



C.M.A.No.1984 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2025

CORAM:

THE HONOURABLE Mrs. JUSTICE R. KALAIMATHI

C.M.A.No.1984 of 2022
and
C.M.P.No.15096 of 2022

M/s.New India Assurance Company Limited,(Erode),
T.P.HUB having office at No.133/31A,
Sethu Krishna Trade Centre,
2nd Floor, Trichy Main Road,
(Near Raja Sabari Theatre), Gugai,
Salem- 636 006.

... Appellant

vs.

1. Vijayakumar

2. K.M.Gopalakrishnan

3. S.Ramanisanker

4. M/s.National Insurance Co. Ltd.,
D.II, 2nd Floor, Balaji Towers,
No.11A, Ramakrishna Road, Salem,
Amended as per Order in
I.A.2671-A, dated 07.12.2021.

... Respondents

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, against the Order dated 01.11.2021 passed in M.C.O.P.No.1177 of 2018 on the file of Motor Accident Claims Tribunal / Special District Court(to deal with MCOP Cases), Salem.

For Appellant

: Mr.K.Vinod



C.M.A.No.1984 of 2022

For Respondents 1 to 3 : No Appearance

For 4th Respondent : Ms.N.B.Sureka

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JUDGMENT

This Civil Miscellaneous Appeal has been preferred against the Award dated 01.11.2021 passed in M.C.O.P.No.1177 of 2018 on the file of the Motor Accident Claims Tribunal, Special District Court (to deal with MCOP Cases), Salem on the liability issue and on quantum of compensation.

2. Parties are indicated herein as per their litigative status and ranking before the Tribunal.

3. Case of the claimants is stated in brief:

On 30.03.2018, at about 3 a.m., while the claimant in M.C.O.P.No.748 of 2018 was driving Omni Van bearing Reg.No.TN-30-BV-6397 along with passengers from Salem to Palani, at Salem-Sankagiri main road at Kaalipatty Bridge, took a U turn on the eastern side of the Bridge with care and caution, a lorry bearing Reg.No.TN-30-AW-3516 was stationed in the no parking area in the National Highway road without proper signal and caution. The driver/claimant hit his Omni Van behind the lorry and the accident occurred. Due to the said impact, the driver of the Omni Van sustained grievous injuries all over the body. One passenger

2/13



C.M.A.No.1984 of 2022

died and other passengers of Omni Van sustained injuries. Claimant was taken to Vinayaka Mission Hospital, Salem. The accident took place due to the negligence of stationed lorry in the no parking area without any proper signal and the owner and insurer of the said Eicher lorry are responsible to pay compensation to the legal representatives of the deceased and injured claimants.

4. On behalf of the 2nd respondent / Insurance Company, it is contended that the lorry was left near the Kaalipatty Bridge by following the traffic rules. Only the driver of the Omni Van drove his vehicle in a rash and negligent manner in a sleepy mode hit behind the lorry. Therefore, the driver of Omni Van has also contributed to the accident and he is not entitled for compensation. Both the drivers of the vehicles had no driving license at the time of accident. More number of persons than the seating capacity travelled in the Van and therefore, the 2nd respondent is not liable to pay compensation.

5. On behalf of the insurer of Omni Van, namely 4th respondent, it has been stated that the driver of the Van drove his vehicle with utmost care and caution. The driver of the Van was unable to observe the lorry



C.M.A.No.1984 of 2022

parked in the dark area in the middle of the road and hit behind the lorry.

Therefore, as the lorry was parked in the middle of the road without any signal the accident occurred due to the negligence of the driver of the lorry. Therefore, 4th respondent is not liable to pay compensation.

6. Eight M.C.O.Ps., were filed and common evidence was recorded in M.C.O.P.No.748 of 2018 and common Order was passed on 01.11.2021 by the Special District Court (to deal with M.C.O.P., cases), Salem.

7. The Tribunal upon consideration of oral and documentary evidence saddled the entire responsibility upon the insurer of Eicher Lorry 2nd respondent herein. This finding given against the 2nd respondent/ Insurance Company is now sought to be challenged.

