



CMA NO.4775 OF 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2025

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CORAM :

**THE HONOURABLE MRS. JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR. JUSTICE R.SAKTHIVEL**

**CMA NO.4775 OF 2019
AND
CMP NO.27494 OF 2019**

The Branch Manager,
Reliance General Insurance Co.Ltd.,
Trichy Town, Trichy District.

... Appellant / 3rd Respondent

Vs.

1. A.Vijayakumar
2. K.Mathiyazhagan
3. S.Karthick
4. P.Selvakumar
5. The Branch Manager,
The National Insurance Co., Ltd.,
Gobichettipalayam, Erode District.

... 1st Respondent / Petitioner
... 2nd Respondent / 1st respondent
... 3rd Respondent/ 2nd respondent
... 4th Respondent / 4th respondent

... 5th Respondent/ 5th respondent

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, praying to set aside the Award dated December 11, 2018 made in M.C.O.P.No.195 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gobichettipalayam.



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For Appellant : Mrs. Bhuvanasundari
For R1 : Mr.M.Guruprasad
For R5 : M/s.N.B.Sweetha
For R2 to R4 : Not served

J U D G M E N T

J.NISHA BANU, J.

Feeling aggrieved by the Award dated December 11, 2018 passed in M.C.O.P.No.195 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gobichettipalayam, ['Tribunal' for short] the third respondent / Insurance Company preferred this Civil Miscellaneous Appeal.

2.For the sake of convenience, the parties herein will be referred to as per their rank in the Motor Claim Original Petition.

Petitioner's case

3.The case of the petitioner / claimant is that on October 24, 2012 at 1.30 pm, the petitioner was travelling as a pillion rider in the motorcycle bearing registration no.TN 36 J 8283 driven by the fourth respondent on the left side of the road towards East to west in Perundurai



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to Thingalur road, at Thudupathi near Thulukkampalayam in a normal

speed by following traffic rules. At that time the first respondent drove the lorry bearing registration No. TN 30 U 5271 in a rash and negligent manner, dashed against the motorcycle. Due to the accident the claimant suffered multiple fractures in his right leg. Immediately after the accident, the claimant was taken to KMCH hospital, Erode. Accident took place due to the rash and negligent driving of the first respondent. A criminal case was also registered against the first respondent. The first respondent admitted the offence and remitted the fine amount on January 3, 2013. The claimant was admitted in the hospital more than 34 days as in-patient in the hospital and during the said period surgery was performed five times. During one of the Surgery performed on the right leg, a steel plate was fixed. The claimant spent huge amount towards medical expenses. Further the doctor advised the claimant to undergo two more surgeries on the right leg and he has to spend huge amount in this regard. The claimant is not yet recovered from the grievous injuries and fractures sustained by him in the accident. At the time of the accident the claimant was 36 years old and he owned agricultural land where he is doing agricultural work. That apart he owned Omini van bearing registration No. TN 36 T 6354 and he was driving the van for hire. Due to the accident, he was enable to drive



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the Omini van, hence he sold the same. He was earning not less than 40,000/- per month, from the Omini van as well as the agricultural income.

Accordingly, he seeks 25,00,000/- lakhs as compensation from the respondents 1 and 2.

4.The first respondent is the driver of the lorry who caused the alleged accident and the second respondent is the owner of the lorry. The third respondent is the insurer of the second respondent's lorry. The fourth respondent is the rider on which the claimant was a pillion rider. The fifth respondent is the insurance company of the fourth respondent's motor vehicle. The respondents 4 and 5 were added as a formal parties but no relief was sought against them.

5.The respondents 1, 2 & 4 were set exparte before the Tribunal.

