



CMA(MD)No.378 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/07/2024

CORAM

The Hon'ble Mr.Justice G.ILANGO VAN

CMA(MD)No.378 of 2024

V.Raja

: Appellant/ Claimant

Vs.

P.Dhashinamoorthy (Died)

1.The Manager,

M/s.United India Insurance Co Ltd.,

Coimbatore

: 1st Respondent/2nd Respondent

2.M.Mustafa

: 2nd Respondent/3rd Respondent

3.The Manager,

M/s.United India Insurance Co Ltd.,

VOC Nagar,

Karaikudi.

: 3rd Respondent/ 4th Respondent

4.D.Nadarajan

5.Mahalakshmi

6.Geethalakshmi

: Respondents 4 to 6/

Respondent 4 to 6

(Legal representatives of P.Dhakshinamoorthy)

(Cause title accepted vide court order dated 16.07.2021 made in CMP(MD)No.5719
fo 2021 in CMA(MD)SR.No.16315 of 2021)

PRAYER:- Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree, dated 29/04/2005 passed in MCOP No.451 of 2004 on the file of the Motor Accident Claims Tribunal (Principal Sub Court), Thanjavur.



WEB COPY



CMA(MD)No.378 of 2024

For Appellant : Mrs.K.R.Shivashankari

For R1 & R3 : Mr.J.S.Murali

For R2 : Ex-parte

For R4 to R6 : Dispensed with

JUDGMENT

This Civil Miscellaneous Appeal is filed seeking enhancement of compensation award made in MCOP No.451 of 2004, dated 29/04/2005 by the Motor Accident Claims Tribunal (Principal Sub Court), Thanjavur.

2.The facts in brief:-

On 14/04/1994 at about 11.30 am, the petitioner was travelling as Cleaner in a Tourist Bus bearing registration No.TN-49-A-1920 from Thanjavur to Madurai. At that time, a Lorry bearing registration No.TNW-7348 was driven by its driver from Melur to Madurai in a rash and negligent manner, both collided with each other. In that process, the petitioner suffered grievous injuries, admitted in the Rajaji Government Hospital, Madurai and underwent treatment from 14/04/1994 to 28/06/1994 as inpatient.



CMA(MD)No.378 of 2024

WEB COPY

3.The occurrence took place because of the rash and negligent act on the part of the both vehicle drivers. He suffered multiple injuries and fracture. After the accident, he did not continue his work as before. At that time, he was earning Rs. 1,800/- per month. Seeking compensation of Rs.15,00,000/-, the claim petition was filed.

4.That was resisted by the 2nd respondent Insurance Company in the main petition by filing Counter stating that only 12 persons were permitted to travel in that vehicle and it occurred due to rash and negligent driving on the part of the offending vehicle driver.

5.Before the Tribunal, on the side of the claimant, 3 witnesses were examined and 9 documents were marked. On the side of the respondents, 2 witnesses were examined and no document was marked.

6.At the conclusion of the enquiry process, even on the first point, the Tribunal came to the conclusion that both sides were responsible for the occurrence taking into account the manner of the accident as 50:50.

7.Regarding the compensation, it recorded a finding that there was amputation on the left leg thigh region. Because of the grievous disability suffered by the appellant, it fixed the permanent disability at 88%, taking Rs.1,500/- as



CMA(MD)No.378 of 2024

monthly income, adopting multiplier '18' fixed the Loss of Income as Rs.2,30,400/-.

WEB COPY

To that, conventional amount of Rs.5,000/- were added under the head of pain and suffering, medical expenses, damages to cloths, etc. and ordered payment of Rs. 2,35,400/- as total compensation amount, directing the respondents to be payable jointly and severally at 50:50.

8.The award was passed on 29/04/2005. The appellant kept silent for several years. Suddenly, he woke up and filed petition in CMP(MD)No.6824 of 2021 to condone the delay of 5314 days in preferring the appeal. That was allowed on payment of Rs.1,000/- as costs to the credit of of Creche attached to Madurai Bench of Madras High Court, Madurai. Since there is a long delay on the part of the appellant in preferring the appeal, even though it is allowed, he is not entitled any interest the default period. He is only entitled for the interest only for the appeal period, if the compensation is going to be raised.

9.Now there is no cross appeal by the respondents.