8. At trial, on the claimant's side, five witnesses have been examined and forty-three documents have been marked. On the respondent's side, driver of the Omni Van, Kalaimani was examined as RW1 and two witnesses have been examined and three documents have been marked. Exs.C1 to C3 are the Disability Certificates of Raju, Angama Devi and Vijayakumar (Claimants). PW1 to PW5 would state that at the



C.M.A.No.1984 of 2022

relevant point of time, when they were travelling in the Omni Van, the Omni Van while turning U turn hit behind the lorry which was stationed in the middle of the road without any blinkers and due to the negligent stationing of lorry by its driver, accident happened. PW1 alone has been extensively cross-examined by the insurer of Omni Van and Eicher lorry. During the cross examination of PW1, he would state that accident occurred in the middle portion of the road. No answer advantageous to the 1st and 2nd respondent (owner and insurer of Eicher lorry) was elicited through PW1.

9. Driver of the Omni Van though is a claimant in M.C.O.P.No.748 of 2018, he was examined as RW1 by the 4th respondent-insurer of Omni Van. It is the evidence of RW1 that when he turned towards Kaalipatty diversion road on the left hand side, lorry was stationed in the middle of the road without any blinkers and when he was turning his vehicle, it hit upon the lorry from behind and his left front side of the Van hit on the right rear side of lorry. RW1 would also state that “என் கார் டையரில் பஞ்சர் ஆனபோதுதான் விபத்து ஏற்பட்டது என்றால் சரிதான்.”

10. On the 2nd respondent's side, no ocular witness was examined. On a careful perusal of the testimony of PW1 and RW1, it is pellucid that,

5/13



C.M.A.No.1984 of 2022

had the blinkers on the Eicher lorry had been lit, stationing of lorry might have been noticed by RW1 (driver of Omni Van) and accident would have been averted.

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11. As per Sections 122, 126, and 201 of Motor Vehicles Act and Rule 15 of Road Regulations, 1989, leaving a vehicle in a public place in a way (i.e.), likely to cause obstruction or inconvenience to the road users is prohibited. As per the regulations 28 of Motor Vehicles regulations 2017, what are the precautions to be taken by the driver is given hereunder:

Vehicles Breakdown (Regulation 28): In case a vehicle with more than two wheels has broken down at a place where it can be recognised in time as a stationary obstacle.

- i) The hazard warning lights of the vehicle shall be switched on immediately;
- ii) On highways and major roads with fast speed, reflective traffic warning triangles shall be placed at a distance of fifty meters behind the broken-down vehicles.
- iii) If there is a bend on the road where the vehicle is parked, reflective traffic warning triangles shall be placed before the bend.



C.M.A.No.1984 of 2022

12. As per Ex.P22, Motor Vehicles Inspector Report in respect of Eicher lorry in column No.12 damage sustained by the vehicle due to the accident is mentioned as follows:

“Rear right body dented and Rear right brake light Assembly broken, Rear right wheel mudguard (rear side) dented”.

13. As per Ex.P23 – Motor Vehicle Inspector Report of Omni Van, Column No.12, details regarding damage sustained by the vehicle due to the accident, the following details are mentioned in Ex.P23.

“Front wind screen glass broken, driver dash board damaged, Front bumper. Front body, Wiper set, Front left Head light, Indicator damaged, front left hand RA mirror broken, Front and Rear both side door glasses broken, Front both seats and centre and sweat assembly damaged both side Front and rear doors totally damaged, Steering column, linkages damaged, Front, right, left, rear and T roof body and structure dented, bent & damaged, Left side running board dented.”

14. In such circumstances, the contention of the appellant/2nd respondent Insurance Company that driver of the Omni Van has also



C.M.A.No.1984 of 2022

contributed to the accident is not acceptable in the absence of testimony of any ocular witness on the side of the 2nd respondent/Insurance Company.

15. Based upon the testimony of the above said witnesses coupled with Exs.P22 and P23, the Tribunal has fastened the entire liability upon the insurer of Eicher lorry cannot be found fault with. This Court does not find any good reason to upset the findings of the Tribunal. This Court also does not find any perversity or infirmity in the findings of the Tribunal.

16. On quantum of compensation, learned counsel for the appellant/ Insurance Company would vehemently argue that for the fracture suffered by the claimant, the District Medical Board assessed the disability of the claimant as 30% partial permanent disability. The Tribunal invoked multiplier method and for the disability suffered arrived at Rs.10,40,275/- which is on the higher side. He would further contend that as per Ex.P21 salary certificate the net salary found in the same is taken as notional income which is also not correct and sought for change in the quantum of compensation.



