



C.M.A.(MD).No.14 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 02.08.2024

DELIVERED ON : 27.08.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.M.A.(MD).No.14 of 2021
and C.M.P.(MD).No.155 of 2021

The Branch Manager,
M/s. United India Insurance Company Ltd.,
Thoothukudi. ... Appellant/Respondent No.5

Vs.

1.Samiraj ... 1st Respondent/Petitioner

2.Arumugam

3.Kamalam

4.M/s.New India Insurance Company Ltd.,
Thoothukudi.

5.Muniyasamy ... Respondents 2 to 5/Respondents 1 to 4

(Notice to the Respondents 3 and 5 is dispensed with as they were set exparte before the Tribunal vide Court order dated 02.04.2024)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, to set aside the order of the Tribunal of MACT cum Additional Sub Court, Tenkasi, made in M.C.O.P.No.433 of 2014, dated 03.09.2020.



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For Appellant : Mr.C.Jawahar Ravindran
For Respondents : Mr.R.J.Karthick for R1
Mr.I.Robert Chandrakumar for R4
No Appearance for R2

JUDGMENT

This appeal has been directed against the order of the Tribunal of MACT cum Additional Sub Court, Tenkasi, made in M.C.O.P.No.433 of 2014, dated 03.09.2020.

2.The facts in brief:

On 29.04.2014 at about 5.45 a.m. the claimant was driving a tipper lorry bearing Registration No.TN 47 Q 5657 from Muthaiahpuram to Thoothukudi New Harbour Road. At that time, another lorry bearing registration No.TN 59 J 7240 was driven by the first respondent's driver with dead speed, came from east to west direction and hit the claimant's lorry. He sustained grievous injuries all over his body. He was taken to the Government Medical College Hospital, Thoothukudi, where he was taking treatment as inpatient from 29.04.2014 to 03.05.2014. He underwent surgery and later readmitted in a C.J. Hospital, Avudayanoor, where he underwent major surgery. Now he is in continuous treatment in



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private hospitals. Because of the accidental injuries, he was unable to continue his work as before. So claiming compensation amount of Rs.10,00,000/-, the claim application was filed.

3.That was resisted by the Insurance Company by filing counter stating that a case was registered only against the claimant. The accident took place because of his rash and negligent driving. The fourth respondent filed a counter stating that even as per the claim application only, the first respondent drove the vehicle in rash and negligent manner. So the fourth respondent is not necessary party. Moreover, the fourth respondent's vehicle is insured with the fifth respondent.

4.The fifth respondent filed a counter, who is the appellant herein, contending that only the claimant drove the vehicle in a sleeping manner. The case was registered only against the claimant. Final report was also filed against him. So the fifth respondent is not liable to pay any compensation on behalf of the fourth respondent or along with him.



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5.Regarding the first aspect of negligence, the Tribunal recorded a finding that the claimant was responsible for the accident. There was no negligence on the part of the first respondent's driver.

6.Regarding the compensation amount, partial permanent disability was fixed at 20%. Rs.5,000/- was taken as base for 1%. For 20% Rs.1,00,000/- was arrayed as compensation. To that other customary amounts were added and finally the following award was passed as compensation.

<i>Sl. No.</i>	<i>Nature of Head</i>	<i>Award (Rs.)</i>
1.	<i>For disability</i>	<i>1,00,000/-</i>
2.	<i>Loss of income</i>	<i>48,000/-</i>
3.	<i>Pain and sufferings</i>	<i>10,000/-</i>
4.	<i>Loss of Estate</i>	<i>10,000/-</i>
5.	<i>Transportation</i>	<i>10,000/-</i>
6.	<i>Extra Nourishment</i>	<i>10,000/-</i>
7.	<i>Medical Charges</i>	<i>1,51,677/-</i>
	<i>Total</i>	<i>3,39,677/-</i>

7.Regarding the liability, the Tribunal recorded a finding that the claimant was under the employment of the fourth respondent in the main petition. Since the occurrence took place during the course of



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employment, compensation must be paid by the fourth respondent. But, the fifth respondent was directed to deposit the amount. Against which, this appeal is preferred by the fifth respondent in the main petition namely United India Insurance Company.