10.The manner in which the occurrence took place indicates that the respondents 1 and 3 were equally responsible for the occurrence. So their liability is fixed at 50:50. That was confirmed in view of the fact the no cross appeal was preferred by the respondents.

11.Only quantum is under dispute.

<https://www.mhc.tn.gov.in/judis>



CMA(MD)No.378 of 2024

WEB COPY

12.The learned counsel appearing for the appellant would submit that since there is amputation on the left leg upto thigh, the permanent functional disability ought to have been taken as 100% by the Tribunal. But it has taken only as 80%. The appellant was working as a Cleaner, his notional income is reasonably fixed at **Rs.3,000/-** per month.

13.We will straightaway go to the evidence on record. Even though, records have been collected from the trial court, except the petition and order, no other materials are available, since it has been destroyed due to lapse of time. So only on the basis of the observations and findings recorded by the Tribunal, this matter has to be disposed of.

14.The claimant took treatment as inpatient in Rajaji Government Hospital, Madurai from 14/04/1994 to 28/06/1994 and thereafter, took treatment as inpatient in Thanjavur Government Hospital from 22/07/1994 to 26/08/1994. His left thigh leg was completely crushed. His left leg was removed below the thigh region. He was not able to stand. His future is completely paralysed because of the removal of the left leg. The disability was estimated at 88% on the basis of the disability certificate issued by the Doctor under Ex.P7.

15.When there is total loss of functional disability, as rightly contended by the appellant, the Tribunal ought to have taken as 100%. There was no proof to show his



CMA(MD)No.378 of 2024

correct monthly earnings. He has stated in his evidence that he was earning Rs. 1,800/- per month and daily batta Rs.10/-. There was no evidence to show the same. The Tribunal has rightly fixed the age of the claimant at 22. When the age of the claimant was fixed at 22, proper multiplier, as per Schedule II to the Motor Vehicles Act is '18'. As per the Sarla Verma's case, the multiplier for this age group was is fixed at 18. So we can take '18' as multiplicand. Functional disability must be fixed at 100%.

16.Regarding the monthly income of Rs.1,500/- fixed by the Tribunal is meagre. He has stated tat he was the working in the Mini Bus as a Cleaner. He has stated that he is earning Rs.100/- per day and batta 10%. Taking the same as Rs. 3,000/- per month, it must be fixed at Rs.100/- per day considering the age of the appellant. By taking the above calculation, the loss of future income is assessed at **Rs.6,48,000/-** (Rs.3,000/- x 12 x 18). The Tribunal has not awarded towards loss of amenities. So the claimant is entitled to **Rs.1,00,000/-** under the heads of the loss of amenities, pain and suffering and damages to clothes. In total, the claimant is entitled to **Rs.7,48,000/-**.

17.The above said modified amount of **Rs.7,48,000/-** must be equally payable by the respondents **(*)4 to 6 being legal heirs to the deceased P.Dhashinamoorthy** and 3 herein equally as apportioned by the Tribunal at the rate of 50:50 on behalf of



CMA(MD)No.378 of 2024

the insured. The respondents (*)4 to 6 being legal heirs to the deceased

WEB COPY

P.Dhashinamoorthy and 3 are directed to deposit the entire amount at 50:50 within a period of one month from the date of receipt of a copy of this order. On such deposit being made, the claimant is entitled to withdraw the entire amount. The appellant is not entitled for any interest for the default period and the interest is payable only from the date of this order by the respondents proportionately as ordered by the Tribunal.

18.In the result, this Civil Miscellaneous Appeal is **partly allowed to the extent indicated above.** No costs.

Sd/-

Assistant Registrar (CS I)

(*)Corrected as per order of this Court dated 09/12/2024 made in CMA(MD)No.378 of 2024

Sd/-

Assistant Registrar (Writs)

// True Copy //

/ /2024

Sub Assistant Registrar(CS)

er



CMA(MD)No.378 of 2024

WEB COPY

To,
(*)To be substituted the order which already despatched on 28/11/2024

1.The Principal Sub Judge,
Motor Accident Claims Tribunal,,
Thanjavur.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.R.SHIVASHANKARI, Advocate (SR-34580[F] dated 12/07/2024)

+2 CC to M/s.J.S.MURALI, Advocate (SR-34604[F] dated 15/07/2024)

CMA(MD)No.378 of 2024

12/07/2024

SL(22.10.2024)/ 8P/ 7C

MGJ (10/12/2024)

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023.