

CMA. No.1592 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.06.2025

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

Civil Miscellaneous Appeal No.1592 of 2023

The Oriental Insurance Company Limited,
Represented by its Branch Manager,
Third Party Hub (HUB),
No.32/312, 13th Street, 1st floor,
Vijayalakshmi Complex, Phase II,
Sathuvachari, Vellore - 4.

... Appellant

Versus

1. Kumaresan

2. E.Chakkaravarthy

3.New India Assurance Company Limited,
Represented by its Branch Manager,
Office's Line, Vellore.

... Respondents

(2nd Respondent set *ex parte* in the Lower Court.

Hence notice him is dispense with)

(3rd Respondent is not a necessary party. Hence given up)

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act 1988), against the Award and Decree dated 25.04.2023 passed in M.C.O.P. No. 180 of 2020 on the file of the Motor Accidents Claims Tribunal (Special Sub Court) Tirupattur.



CMA. No.1592 of 2023

For Appellant : Mr. R.Sivakumar

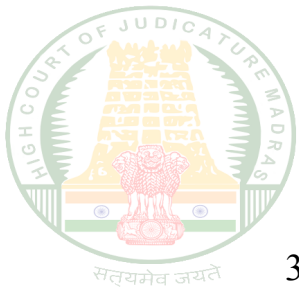
For Respondents : Mr. M. Arun,
for M/s Karan & Uday (for R1)

: (R2, R3 - Given up)

J U D G M E N T

Challenging the award passed by the award and decree dated 25.04.2023 passed in M.C.O.P. No.180 of 2020 on the file of the Motor Accidents Claims Tribunal (Special Sub Court) Tirupattur, the Insurance Company has preferred the present appeal.

2. The first respondent in this appeal is the claimant in M.C.O.P. No. 180 of 2020 on the file of the Motor Accident Claims Tribunal (Special Sub Court) Thirupattur. The appellant/Insurance Company is the second respondent before the Tribunal. The second respondent in this appeal was set *ex parte* before the Tribunal, and the notice to the second respondent is hereby dispensed with. The third respondent in this appeal had already been determined to be not a necessary party and was therefore given up.



CMA. No.1592 of 2023

WEB COPY

3. As per the claim petition, the claimant contended that he was working as a driver and was earning Rs.25,000/- per month. On 20.05.2020, while he was driving the Lorry bearing Registration No.TN-23-Y-6390 on Chennai to Bangalore National Highway, near the Police Check Post, in Koothambakkam within Pallikonda Police Range, at about 11:45 P.M., a container Lorry bearing Registration No. TN-04-AF-1580 was driven by its driver in a rash and negligent manner and suddenly turned the vehicle on the right side without giving any indication. The claimant, caught unaware, applied the brakes suddenly, but in spite of it, his Lorry hit the Container Lorry on its backside. In the impact, the claimant suffered fracture injuries in both legs. In this regard, a case in Crime No.376 of 2020 was registered as against the claimant. In the meantime, the claimant was taken to Government Hospital, Vellore, where, after first aid, he was referred to the Government Specialty Hospital at Adukkamparai. Subsequently, the claimant was taken to Arun Hospital, Krishnagiri for better treatment. During the course of his treatment between 21.05.2020 and 26.05.2020, he had underwent two surgeries. It was stated by the claimant that due to the injuries he suffered, he was bedridden for about one year, and thereafter, he started walking slowly. Even after a year, he could not resume his normal



CMA. No.1592 of 2023

WEB COPY

avocation as a driver of heavy vehicles. For the purpose of treatment, he had spent Rs.3,00,000/- besides he had lost his earnings for more than a year. Therefore, the claimant had filed the claim petition in M.C.O.P. No. 180 of 2020 on the file of the Motor Accidents Claims Tribunal (Special Sub Court) Tirupattur, seeking to award a sum of Rs.10 Lakhs as compensation for the injuries sustained by him, against the owner of the container Lorry/first respondent, and the Insurance Companies of both lorries/second and third respondents.

4. The claim petition was resisted by the second respondent- Insurance Company by contending that it was the claimant who had driven the Lorry in a rash and negligent manner and hit the container Lorry on its backside. Regarding the criminal case was registered against the driver of the Container Lorry, a final report was filed in S.T.C. No. 819 of 2020 dated 11.12.2020 for the offence under Section 279 of IPC and the case was ended by imposing fine amount of Rs.1,000/- to the driver of the Container Lorry. The Insurance Company also contended that the alleged loss of earnings, medical expenses, etc., had to be substantiated by the claimant by filing acceptable documentary evidence. In any event, since the claimant



CMA. No.1592 of 2023

was the one who had caused the accident, the Insurance Company was not liable to pay any compensation.

5. Similarly, the third respondent has filed a counter statement contending that the compensation claimed is high. The claimant was not entitled for payment of compensation when he has adequately contributed and was instrumental in causing the accident. The claimant was not earning Rs.25,000/- per month, as alleged and accordingly the third respondent prayed for dismissal of the claim petition.

6. Before the Tribunal, the claimant examined himself as P.W.1 and Exs.P1 to P19 documents were marked. On behalf of the second respondent-Insurance Company, one Mr. Kaali was examined as R.W.1. On behalf of the third respondent-Insurance Company, one Mr. Kadhirvelu was examined as R.W.2. However, no documentary evidence have been marked on the side of the respondents.

