



C.M.A.(MD).No.618 of 2020 and 520 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 27.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD).Nos.618 of 2020 and 520 of 2021
and
C.M.P.(MD).No.1937 of 2022

C.M.A.(MD).No.618 of 2020

Reliance General Insurance Company Limited
through its branch Manager,
No.10/4/4, Thaha Plaza, 2nd Floor,
South Bypass Road,
Vannarapettai,
Tirunelveli.

... Appellant

Vs.

1.Subramanian

2.Thanasekar

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 19th December 2019 passed in M.C.O.P.No.1673 of 2015 on the file of the Motor Accident Claims Tribunal, Tirunelveli / Special Sub Judge, dealing with MCOP Cases, Tirunelveli insofar as liability to pay compensation and the quantum of compensation awarded are concerned.



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C.M.A.(MD).No.618 of 2020 and 520 of 2021

For Appellant : Mr.V.Sakthivel
For R1 : Mr.T.Selvakumaran
For R2 : No appearance

C.M.A.(MD).No.520 of 2021

Subramanian Vs. ... Appellant

1.Thanasekar

2.Reliance General Insurance Company Limited
through its branch Manager,
No.10/4/4, Thaha Plaza, 2nd Floor,
South Bypass Road,
Vannarapettai,
Tirunelveli.

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.1673 of 2015 on the file of the Motor Accident Claims Tribunal, Tirunelveli, (Special Sub Judge), Tirunelveli dated 19.12.2019.

For Appellant : Mr.T.Selvakumaran
For R2 : Mr.V.Sakthivel



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C.M.A.(MD).No.618 of 2020 and 520 of 2021

COMMON JUDGMENT

(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

The Insurance Company filed the Civil Miscellaneous Appeal in CMA(MD)No.618 of 2020 challenging the award passed by the Motor Accident Claims Tribunal, Tirunelveli / Special Sub Judge, dealing with MCOP Cases, Tirunelveli in M.C.O.P.No.1673 of 2015, dated 19th December 2019 and the petitioner/claimant filed the Civil Miscellaneous Appeal in CMA(MD) No. 520 of 2021, for enhancement of compensation.

2. Facts of the case:

The first respondent/petitioner in CMA(MD).No.618 of 2020, is the Cleaner in the lorry bearing Registration No.TN.69.AE2954 insured with the appellant/Insurance Company. On 26.09.2015, at about 9.00 a.m., when the lorry was loaded with wooden logs, he sustained injury. Immediately the first respondent was taken to Sapthagiri Hospital at Bangalore. In the said hospital the first respondent underwent surgery and the right leg below knee was amputated and a surgery was conducted in which iron rod and plates were inserted on the left leg. Hence, he filed the claim petition seeking compensation



C.M.A.(MD).No.618 of 2020 and 520 of 2021

of Rs.25,00,000/- against the appellant/Insurance Company.

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3. The appellant/Insurance Company filed a counter denying the liability and specifically took a plea that the claim petition is not maintainable. Further, the said lorry was parked and the engine was in a switched off position. Hence, the Motor Vehicles Act is not applicable and if at all the claimant proves his claim, it could be restricted to W.C. Act only. Therefore, the Insurance Company is not liable to pay any compensation to the petitioner.

4.Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, held that the driver of the appellant's vehicle was responsible for the accident. The learned trial Judge considered the evidence of P.W.1 and considering the age of the injured claimant as 21 years and has fixed the monthly income of the injured claimant as Rs.9,000/-. The Tribunal awarded 40% towards Future Prospect and applied multiplier 18 and awarded compensation of Rs. 26,98,266/- to the claimants under the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
1	Loss of earning power	Rs.21,77,280/-
2	Medical Bills	Rs. 3,40,986/-
3	Attendance Charges	Rs. 20,000/-



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C.M.A.(MD).No.618 of 2020 and 520 of 2021

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
4	Pain and Suffering	Rs. 50,000/-
5	Transport expenses	Rs. 10,000/-
6	Extra Nourishment	Rs. 50,000/-
7	Loss of Convenience	Rs. 50,000/-
Total Compensation awarded		Rs.26,98,266/-

Assailing the said award, the appellant Insurance Company has filed the CMA(MD).No.618 of 2020 and the petitioner/claimant also has filed the CMA(MD).No.520 of 2021.