C.M.A.No.1984 of 2022

17. The learned counsel for the claimant rather would strenuously put-forth that the claimant suffered two fractures namely, fracture on the right femur and fracture on the left forearm. He is working as Assistant Engineer in Public Works Department, Villupuram and is not in a position to work as he worked before. In consideration of medical records and evidence of PW1, the Tribunal has assessed the functional disability at 10%. As per Ex.P21 salary certificate, his notional income is fixed at Rs.54,181/-. Under what circumstances, in injury cases, multiplier method has to be invoked has been discussed by the Hon'ble Supreme Court in **Raj Kumar v. Ajay Kumar** reported in **[(2011) 1 SCC 343]** and certain guidelines have been issued in this regard which are given hereunder:

"(i) All injuries (or permanent disabilities arising from injuries), do not result in loss of earning capacity.

(ii) The percentage of permanent disability with reference to the whole body of a person, cannot be assumed to be the percentage of loss of earning capacity. To put it differently, the percentage of loss of earning capacity is not the same as the percentage of permanent disability (except in a few cases, where the Tribunal on the basis of evidence, concludes that percentage of loss of earning capacity is the same as percentage of permanent disability).

(iii) The doctor who treated an injured-claimant or who examined him subsequently to assess the extent of



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C.M.A.No.1984 of 2022

his permanent disability can give evidence only in regard the extent of permanent disability. The loss of earning capacity is something that will have to be assessed by the Tribunal with reference to the evidence in entirety.

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons, depending upon the nature of profession, occupation or job, age, education and other factors."

To put it in a nutshell, the Apex Court is of the view that if a person suffers from permanent disability, either partially or totally, after the period of treatment and recuperation, if the disability affects his performance to attend to his duties and bodily functions depending upon the age, work or avocation and the impact and effect of the disability etc, the Court is justified in invoking multiplier method in injury cases.

18. From the evidence of PW1, it is pellucid that 34 year old, Civil Engineer, suffered by fracture of right femur and fracture in left forearm. It is the evidence of PW1 that due to the said fractures suffered by him on account of the accident he finds difficulty in climbing upstairs and to lift weight during his official work. Taking into account of his evidence and nature of fracture suffered, the Tribunal has fixed functional disability at 10% and the loss of future income is worked out as Rs.10,40,275/- is

10/13



C.M.A.No.1984 of 2022

certainly not on the higher side (Rs.54,181/- X 12 X 16m X 10%). The Tribunal has granted Rs.20,000/- for pain and sufferings and Rs.5,00,000/- towards medical expenses. In all, an amount of Rs.15,60,275/- is granted as compensation. In consideration of the above said details, the amount awarded by the Tribunal under various heads are reasonable and acceptable and does not warrant any interference by this Court.

19. In the result,

(i) The Civil Miscellaneous Appeal stands dismissed. No costs.

(ii) The compensation awarded by the Tribunal is confirmed.

(iii) The appellant / Insurance Company is directed to deposit the compensation awarded by the Tribunal i.e., **Rs.15,60,275/-** (less the amount already deposited if any) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, **(excluding the period of default, if any)** to the credit of M.C.O.P.No.1177 of 2018 on the file before the Motor Accident Claims Tribunal, Special District Judge, Salem, within a period of eight weeks from the date of receipt of a copy of this Judgment.

(iv) On such deposit being made, the claimant is at liberty to withdraw the award amount along with interest and costs, after adjusting the amount, if any already withdrawn, by filing cheque application before

11/13



C.M.A.No.1984 of 2022

the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall disburse the enhanced amount upon production of the certified copy showing proof of payment of Court fee by the claimant. Consequently, connected miscellaneous petition is closed.

28.11.2025

Index : Yes/No
Speaking / Non-speaking order
ssn

To:

1. The Motor Accident Claims Tribunal,
Special District Judge, Salem.
2. The Section Officer,
V.R.Section,
High Court of Madras,
Chennai.



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C.M.A.No.1984 of 2022

R.KALAIMATHI, J.,

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**C.M.A.No.1984 of 2022
and
C.M.P.No.15096 of 2022**

28.11.2025