7. The Tribunal, on considering the oral and documentary evidence, passed the award dated 25.04.2023 directing payment of



compensation to the claimant as follows:-

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<u>SL.No</u>	<u>Description</u>	<u>Amount awarded by Tribunal</u>
1.	10% permanent Disability	Rs.50,000/-
2.	Pain and Suffering	Rs.50,000/-
3.	Transportation	Rs.28,175/-
4.	Attendant expenses	Rs.1,500/-
5.	Extra Nourishment	Rs.15,000/-
6.	Medical expenses	Rs.1,01,476/-
7.	Loss of earning capacity for 5 months	Rs.40,000/-
	Total	Rs.2,86,151/-

8. As against the award passed by the Tribunal, the present appeal is filed by the appellant, who is the Insurer of the Container Lorry bearing Registration No.TN-04-AF-1580 belonging to the second respondent in the claim petition.

9. The learned counsel for the appellant/second respondent contends that the Tribunal erred in concluding that the accident has occurred only due to rash and negligent driving of the driver of the Container Lorry bearing Registration No.TN-04-AF-1580 belonging to the second respondent herein and insured with the appellant. The Tribunal did not consider that the accident has occurred due to the negligence on the part



CMA. No.1592 of 2023

WEB COPY

of the claimant alone, who was driving the Lorry bearing Registration No.TN-23-Y-6390 at the time of accident. When the accident was caused due to his own negligence, then, the Claimant is not entitled to claim any Compensation from the appellant. It is an admitted fact that the Lorry driven by the claimant had dashed the container Lorry on it's backside and caused damages. The Tribunal did not take note of the First Information Report, under Ex.P1 registered against the claimant and he has also admitted his guilt and paid the fine of Rs.1,000/- before the jurisdictional Court. This amply proves that it was the claimant, who, by his negligent driving, caused the accident. However, the Tribunal concluded that the appellant has to compensate the claimant for the injuries sustained by him, without any evidence. The claimant did not examine any independent eye witness to prove the manner in which the accident has occurred. On the other hand, the respondents 2 and 3 in the claim petition have examined RW1 and RW2, whose evidence was simply brushed aside by the Tribunal. Furthermore, the claimant had taken treatment as in-patient only for six days and was bed ridden for a few days. While so, the amount of Rs.2,86,151/- awarded by the Tribunal is onerous and it is not in consonance with the evidence available on record. Accordingly, the



CMA. No.1592 of 2023

learned counsel for the appellant prayed for allowing this appeal.

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10. Per contra, the learned counsel appearing for the Claimant submitted that the compensation fixed by the Tribunal is fair and is reasonable and it needs no interference. Accordingly, he prayed for dismissal of this appeal.

11. Heard the learned counsel for both sides and perused the materials available on record.

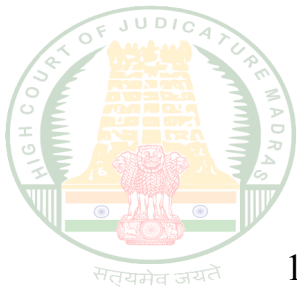
12. It is an admitted fact that on the date of accident, the Lorry driven by the claimant and the container Lorry driven by the driver of the first respondent in the claim petition colluded against each other. Even though the first information report in Crime No.376 of 2020 was filed as against the claimant, the fact remains that the claimant had suffered injuries in the accident. It is also to be noted that the driver of the container Lorry was not examined before the Tribunal. He is the best person to speak about the negligence or otherwise of the claimant in driving the Lorry. On the other hand, the officers of the Insurance Company were examined before



CMA. No.1592 of 2023

the Tribunal as R.Ws.1 and 2. In fact, the deposition of R.Ws.1 and 2 are based on the enquiry conducted by them post-accident and therefore, their evidence is not helpful for the appellant to substantiate their defence. Therefore, the defence of the appellant with respect to the manner in which the accident said to have taken place and the negligence on the part of the claimant is not proved through acceptable evidence.

13. On the other hand, it was substantiated by the claimant that he suffered grievous injury and was hospitalized for five days. The injury suffered by the claimant is borne out of the hospital records such as wound certificate, discharge summary and medical bills. In such circumstance, the Tribunal, by ignoring the First Information Report registered against the claimant, has rightly determined the compensation amount payable to the claimant. Furthermore, the compensation amount awarded by the Tribunal is befitting the nature of injuries sustained by the claimant, his earning capacity, his age and avocation. While so, this Court is of the view that the award passed by the Tribunal needs no interference.



CMA. No.1592 of 2023

WEB COPY

14. In the result, the Award and Decree dated 25.04.2023 passed in M.C.O.P. No. 180 of 2020 on the file of the Motor Accidents Claims Tribunal (Special Sub Court) Tirupattur is hereby confirmed. The Civil Miscellaneous Appeal is dismissed. No costs.

15. It is seen from the records that pending appeal, interim stay was granted directing the appellant to deposit 50% of the award amount. It is stated that the appellant has complied with the said condition and deposited 50% of the award amount. Therefore, the appellant is directed to deposit the balance 50% of the award amount with accrued interest, less the amount, if any, already deposited, within a period of eight (8) weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the Tribunal is directed to transfer the said amount to the claimant/first respondent directly to his bank account through RTGS within a period of two (2) weeks thereafter.

18.06.2025

Speaking / Non Speaking order
Neutral Citation : Yes/No
Index : Yes/No
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CMA. No.1592 of 2023

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To.

1. The Motor Accidents Claims Tribunal
(Special Sub Court) Tirupattur.
2. The Section Officer, VR Section,
High Court of Madras.



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CMA. No.1592 of 2023

T.V.THAMILSELVI,J.

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C.M.A.No.1592 of 2023

18.06.2025