



C.M.A(MD)No.482 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.07.2024

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.482 of 2019
and
Cros. Objection(MD)No.4 of 2024

C.M.A(MD)No.482 of 2019:

M/s.Sri Sai Fire Works Industries,
Represented through its one of the partner,
N.Sakthivel Rajan. ... Appellant/1st Respondent

Vs.

1.Subbulakshmi ... 1st Respondent/Petitioner

2.The Divisional Manager,
New India Assurance Company Limited,
Madurai Road,
Virudhunagar. ... 2nd Respondent/2nd Respondent

3.Muthuchamy ... 3rd Respondent/3rd Respondent

4.The Divisional Manager,
United India Insurance Limited,
No.103-B1, Madurai Road,
Virudhunagar District. ... 4th Respondent/4th Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the order passed by the learned



C.M.A(MD)No.482 of 2019

Motor Accident Claims Tribunal (Additional District Judge),
Virudhunagar in M.C.O.P.No.65 of 2013, dated 12.07.2018 and allow
this appeal.

For Appellant : Mr.J.Jeyakumaran
For R-1 : M/s.K.R.Shivashankari
For R-2 : Mr.N.Dilip Kumar
For R-3 : No appearance
For R-4 : Mr.S.Royce Immanuel

Cros. Objection(MD)No.4 of 2024:

Subbulakshmi ... Cross Objector/1st Respondent
Petitioner

Vs.

1.M/s.Sri Sai Fire Works Industries,
Represented through its one of the partner,
N.Sakthivel Rajan. ... 1st Respondent/Appellant
1st Respondent

2.The Divisional Manager,
New India Assurance Company Limited,
Madurai Road,
Virudhunagar. ... 2nd Respondent/2nd Respondent
2nd Respondent

3.Muthuchamy ... 3rd Respondent/3rd Respondent
3rd Respondent



C.M.A(MD)No.482 of 2019

4.The Divisional Manager,
United India Insurance Limited,
No.103-B1, Madurai Road,
Virudhunagar District.

... 4th Respondent/4th Respondent
4th Respondent

PRAYER: Cross Objection is filed under Order XLI, Rule 22 of Civil Procedure Code, against the order and decree, dated 12.07.2018 of the Motor Accident Claims Tribunal (Additional District Judge), Virudhunagar in M.C.O.P.No.65 of 2013 in so far as it is against the cross objector.

For Cross Objector : M/s.K.R.Shivashankari

For R-1 : Mr.J.Jeyakumaran

For R-2 : Mr.N.Dilip Kumar

For R-3 : No appearance

For R-4 : Mr.S.Royce Immanuel

COMMON JUDGMENT

The instant appeal has been filed by the owner of the vehicle challenging the order of pay and recovery.

2. The injured claimant had filed the claim petition contending that she was travelling as a passenger in a Mahindra Van owned by the appellant Fire Works Industry and insured with New India Assurance



C.M.A(MD)No.482 of 2019

Company Limited. While she was travelling in the said Van, a lorry owned by the third respondent and insured with the fourth respondent had come from the opposite direction and dashed against the vehicle, in which she had sustained grievous injuries. She filed the above said claim petition seeking a compensation of Rs.10,00,000/-.

3. The Tribunal after considering Exhibit P.1 FIR and Exhibit R.1 Policy arrived at a finding that, the seating capacity is 14 passengers along with one driver. However, at the time of accident, 18 passengers have travelled in the said Van. Since there is violation of policy conditions, the Tribunal has proceeded to pass an order of pay and recovery. The Tribunal has fixed the award amount at Rs.6,68,750/-. Challenging the order of pay and recovery, the owner of Mahindra Van has filed the present appeal.

4. According to the learned Counsel appearing for the appellant, even in a case of over loading, up to the seating capacity, the highest awards have to be satisfied by the Insurance Company. In the present case, there are 17 claim petitions and in case, if highest awards are arranged in the descending order, this award would fall within the



C.M.A(MD)No.482 of 2019

highest award and the Company should be directed to satisfy the award.

However, the Tribunal was not right in ordering pay and recovery on the ground of violation of policy conditions.

5. The learned Counsel appearing for the appellant had also relied upon the judgment of the Hon'ble Supreme Court reported in **2011 (1) TNMAC 441 [United India Insurance Company Vs. K.M.Poonam and Others]**, to contend that, the highest awards up to the seating capacity have to be construed as liability upon the Insurance Company.

6. Per contra, the learned Counsel appearing for the Insurance Company had contended that, though 17 claim petitions were filed, 16 of them were filed before the Sub Court, Aruppukottai and out of the 16 claim petitions, 14 of the highest awards have already been satisfied by the Insurance Company. Two of the awards passed by the said Court have been directed as against the owner on the ground that, it had exceeded the seating capacity. In such circumstances, the present award cannot be satisfied by the Insurance Company. Hence, he prayed for dismissal of the appeal.