4. The Tribunal answered the specific plea raised by the appellant/Insurance Company, on the basis of the judgment of the Hon'ble Apex Court reported in **2018 (2) TNMAC 2017**. The Tribunal, after considering Section 165 of the Motor Vehicles Act, 1988 and also considering the said judgment of the Hon'ble Apex Court, held that the loading and unloading is part and parcel of the operation of a lorry. Hence, the Motor Vehicles Act is applicable. Challenging the said finding, the appellant/Insurance Company filed the C.M.A.(MD).No.618 of 2020 and the first respondent/claimant filed the C.M.A.(MD).No.520 of 2021 for enhancement of compensation. Hence, both the appeals are taken up together and disposed of by this common judgment.



C.M.A.(MD).No.618 of 2020 and 520 of 2021

5. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that at the time of accident, the lorry was stationary and the said vehicle never hit the first respondent and while loading and unloading, the Cleaner sustained injury. Hence, the claim petition is not maintainable under the provisions of the Motor Vehicles Act and the compensation may be converted into Workman Compensation Act and proper compensation may be ordered. He has also relied on a judgment of the Division Bench of Karnataka High Court reported in II (1998) ACC 379.

6. Submission of the learned counsel for the Respondents:

On the other hand, the learned counsel appearing for the first respondent/claimant would submit that the Tribunal, relied upon the judgment of the Hon'ble Apex Court reported in *2018 (2) TNMAC 2017*, where it has been clearly stated about the use of the vehicle and similar case was approved by the Hon'ble Apex Court. Hence, he seeks for dismissal of the appeal filed by the Insurance Company and seeks for enhancement of compensation under the head of pain and suffering, since the petitioner/claimant lost his right leg. The Tribunal has awarded only a sum of Rs.50,000/- for pain and suffering and hence, he seeks a sum of Rs.1,00,000/- towards pain and suffering.



C.M.A.(MD).No.618 of 2020 and 520 of 2021

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7. This Court has considered the rival submissions made on either side and perused the order passed by the Tribunal.

8. The following points arise for consideration of this appeal:

8.1. Whether the contention of the learned counsel for the appellant that the claim petition filed by the injured claimant under the Motor Vehicle Act, 1988, is not maintainable on account of the fact that the injured sustained injuries by fall of logs, during the course of the loading of the wooden logs in the insured stationary lorry, is acceptable or not?

8.2. Whether the compensation granted is in accordance with law?

9. Discussion on the use of the vehicle:

It is the case of the claimant that on 26.09.2015 at about 9.00 am., the first respondent was employed in a lorry bearing registration No.TN 69 AE 2954 belonging to the 2nd respondent insured with the appellant as cleaner. The lorry was loaded with wooden logs to New Ambika Saw Mill at Acharya Road, Bangalore and reached the said mill. At about 9.00 am., the driver instructed the injured to stand on one side of the lorry and he stood on the one side of the lorry. But, driver without any precaution or any signal, removed the knot on one



C.M.A.(MD).No.618 of 2020 and 520 of 2021

end of the hook in careless manner, in result loaded wooden logs started to roll down towards the surface and fell down on the injured and injured was unable to escape and trapped inside the rolling logs. Therefore, the injured sustained injuries. The contention of the learned counsel for the insurance company that lorry was not in moving condition and engine was switched off and while unloading the wooden logs, the injured sustained injury and hence his claim under the motor vehicle Act is not maintainable for the reason that there was no use of vehicle. This Court is unable to accept the said contention for the reason that the accident happened due to the negligent act of the driver, while unloading the wooden logs carried in the lorry ie., driver carelessly removed the knot resultantly loaded wooden logs started to roll down towards surface and fell on the injured.

9.1.It is well settled under Section 165 of the Motor Vehicle Act, 1988, the Motor Accidents Claims Tribunal, has jurisdiction to decide the case of this nature by giving wide interpretation to the word “*arising out of use of motor vehicle*”. The Hon'ble Supreme Court in the case of **Shivaji Dayanu Patil Vs.Vatschala Uttam More** reported in **1991 3 SCC 530**, has construed the use of motor vehicle in wide manner and relevant portion is as follows:

The word 'use' has a wider connotationas to cover the period when the vehicle is not moving and is



stationary and the use of a vehicle does not cease on account of the vehicle having been rendered immobile on account of a break-down or mechanical defect or accident.