Third respondent's case

6.The 3rd respondent – Insurance Company filed counter stating that the first respondent/driver drove the lorry slowly by following all the traffic rules and regulations. At that time the rider of the motorcycle

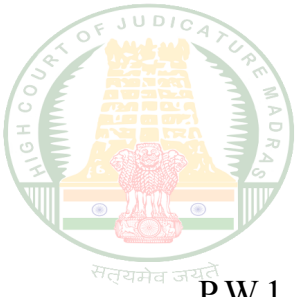


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came in the wrong side of the road, unable to control his vehicle, suddenly moved into the middle of the road and invited the accident. There is no fault on the part of the driver of the lorry/first respondent. Therefore, the owner and insurance company of the motorcycle bearing registration No.TN 36 J 8283 i.e. respondents 4 and 5 are equally liable for paying compensation. As it is a clear head on collusion case, composite negligence of the rider of the vehicle also to be taken into consideration for fixing the contributory negligence. Further, the rider of the motorcycle was not having valid and effective driving license at the time of accident. The age, occupation, monthly income of the claimant, the nature of the injuries, the nature of the treatment and the medical expenses incurred are all denied. Accordingly, the third respondent prayed to dismiss the original petition.

Fifth respondent's case

7.The 5th respondent – Insurance Company filed counter affidavit stating that the FIR was registered against the first respondent and the first respondent admitted the offence and paid the fine amount before the Criminal Court in STC No.12/2013. Therefore, the accident has occurred only due to the rash and negligent driving of the first respondent. The fourth respondent is not responsible for the accident.

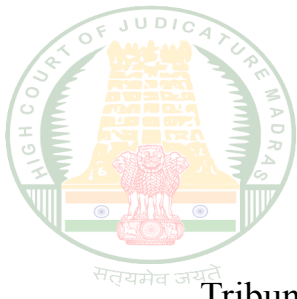


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8. During the enquiry, the first claimant was examined as

P.W.1 and one Kavundiappan was examined as P.W.2 and Ex-P.1 to Ex-P.37 were marked on the side of the Claimant. Neither oral evidence and nor documents were adduced on the side of the respondents. The disability certificate issued by the Government Head Quarters Hospital, Erode was marked as Ex.C1.

9. The Tribunal after hearing both sides and considering the evidence available on record, based on the Ex.P1 FIR, Ex.P8 charge sheet and Ex.P9 certified copy of STC extract in STC 12 of 2013 on the file of Judicial Magistrate, Perundurai, came to the conclusion that the accident occurred due to the rash and negligent driving of the 1st respondent and the 2nd respondent is the owner of the Lorry. At the time of accident, the Lorry which caused accident was insured with the third respondent / Insurance Company. Accordingly, the Tribunal held that respondents 1 to 3 are jointly and severally liable to pay the compensation to the claimant. However, the 3rd respondent, as insurer, is liable to pay the Award amount to the claimant.



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10.As far as quantum of compensation is concerned, the

Tribunal considering the evidence of PW2 and also facts that the claimant owned nearly 10 acres agricultural lands and upon considering the nature of the injury mentioned in the disability certificate, came to the conclusion that the claimant is entitled to compensation as tabulated below:-

Sl.No.	Head	Amount
1.	Medical Expenses	Rs.5,96,834/-
2.	Permanent Disability, Loss of earning and loss of earning power	Rs.11,46,600/-
3.	Transport to Hospital	Rs.10,000/-
4.	Extra Nourishment	Rs.20,000/-
5.	Pain and suffering	Rs.75,000
	Total	Rs.18,48,434/- Rounded off Rs.18,48,500/-

11.Feeing aggrieved by the award passed by the Tribunal, the third respondent/Insurance Company has preferred this Civil Miscellaneous Appeal.

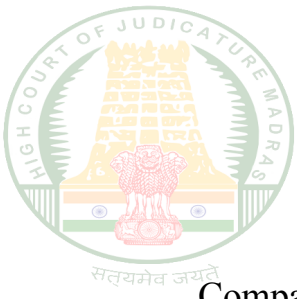
12.Ms.C.Bhuvanasundari, learned counsel for the appellant / Insurance Company argued that though the claimant sustained 70% disability there is no evidence to show that it has affected his income. Further the Tribunal taken a sum of Rs.6,500/- as notional income and applied multiplier method for awarding compensation which is not



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warranted. The learned counsel further argued that the injuries suffered by the claimant in the accident has not resulted in functional disability, hence, multiplier method adopted by the Tribunal is erroneous. Accordingly, the learned counsel prayed to allow this Civil Miscellaneous Appeal.

