.The learned counsel for the respondent would submit that considering the age and profession of the claimant, multiplier 14 was adopted. So the compensation awarded by the Tribunal is reasonable, which requires no interference.

9.With regard to the first aspect of negligence, no arguments was advanced by the appellant. So that portion of the finding of the trial Court requires no reconsideration, even on merits, considering the manner in which the occurrence said to have been taken place.



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10.Both vehicles were proceedings in opposite directions. The first respondent's vehicle's driver came in the wrong side and hit the two wheeler. The manner of the accident itself does indicates the rash and negligent driving on the part of the offending vehicles' driver.

11.Regarding the compensation as mentioned above, the Tribunal fixed the total disability as 50%. Whether it is correct on record is point to be considered. The following injuries were found noted by the Tribunal.

- 1.Lacerated injury below the right leg knee.*
- 2.Abrasion over the right hand and little finger*
- 3.Abrasion over the right hand knee*
- 4.Abrasion over the left leg ankle and*
- 5.Multiple injuries all over the body.*

12.The X-Ray shows that there was a fracture on the tibial condyle portion. To show the disability, none was examined on the side of the petitioner. He was referred to the Medical Board attached to the Tirunelveli Medical College Hospital. The Medical Board assessed the



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disability as 22%. The Tribunal recorded a finding that even though the Medical Board assessed the disability at 22%, the functional disability can be fixed at 50%. On what ground the above said finding was recorded by the Tribunal is completely not available on record. When a competent Medical Board, assessed the disability, whether it is proper on the part of the Tribunal to assess the functional disability on his own assessment by simply seeing photographs?

13.PW1 has stated in his evidence that he is suffering by shortening of left leg. Screening and drafting was done and so there is weakness on the left leg. Because of the above said injuries, he is not able to continue his work as before. He underwent surgery on 12.08.2018. Screening and drafting was done and there was a compound fracture on the tibia bone on the condyle portion area. But, he assessed that his left leg is affected. But, it is not correct as per the Medical Record. Even though the wound certificate and accident register indicates that his right leg was affected, the photographs submitted by the petitioner shows that his right leg is affected. His shortening disfigurement is apparent on the face of the photographs. As seen from



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the photographs, his earning capacity has been badly affected. So here, the Multiplier method is the proper method for assessing the compensation.

14. So 22% can be taken as functional disability. He was aged about 44 years at the time of occurrence. We cannot expect any direct evidence on the point of income. Considering the age and the job nature, it was fixed at Rs.9,000/- by the Tribunal notionally, which is not on the higher side. Multiplier 14 is also correct. But, the claimant is entitled to claim future prospects at 30%. Therefore, the petitioner is entitled to claim compensation under the head of future loss of earning capacity as follows: Rs.9,000 + Rs.2,700 (Notional Income + Future Prospects 30%) = Rs.11,700. $\text{Rs.11,700} \times 12 \times 14 = \text{Rs.19,60,000/-}$. $\text{Rs.19,60,000} \times \frac{22}{100} = 4,31,200/-$. So the loss of income is Rs.4,31,200/-. The other award amounts in respect of loss of convenience, pain and suffering, Transport Charges, Attendant Charges and Extra nourishment, have been reasonably fixed, which requires no interference.

15. Accordingly, this appeal is partly allowed and the award



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amount passed by the Tribunal is modified as follows.

<i>1.Loss of future earning power</i>	<i>Rs.4,31,200/-</i>
<i>2.Medical Expenses</i>	<i>Rs.1,86,865/-</i>
<i>3.Loss of Convenience</i>	<i>Rs. 50,000/-</i>
<i>4.Pain and Sufferings</i>	<i>Rs. 50,000/-</i>
<i>5.Transport Expenses</i>	<i>Rs. 10,000/-</i>
<i>6.Attendant Charges</i>	<i>Rs. 20,000/-</i>
<i>7.Extra Nourishment</i>	<i><u>Rs. 10,000/-</u></i>
<i>Total Compensation Award</i>	<i><u>Rs.7,58,035/-</u></i>

(i)The quantum of compensation awarded by the Tribunal is reduced from Rs.12,71,840/- to **Rs.7,58,035/- (Rupees Seven Lakhs Fifty Eight thousand and thirty five only)** which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the entire compensation of Rs.**7,58,035** /- (if not 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 proportionate costs to the credit of M.C.O.P.No.801 of 2019 on the file of the Motor Accident Claims Tribunal, Tirunelveli (Special Subordinate Judge, Tirunelveli), within a



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period of two months from the date of receipt of a copy of this order.

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(iii) On such deposit being made by the appellant / insurance company, the first respondent / claimant is permitted to withdraw the entire award amount of Rs.7,58,035/- (**Rupees Seven Lakhs Fifty Eight thousand and thirty five only**) after following the due process of law, less any amount already received by him.

(iv) No costs. Consequently, connected miscellaneous petitions stand closed.

20.08.2024

Index : Yes / No
Internet : Yes / No
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To

- 1.The Special Sub Judge, Motor Accident Claims Tribunal,
Tirunelveli.
- 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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