9.2. In similar circumstances, the Division Bench of the High Court of Orissa in the case of ***Kanhei Rana and another vs. Gangadhar Swain and others*** has fixed liability for the death of the deceased/labour after loading the truck. In that case, the death was on account fall of log, when the truck was being loaded with logs. The Division Bench reversed the decision of the learned single Judge that the insurance company was not liable to pay compensation amount under the Motor Vehicle Act, 1988. The said Division Bench decision had been considered by the three judges bench of the Hon'ble Supreme Court in the case of ***Kalim Khan and others Vs. Fimidabee and others*** reported in **2018 7 SCC 687** and approved the said decision and held as follows:-

25. From the aforesaid authorities, it is limpid that the expression “use of the vehicle” under certain circumstances can be attracted when the vehicle is stationary or static. A Single Judge Bench of the High Court of Orissa in Kanhei Rana v. Gangadhar Swain [Kanhei Rana v. Gangadhar Swain, 1992 SCC OnLine Ori



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C.M.A.(MD).No.618 of 2020 and 520 of 2021

30 : AIR 1993 Ori 89] while dealing with a situation where the deceased labourer after loading the truck with logs lost his life. The Tribunal had categorically found that death was on the account of fall of a log, when the truck was being loaded with logs. The learned Single Judge, in appeal, had concurred with the view of the Tribunal by opining that the fall of the log had no nexus with the use of the vehicle not even remotely, and there was no material to show that the fall of the log was occasioned due to use of the vehicle. He had further held that the careless handling of goods being loaded on or unloaded from a vehicle had no connection to the vehicle itself. Reversing the conclusion of the learned Single Judge, the Division Bench opined that the concept of movement being not intrinsically or inherently connected with the use and the term “use” having been connotatively expanded, there can be no doubt that the same can also be extended to the arena/sphere of a claim advanced under Section 110 of the 1939 Act. Heavy onus is cast on the driver to avoid negligence while the vehicle is in use. If the term “use” in its conceptual sweep engulfs no motion or no movement or stationariness, then by logical corollary it is made essential that the driver or for that matter any agent of the owner should be



C.M.A.(MD).No.618 of 2020 and 520 of 2021

careful and non-negligent. Negligence in driving is regarded as a fact that the vehicle is in motion. But the definition of “use” having been expanded in its broader canvas, it has to clothe in its sweep other categories of negligence. To elaborate, when a vehicle remains static, it cannot constitute that the driver is negligent because of his rash and negligent driving. On the contrary, it has to embody some other different types of negligence. Of course that would depend upon the facts and circumstances of each case. The Division Bench of the High Court went on to say that the Apex Court in Patil [Shivaji Dayanu Patil v. Vatschala Uttam More, (1991) 3 SCC 530 : 1991 SCC (Cri) 865] was dealing with the negligence so far as it was concerned with Section 92 of the Act, but as the language of Section 92-A and Section 110 of the old Act used the same phraseology and there is absence of any etymological distinction, the same meaning should be given to the expression under Section 110 of the old Act. The appellate Bench held that there was causal relationship with the accident which had resulted in the death of the claimant.

26. *We entirely agree with the aforesaid analysis, for it is in accord with the view of the decisions of this Court.*

27. *It may be reiterated here that the causal*



C.M.A.(MD).No.618 of 2020 and 520 of 2021

relationship should exist between violation and the accident caused. There has to be some act done by the person concerned in causing the accident. The commission or omission must have some nexus with the accident. The word “use” as has been explained by the authorities of this Court need not have an intimate and direct nexus with the accident. The Court has to bear in mind that the phraseology used by the legislature is “accident arising out of use of the motor vehicle”. The scope has been enlarged by such use of the phraseology and this Court taking note of the beneficial provision has placed a wider meaning on the same. There has to be some causal relation or the incident must relate to it. It should not be totally unconnected. Therefore, in each case what is required to be seen is whether there has been some causal relation or the event is related to the act.

9.3.In this case while unloading the wooden logs carried in the lorry due to the negligence act of the driver, the accident has happened. The FIR was registered against the driver of the second respondent. No evidence was adduced on the side of the appellant insurance company. In the situation, the submission of the learned counsel for the appellant/Insurance Company that the



C.M.A.(MD).No.618 of 2020 and 520 of 2021

‘use’ of the vehicle in this case not come under the Motor Vehicles Act is not acceptable. Therefore, the learned Tribunal Judge has correctly held that the driver of the second respondent alone is responsible for the accident.