13.Mr. M.Guruprasad, learned counsel appearing for the first respondent/claimant would argue that the claimant had already underwent five surgeries in his right leg and doctor advised him to be prepared to undergo two more surgeries in the right leg. Further, due to the accident, the claimant not able to drive the vehicle, through which the claimant earned considerable quantum of income. Hence, he sold the Omini van after the accident. Further the claimant owned 10 acres agricultural land but due to the injuries the claimant is not able to earn income in the agricultural operation. The Tribunal has taken a sum of Rs.6,500/- as his notional income and it is very meager to award compensation. Hence, there is no need to interfere in the award passed by the Tribunal. Accordingly, the learned counsel prayed to dismiss this Civil Miscellaneous Appeal.

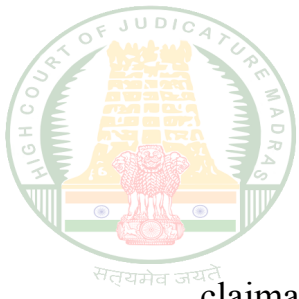


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14.It is contended on behalf of the appellant-Insurance

Company that the accident took place due to rash and negligent driving of the fourth respondent. However, on perusal of the records, it is seen that the FIR was registered against the first respondent. The first respondent also appeared before the criminal Court, admitted the offence and paid fine amount. The Insurance company also did not produce any evidence to show that the fourth respondent is responsible for the accident. Thus, the evidence available on record clearly establish that the first respondent alone caused the accident, hence, the second respondent/owner of the vehicle and third respondent / insurance company of the vehicle are liable to pay the compensation to the claimant. The Tribunal rightly decided the liability against the insurance company over which we see no reason to interfere.

15.When the matter is taken up on December 12, 2024, this Court directed to the claimant to appear before this Court on January 10, 2025. On January 10, 2025 the first petitioner / claimant appeared before this Court. The claimant sustained injuries in his right leg and the scar in his leg would show that he underwent an operation is visible. He has stated that he cannot drive Car or undertake agricultural activities in his land. He cannot walk alone without aid.



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16. In the circumstances, this Court is of the view that the

claimant has suffered functional disability. Hence the multiplier method adopted by the Tribunal is correct.

17. As far as quantum is concerned, the claimant proved that he owns nearly 10 acres of agricultural lands. For doing agricultural work some kind of expertise is necessary and the claimant is having such expertise to do the agricultural operation. However, due to the injuries sustained in the accident, it is not possible to him to undertake his agricultural activities effectively. Though he can do agricultural operations by appointing another person, he could not get the desired yield or result. In the circumstances, this Court is of the considered view that the monetary loss suffered by the claimant is not less than 6,500/- per month. Hence, the Tribunal rightly taken Rs.6,500/- as his notional income, applied future prospects and adopted multiplier method as per the judgments of the Hon'ble Supreme Court in *National Insurance Company Limited vs. Pranay Sethi & Others [2017 (16) SCC 680]* and *Sarla Verma & Ors. Vs. Delhi Transport Corporation & Another [2009 (6) SCC 121]*. The Tribunal also awarded actual medical expenses incurred by the claimant. In all respects, the award passed by the Tribunal



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is befitting the nature of injuries suffered by the claimant. There is no infirmity or irregularity in the award passed by the Tribunal. There is no merit in this Civil Miscellaneous Appeal.

18. Accordingly, the Award dated December 11, 2018 made in M.C.O.P.No.195 of 2013 on the file of the Motor Accidents Claims Tribunal, Sub Court, Gobichettipalayam is confirmed. The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.] [R.S.V., J.]

10.01.2025

Index : Yes / No
Neutral Citation : Yes / No
Speaking Order : Yes / No
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To

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Sub Court, Gobichettipalayam.



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