



CMA.(MD)No.562 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/07/2024

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

CMA (MD) No. 562 of 2024

and

CMP (MD) No. 7206 of 2024

M/s.Oriental Insurance Company Ltd.,
through its Divisional Manager,
having office at Door No.24E,
No.12A, Sivasakthi Shopping Complex,
S.N.High Road,
Tirunelveli.

: Appellant/2nd Respondent

Vs.

1.K.Murugan

: 1st Respondent/Petitioner

2.M.Karthick

: 2nd Respondent/1st Respondent

PRAYER:-Civil Miscellaneous Appeal is filed under section 173 of the Motor Vehicle Act 1988 to set aside the order of the Tribunal of MACT-cum-Special Sub Court, Tirunelveli, made in MCOP No.1260 of 2018, dated 27/02/2024.

For Appellant : Mr.C.Jawahar Ravindran

For 1st Respondent : Mr.V.Sasikumar

JUDGMENT

This appeal has been filed seeking to set aside the award passed in MCOP No.1260 of 2018, dated 27/02/2024 by the Motor Accident Claims Tribunal, Special Sub Court, Tirunelveli.



2. The facts in brief:-

On 09/02/2018 at about 09.15 am, the petitioner was riding a two wheeler bearing registration No.TN-72-BZ-0581 from Paruthipadu to Thirumal Nagar along with one Sudalairaj. When they were nearing the place of occurrence, another unregistered two wheeler which belongs to the first respondent was driven by its rider in a rash and negligent manner came in the opposite direction, dashed against the two wheeler. As a result of which, both fell down and he admitted in the Tirunelveli Medical College Hospital as inpatient on 09/02/2018. He underwent surgery. Thereafter taking treatment in a private hospital.

3.A case in Crime No.86 of 2018 was registered by the Muneerpallam Police Station for the offences under sections 279 and 337 IPC against the first respondent. The petitioner was aged about 42 at the time of the occurrence and earning not less than Rs.15,000/- as Painter. Because of the accidental injuries on the right leg and left shoulder, now he could not continue his work as before. So, seeking compensation of Rs.50,00,000/-, the claim petition was filed.



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4. That was resisted by the Insurance Company by filing counter stating that first respondent vehicle rider did not possess proper driving licence, so also the petitioner; Both of them were responsible for the rash and negligent driving.

5. Before the Tribunal, on the side of the claimant, one witness was examined and 3 documents were marked. On the side of the Insurance Company, 3 witnesses were examined and 12 documents were marked. Apart from that, the disability certificate issued by the Medical Board for the petitioner was marked as Ex.C1.

6. With regard to the first aspect of negligence, The Tribunal concluded that due to rash and negligent act on the part of the first respondent driver, it occurred.

7. Regarding the compensation amount, on the basis of the assessment made by the Medical Board, it was assessed at 63%. Considering his avocation, multiplier method was adopted. The Loss of Income was assessed at Rs. 11,90,700/-. To that, customary amounts were included. Finally, it arrived at the following figure:-



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Loss of earning capacity	Rs.11,90,700/-
Loss of convenience	Rs. 25,000/-
Pain and Suffering	Rs. 25,000/-
Transport Expenses	Rs. 5,000/-
Attendant Charges	Rs. 5,000/-
Extra Nourishment	Rs. 5,000/-
Total	Rs.12,55,700/-

8.Regarding violation of Motor Vehicle Rules and the policy conditions, it was observed by the Tribunal that the first respondent's vehicle rider was not having proper driving licence. So, the Insurance Company was directed to pay the compensation and recover the same from the owner of the vehicle namely the first respondent in the main petition.

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

10.Heard both sides.

11.The learned counsel appearing for the appellant would submit that the claimants as well as the first respondent vehicle driver were negligent in their riding. Multiplier method adopted by the Tribunal is not proper, since only 63% of the permanent disability noted.



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12.Per contra, it is contended by the 1st respondent that 63% of the partial permanent disability has caused functional disability, affecting the claimant's capacity to work as before. So, the multiplier method adopted by the Tribunal is proper. It requires no interference.

13.Regarding the negligence aspect, we will go to the evidence on record.

14.Except the evidence of PW1, there is no evidence on the part of the claimant to show the manner of the accident. PW1 has stated that he was riding the two wheeler on the left side of the road from south to north direction. At that time, the first respondent vehicle driver came in the opposite direction and dashed against him. It was suggested to him that he did not own proper driving licence and he also contributed to the occurrence. But it was not established before the Tribunal. On the other hand, it was established that the first respondent vehicle was not registered and no driving licence was available to the rider. So, it appears that non-possession of the driving licence, the first respondent drove the vehicle and naturally, he has to incur their responsibility for the occurrence. So, the finding of the Tribunal on this aspect requires no interference.



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15.Regarding the compensation, as mentioned above, the claimant suffered 63% partial permanent disability as assessed by the Medical Board.

16.Now we will go to the medical evidence on record. Right side finger bone found fractureed and there was non-union of super condylor femur fracture. So, there is deformation on the right knee.

17.Reading of the disability certificate shows that femur bone did not unit properly, as a result of which, there is deformation on the right knee and it affected his movement. When there is deformation and non union of the bone, the Tribunal though it fit to adopt multiplier method instead of taking percentage method. I am of the considered view that it requires no reconsideration. The amount has been reasonably fixed and conventional amounts were also reasonably added. So, the quantum is also sustained.

18.In the result, this Civil Miscellaneous Appeal is **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index:Yes/No
Internet:Yes/No
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To,

1.The Motor Accident Claims Tribunal/
Special Sub Court,
Tirunelveli.

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



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G.ILANGOVAN, J

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