8.The learned counsel for the appellant would submit that as per the Finding of the Trial Court, because of the rash and negligent driving on the part of the claimant himself, the occurrence took place. The appellant herein is the insurer of the lorry, which was driven by the claimant, which belongs to the fourth respondent in the main petition. In stead of directing the claimant to approach the Commissioner of Labour under the provisions of Workmen Compensation Act, the Tribunal has assessed the compensation by invoking the procedure contemplated under the provisions of Motor vehicles Act, which is not legal.

9.Per contra, the learned counsel for the respondent would submit that it is clear admission on the part of the respondent. So no interference is called for.



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10.Only short point arises for consideration here. Whether the exercise undertaken by the Tribunal in assessing the compensation by invoking Section 163A of Motor Vehicles Act, is proper. Now, it is well settled that Section 163A can be invoked only in the case of a third party vehicle is involved and claim is entertainable, when establishing or proving the fault on the part of the third party is not warranted. Hereunder, the claimant himself is a tort-feasor. So he cannot maintain the application under Section 163 A. Now, it has been well settled proposition of law. It is Suffice to say that 163A will not attract to the facts and circumstances of the case.

11.Regarding the invocation of the Employees Compensation Act, the Tribunal now can undertake the exercise for awarding the compensation as per the settled proposition of law now laid down in the case of *the Oriental Insurance Co. Ltd., Vs. Krishan & Others*, reported in **2003 (2) LW 73**.

12.In view of the Judgment of the Division Bench of this Court, this Court can itself undertake the exercise since the procedure followed



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by the Tribunal is not proper.

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13.Regarding the age of the claimant, there is no finding by the Tribunal. He has stated in his evidence that he is aged about 36 years at the time of occurrence. There is no evidence on record to show his date of birth. In the accident register his age is also mentioned as 36. In all the medical records, the very same age is mentioned or repeated. So we can take that the age of the claimant at the time of occurrence was 36.

14.The next aspect is the monthly salary. For that also there is no clear proof and evidence. Even though the fourth respondent, who is the owner of the vehicle, filed his counter and he has not stated about the monthly salary given to the claimant. The claimant has stated in the petition that he was paid Rs.15,000/- as salary. But, the Tribunal due to the absence of direct evidence on that aspect, notionally fixed the salary as Rs.8,000/-. We can take that amount as reasonable, considering the age and occupation of the claimant. The relevant factor for the claimant, who aged about 36 as per the schedule IV of the Employees Compensation Act is 194.64.



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15.Regarding the disability as stated in the award, claimant was referred to the Medical Board attached to Government Medical College Hospital, Tirunelveli. He was assessed with 10% partial permanent disability, noting that there was “*Wasty of left calf muscle stiffness left knee joint portion*”. Movement is restricted. But, however the Tribunal assessed the disability as 20% without any basis, when he was referred to the Medical Board, it assessed the disability as 10%. So, it should be reassessed.

16.In view of the same the award should be reassessed as follows:
($194.64 \times 10/100 \times 8,000 \times 60/100 = 93,427.20$). So the compensation is fixed as Rs.93,427/-. To that Rs.1,51,677/- towards Medical Charges, which supported by the Bills Ex.P11 to Ex.P14, Ex.P19 & Ex.P20. Therefore, in view of the above, the total compensation award is modified as Rs.2,45,104/- (Two Lakhs Forty Five Thousand One Hundred and four only)

17.Accordingly, this civil miscellaneous appeal is partly allowed.



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(i) The quantum of compensation awarded by the Tribunal is reduced to Rs.2,45,104/- (Two Lakhs Forty Five Thousand One Hundred and four only), which shall carry interest at the rate of 7.5% per annum.

(ii) The appellant/ insurance company is directed to deposit the entire compensation of Rs.2,45,104/- (Two Lakhs Forty Five Thousand One Hundred and four only) (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No. 433 of 2014 on the file of the Additional Motor Accident Claims Tribunal, Additional Sub Court, Tenkasi, within a period of two months from the date of receipt of a copy of this order.

(iii) On such deposit being made by the appellant / insurance company, the first respondent / claimant is permitted to withdraw the entire award amount of Rs.2,45,104/- (Two Lakhs Twenty Forty Five Thousand One Hundred and four only) after following the due process of law, less any amount already received by him.

(iv) Consequently, connected miscellaneous petition stands closed.
No Costs.

27.08.2024



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Index : Yes / No

Internet : Yes / No

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To

1.The Additional Subordinate Judge, Additional Motor Accident Claims Tribunal, Tenkasi.

2.The Section Officer,
E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGOVA,J.

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