C.M.A(MD)No.482 of 2019

7. The claimant had filed cross objection in Cros. Objection(MD)No.4 of 2024 seeking to enhance the compensation. The learned Counsel appearing for the claimant had contended that under Exhibit P.7, the disability has been fixed at 57% by the Doctor. However, the Tribunal without assigning any reasons whatsoever has reduced the said disability to 30%. She further contended that, though multiplier method has been adopted on the ground of functional disability, future prospects have not been added to the loss of income. Hence, she prayed for enhancement of the compensation.

8. The learned Counsel appearing for the appellant had contended that already the award amount is excess in nature and therefore, there is no scope for enhancement of compensation.

9. I have carefully considered the submissions made on either side and perused the materials available on record.

10. At the relevant point of time, 18 passengers, apart from the driver have travelled in the Mahindra Van. It had dashed against a lorry coming from the opposite direction. The Tribunal has arrived at a



C.M.A(MD)No.482 of 2019

specific finding that, the accident has taken place only due to the negligence on the part of the driver of the Mahindra Van and mulcted the liability upon the owner of the said Van, namely, the appellant herein and their insurer, namely, New India Assurance Company Limited.

11. 16 claim petitions were filed before the Sub Court, Aruppukottai, the highest 14 awards (up to the seating capacity) were directed to be satisfied by the Insurance Company and they have been satisfied also. Balance two claim petitions filed before the same Court, directions have been issued as against the owner to satisfy the award. As against these two awards in M.C.O.P.Nos.54 of 2013 and 55 of 2013 in which an award has been passed as against the owner, no appeal has been filed by the owner.

12. The present M.C.O.P.No.65 of 2013 has been filed before the Additional District Court, Virudhunagar. The Tribunal after arriving at a finding that excess passengers have been accommodated more than the seating capacity, has construed it as a violation of policy condition and directed the Insurance Company to satisfy the award and thereafter, recover the same from the owner of the vehicle.



C.M.A(MD)No.482 of 2019

13. I am of the considered opinion that, the judgment of the Hon'ble Supreme Court reported in **2011 (1) TNMAC 441** has already been complied with to the effect that, the highest 14 awards have already been satisfied by the Insurance Company. This award passed by the Additional District Court, Virudhunagar was not brought to the notice of the Sub Court, Aruppukottai. In such circumstances and considering the fact that, the appellant has not challenged the award in M.C.O.P.Nos.54 and 55 of 2013, this Court is of the opinion that, the order of the Tribunal directing pay and recovery does not call for any interference and the same is hereby confirmed and the appeal stands dismissed.

14. The learned Counsel appearing for the claimant has filed a cross objection seeking enhancement of compensation. As per Exhibit P.7, the disability is 57%. A perusal of Exhibit P.7 indicates that the claimant has sustained grievous injuries. Therefore, the Tribunal was not right in reducing the percentage of disability to 30%.

15. This Court is inclined to fix the percentage of disability at 45%. The Tribunal has arrived at a finding that, there is a functional disability. However, has not proceeded to add future prospects.



C.M.A(MD)/No.482 of 2019

Considering the fact that the claimant is below 40 years and she is self employed, 40% has to be added towards future prospects.

16. In view of the above said discussions, the award of the Tribunal is re-assessed as follows:

S.No.	Heads	Compensation
01.	Monthly Income :Rs.6,000/- (+)40% future prospects :Rs.2,400/- (Rs.6000 X 40%) ----- Rs.8,400/- Therefore, [Rs.8,400/- X 12 X 16 (multiplier) X 45% (disability)]	Rs.7,25,760 /-
02.	Loss of earning	Rs.36,000/-
03.	Transportation	Rs.10,000/-
04.	Extra Nourishment	Rs.10,000/-
05.	Damage to Clothes	Rs.2,000/-
06.	Medical Expenses	Rs.1,25,150
07.	Attendant Charges	Rs.25,000/-
08.	Loss of amenities	Rs.40,000/-
09.	Pain and Sufferings	Rs.75,000/-
	Total	Rs.10,48,910/-

17. The award of the Tribunal is enhanced from Rs.6,68,750/- (Rupees Six Lakhs Sixty Eight Thousand and Seven Fifty only) to **Rs.10,48,910/- (Rupees Ten Lakhs Forty Eight Thousand and Nine**



C.M.A(MD)No.482 of 2019

Hundred and Ten only). The enhanced award will carry 7.5% interest from the date of the claim petition excluding the default period, if any.

The appellant is directed to deposit the enhanced award amount within a period of eight (8) weeks from the date of receipt of a copy of the judgment. On such deposit, the claimant is entitled to withdraw the said amount along with accrued interest and cost.

18. In fine, Cross objection(MD)No.4 of 2024 stands partly allowed to the extent as stated above and the Civil Miscellaneous Appeal stands dismissed. There shall be no order as to costs.

01.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

1.The Motor Accident Claims Tribunal
(Additional District Judge),
Virudhunagar.

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



C.M.A(MD)No.482 of 2019

WEB COPY

3.The Divisional Manager,
United India Insurance Limited,
No.103-B1, Madurai Road,
Virudhunagar District.



WEB COPY



C.M.A(MD)No.482 of 2019

R.VIJAYAKUMAR, J.

BTR

Judgment made in
C.M.A(MD)No.482 of 2019

01.07.2024