9.4.It is the right of the claimant either to make the claim under the Employees Compensation Act, or under the Motor Vehicle Act. The difference is that in the case of the employees compensation Act, the claimants need not prove the negligence. Under the Motor Vehicle Act, the claimants shall prove the negligence by preponderance of probability. The Hon'ble Supreme Court in the judgment reported in **2005 (6) SCC 172** in the case of **National Insurance Company Ltd. Vs Prembai Patel** has held that there is no bar to file the claim under the Motor Vehicle Act. The only exemption is that the claimant has no right to make claim under both Acts. In this case, the injured made claim only under the Motor Vehicle Act and also proved the negligence on the part of the driver of the lorry. Therefore, the contention of the learned counsel for the appellant that this petition under Motor Vehicle Act is not maintainable cannot be accepted. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.



C.M.A.(MD).No.618 of 2020 and 520 of 2021

WEB COP **10.Discussion on quantum:**

The age of the injured claimant is 21 years. The partial permanent disability with regard to the body is 80%. He was a lorry cleaner and earning Rs.15,000/- per month and no documentary evidence was let in to that effect. In the absence of any other document, the Notional income of the injured has to be fixed as Rs.9,000/- per month. The injured claimant monthly income was fixed as Rs.9,000/- with 40% for future prospects and it comes to Rs.12,600/-. This Court finds no reason to differ with the said amount as a monthly salary.

10.1.Calculation of the amount:

The compensation is accordingly assessed towards loss of earning capacity at Rs.21,77,280/- ($9,000 + 40\% \text{ future prospects} = 12600 \times 12 \times 18 \text{ multiplier} \times 80 \text{ functional disability}$ which comes to Rs.21,77,280/-). The learned Tribunal Judge also awarded a sum of Rs.3,40,986/- under the head of Medical Bills and Rs.20,000/- under the head for Attendance Charges and Rs.50,000/- under the head of Pain and Suffering and Rs.10,000/- under the head for Transport Expenses and Rs.50,000/- under the head of Extra Nourishment and Rs.50,000/- under the head of Loss of Convenience. Total Compensation awarded is Rs.26,98,266/- by the Tribunal to the claimant.



C.M.A.(MD).No.618 of 2020 and 520 of 2021

Therefore, the learned Tribunal Judge has correctly awarded the compensation.

Hence, the appeal filed by the Insurance Company is liable to be dismissed and the appeal filed by the claimant is concerned, considering the amputation on the right leg of the claimant, this Court awarded a sum of Rs.1,00,000/- instead of Rs.50,000/- towards pain and suffering and the other contention of the petitioner/claimant is not accepted.

11.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal</i>	<i>Re-quantified amount by this Court</i>	<i>Status</i>
1	Loss of earning power	Rs.21,77,280/-	Rs.21,77,280/-	confirmed
2	Medical Bills	Rs. 3,40,986/-	Rs. 3,40,986/-	confirmed
3	Attendance Charges	Rs. 20,000/-	Rs. 20,000/-	confirmed
4	Pain and Suffering	Rs. 50,000/-	Rs. 1,00,000/-	Enhanced
5	Transport expenses	Rs. 10,000/-	Rs. 10,000/-	confirmed
6	Extra Nourishment	Rs. 50,000/-	Rs. 50,000/-	confirmed
7	Loss of Convenience	Rs. 50,000/-	Rs. 50,000/-	confirmed
Total Compensation awarded		Rs.26,98,266/-	Rs.27,48,266/-	Enhanced

Accordingly, the questions are decided against the insurance company.



C.M.A.(MD).No.618 of 2020 and 520 of 2021

12. In the result, the Civil Miscellaneous Appeal in CMA(MD).No.618 of 2020, filed by the Insurance Company is dismissed and the Civil Miscellaneous Appeal in CMA(MD).No.520 of 2021, filed by the petitioner/claimant is partly allowed. The compensation awarded in M.C.O.P.No.1673 of 2015, on the file of the Motor Accident Claims Tribunal/Special Sub Judge, dealing with MCOP Cases, Tirunelveli, dated 19.12.2019, is hereby enhanced from Rs.26,98,266/- to Rs.27,48,266/-. The appellant/Insurance Company is directed to deposit the modified award amount with accrued interest and costs, less any amount if already deposited, within a period of six weeks from the date of receipt of a copy of this judgment and the claimant is permitted to withdraw the same. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] [K.K.R.K.,J.]
27.02.2024

NCC: Yes/No
Index: Yes/No
akv/sbn



C.M.A.(MD).No.618 of 2020 and 520 of 2021

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To

1. The Motor Accident Claims Tribunal, Tirunelveli /
Special Sub Judge, dealing with MCOP Cases,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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C.M.A.(MD).No.618 of 2020 and 520 of 2021

V.BHAVANI SUBBAROYAN,J.
and
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