



WEB COPY



C.M.A(MD)No.522 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.07.2024

Pronounced on : 14.08.2024

CORAM

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

C.M.A(MD)No.522 of 2022

D.Sankaralingam (died)

2.S.Ramalakshmi

3.Kayathrilakshi

4.Selvalakshmi

(Appellants 2 to 4 are brought on
record as legal representatives of
the deceased sole appellant vide
Court order dated 05.07.2024)

... Appellants

Vs.

1.K.Ayyanar

2.G.Ponnuthai

3.Claims Manager,
Sri Ram General Insurance Company Ltd.,
D.No.30, Hak Road,
Chinna Chokkikulam,
(Near ICICI Bank),
Madurai - 625 002.

... Respondents / Respondents



C.M.A(MD)No.522 of 2022

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 Motor vehicles Act to allow this Civil Miscellaneous Appeal by setting aside the order and decree made in M.C.O.P.No.114 of 2019 (Old M.C.O.P.No.117 of 2019), dated 23.12.2021 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Srivilliputhur.

For Appellant : Mr.M.Thirunavukkarasu
For R1 & R2 : Mr.K.P.Narayanakumar
For R3 : Mr.V.Sakthivel

JUDGMENT

This Civil Miscellaneous Appeal is filed by setting aside the order and decree made in M.C.O.P.No.114 of 2019 (Old M.C.O.P.No.117 of 2019), dated 23.12.2021 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Srivilliputhur.

2. The case of the claimant is that on 12.08.2018 at about 2.30 p.m., the petitioner namely the claimant Sankaralingam was riding a two wheeler bearing registration No.TN67 M 9388 on the Srivilliputtur to Rajapalayam main road and at that time, in the opposite direction, a vehicle bearing



C.M.A(MD)No.522 of 2022

registration No. TN 67 AX 0478 was driven by its driver in a rash and negligent manner and suddenly turned towards the East direction and in that process he hit the two wheeler as a result of which, the claimant fell down and sustained grievous injuries on the left femur and left patella. He was taken to the Jawahar Hospital, Rajapalayam, where he was fitted with plate and screw by surgery. He was discharged from the hospital on 20.08.2018. After that he was continuing the treatment. Later for the second time, he admitted in Jawahar Hospital, Rajapalayam on 24.08.2018 for post operation check up and followed up and discharged on 26.08.2018. Because of the accidental injuries, the movement in that portion restricted and unable to carry on his work as before. Over the occurrence a case in Crime No.428 of 2018 was registered on the file of the Rajapalayam North police Station. Claiming compensation amount of Rs.20,00,000/-, the claim petition was filed before the learned Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Srivilliputhur.

3. That was resisted by the second respondent in the main petition, stating that because of the rash and negligent driving on the part of the petitioner himself, the accident took place. There was no permanent disability.



C.M.A(MD)No.522 of 2022

The third respondent / insurance company filed a counter stating that the first respondent vehicle was not owning proper driving licence at the time of accident. Apart from that it is also stated that the accident took place because of the rash and negligent driving on the part of the claimant himself and not on the first respondent vehicle driver.

4. Regarding the first aspect of negligence, the Tribunal recorded a finding that only because of the rash and negligent driving on the part of the first respondent vehicle driver, the occurrence took place. Regarding the compensation amount, the Tribunal recorded a finding that the claimant suffered 65% of the partial permanent disability and adopted percentage method for calculating the compensation and took Rs.5,000/- per percentage and awarded Rs. 3,25,000/- towards partial permanent disability. To that amount, other customary amounts were added. Apart from that the medical expenses were added which was supported by the documentary evidences. The Tribunal finally awarded Rs.5,32,124/- as compensation. Dissatisfied with the quantum, the present Civil Miscellaneous Appeal has been preferred.



C.M.A(MD)No.522 of 2022

WEB COPY

5. There is no cross objection or separate appeal by the insurance company. Therefore, there is no reconsideration with regard to the liability. Coming to the quantum aspect, the learned counsel for the appellant would rely upon the following judgments reported in ***[2015(1) TN MAC 801 (SC)] in the case of Khenyei Vs New India Assurance Company Ltd., and others*** and ***[2011 (1) TN MAC 190 (SC)] in the case of B.T.Krishnappa Vs The Divisional Manager, United Insurance Company Ltd., and another***, to bring his point that in the case of functional disability, the Tribunal ought to have adopted the multiplier method. He would submit that the claimant was aged about 51 years at the time of occurrence. He under went two surgeries. Atleast, a sum of Rs.10,000/- must be taken as monthly income and 10% might have been added to the future prospects and future medical expenses ought to have been taken into account by the Tribunal. According to him, the compensation awarded by the Tribunal is very meagre and must be enhanced as claimed in the petition itself.

6. Per contra, learned counsel for the respondent would submit that the claimants suffered only partial permanent disability at 65%. Therefore, the



C.M.A(MD)No.522 of 2022

percentage method adopted by the Tribunal requires no interference. He has referred the following judgments reported in

i) 2014 (1) TN MAC 289 (SC) in the case of G.Dhanasekar Vs M.D., Metropolitan Transport Corporation Ltd.,

ii) 2014(i) TN MAC 295 (DB) in the case of Managing Director, Tamil Nadu State Transport Corporation Ltd., Madurai and another,

iii) 2020 (1) TN MAC 635 in the case of Royal Sundaram Alliance Insurance Co. Ltd Vs Abutahir and 4 others.

7. In respect of injury cases, it is a basic principle is to see whether injury suffered by the claimant resulted in functional disability depriving him of his livelihood as before the accident. For that purpose, the job nature and the profession of the claimant is the paramount consideration. Now we will see the nature of profession of the appellant. He stated in his affidavit that he was the owner cum driver of the auto bearing registration No.TN 67 M 9388 and earning not less than Rs.15,000/-. To show that he owns a three wheeler and earning by the profession, it appears that no document was produced by him before the trial Court. Therefore, without any documentary evidence, the contention on the part of the petitioner is that the owner of the three wheeler and earning must be decided.



C.M.A(MD)No.522 of 2022

WEB COPY

8. Now we will go to the FIR, wherein he stated that he is owning a three wheeler and he is also driving the vehicle for hire. It is not disputed by the insurance company that he is not the owner of the vehicle. When it is not disputed we can take that the claimant was the owner of the auto stated above and was earning by that profession, even though there is no documentary evidence to show the same as stated above. There is no aspect as to whether the accidental injuries totally deprived him to drive the vehicle and earning. Ex.P6 is the discharge summary issued by the Jawahar Hospital, Rajapalayam, wherein the nature of injuries are noted as *Swelling, deformity and abnormal Mobility of the Left Knee joint present. No Distal Neuro Vascular deficit.* X-Ray shows that there is a fracture on the left knee region and fracture on the femur bone, fracture on the Patella bone. He under went surgeries on 14.08.2018 and 16.08.2018. From the above said evidences it is stand established that the petitioner suffered multiple fractures and under went two surgeries. He was referred to the Medical Board attached to the Government Head Quarters Hospital, Virudhunagar for assessment of the disability. The Doctor assessed 65% of partial permanent disability. So it is seen that he suffered 65% of the partial permanent disability. Whether that can be



C.M.A(MD)No.522 of 2022

considered as a functional disability as noted above, absolutely, there is no evidence on record on the side of the appellant that subsequent to the occurrence he could not continue his driving job as before. In the absence of any such evidence on his side that he has deprived of his livelihood, the multiplier method requested by the appellant cannot be considered.

9. The Tribunal recorded a finding to the effect that the fracture on the knee portion will not affect his profession. As noted above, there is no evidence on record also to the effect that he had discontinued the profession. So taking Rs.5,000/- per percentage of disability, by the Tribunal cannot be considered to be less. The other heads are reasonably fixed. Considering the fracture Rs.40,000/- was awarded towards pain and sufferings. Medical evidence was supported by documentary evidence. The loss of income for three months was taken as Rs.19,500/-. Considering the job nature, it is fit for Rs.10,000/- may be taken as his monthly income. For three months he was out of job and therefore it is raised to Rs.30,000/-. The compensation awarded towards extra nourishment can be raised to Rs.10,000/-. Therefore, the total compensation is modified as below:



C.M.A(MD)No.522 of 2022

Heads of compensation	Awarded by the Tribunal	Awarded by this Court
Partial Permanent disability	Rs.3,25,000/-	Rs.3,25,000/-
Pain and Sufferings	Rs. 40,000/-	Rs. 40,000/-
Medical expenses	Rs.1,32,624/-	Rs.1,32,624/-
Extra Nourishment	Rs. 5,000/-	Rs. 10,000/-
Attendant Charges	Rs. 5,000/-	Rs. 5,000/-
Transportation	Rs. 5,000/-	Rs. 5,000/-
Loss of Income	Rs. 19,500/-	Rs. 30,000/-
Total	Rs.5,32, 124/-	Rs.5,47,624/- rounded off to Rs.5,47,600/-

10. The Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal is modified as follows:

(i) The quantum of compensation awarded by the Tribunal is increased to ***Rs.5,47,600/- (Rupees Five Lakhs Forty Seven Thousand Six Hundred only)*** with interest at the rate of 7.5% per annum.

(ii) The third respondent / insurance company is directed to deposit the award amount together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and with cost to the credit of M.C.O.P.No.114 of 2019 on the file of the Motor Accident Claims Tribunal /



C.M.A(MD)No.522 of 2022

Chief Judicial Magistrate, Srivilliputhur, within a period of two months from the date of receipt of a copy of this judgment, if not already deposited.

(iii) On such deposit being made, the appellants / claimants are at liberty to withdraw the compensation amount, after following the due process of law, less any amount already received by them.

(iv) No costs.

14.08.2024

NCC: Yes / No

Index: Yes / No

Internet : Yes / No

pnn

To

- 1.The Motor Accident Claims Tribunal / Chief Judicial Magistrate,
Srivilliputhur.
- 2.The Section Officer, Vernacular Records Section,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.522 of 2022

G.ILANGO VAN, J.

pnn

Pre-Delivery Judgment made in
C.M.A(MD)No.522 of 2022

14.08.2024