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C.M.A. No.2274 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON: 09 / 12 / 2024

JUDGMENT DELIVERED ON: 19 / 02 / 2025

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

AND

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

CMA NO.2274 OF 2022
AND CMP NO.17477 OF 2022

The Branch Manager,
M/s. The New India Assurance Co. Ltd.,
No.99/C-3, 1st floor, Vadakku Street,
Opp. To New Bus Stand, Perambalur.
Now at Motor Third Party Claims,
No.232, Bombay Mutual Building,
6th floor, NSC Bose Road,
Chennai – 600 001.

... Appellant / 2nd Respondent

Vs.

1. Rajavel

... 1st Respondent / Petitioner

2. Rajesh

... 2nd Respondent / 1st respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, praying to set aside the Award dated May 25, 2022 made in M.C.O.P.No.139 of 2018 on the file of the Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Perambalur.



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For Appellant : Mr. P.Sankaranarayanan
For R 1 : Mr.S.P.Yuaraj
For R2 : Mr.R.Krishnasamy

J U D G M E N T

R.SAKTHIVEL, J.

Feeling aggrieved by the Award dated May 25, 2022 passed in M.C.O.P. No.139 of 2018 on the file of the 'Motor Accidents Claims Tribunal (Chief Judicial Magistrate), Perambalur' ['Tribunal' for short], the second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

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

Petitioner's case :

3. The case of the petitioner is that on January 02, 2018 at about 12.15 hours, he was travelling as a cleaner in Mahindra Navistar Truck bearing Registration No.TN-18-J-0612 loaded with iron rods, on Trichy-Chennai Highway. While approaching Venganoor Bus-stop, the said Truck was driven by petitioner's relative / first respondent, namely Rajavel in a rash and negligent manner and the front right side tyre of the



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said Truck suddenly burst. Consequently, first respondent lost control and the vehicle toppled upside down. In the accident, the petitioner's left leg was crushed between iron rods. Immediately, he was admitted in the Government Hospital, Perambalur for first aid and then admitted in Atlas Hospital, Trichy, where his left leg below knee was removed. Even thereafter he continued treatment as in-patient in Thanjavur Government Medical College Hospital and a surgery was performed again in his left leg. The accident happened only due to the rash and negligent driving of the first respondent against whom a case was registered in Crime No.3/2018 under Sections 279 and 337 of Indian Penal Code, 1860 by the Ramanatham Police, Cuddalore. The petitioner was aged about 34 years at the time of accident and he was working as a load man in M.M.S. Fisheries on contract basis and earned Rs.1000/- per day *i.e.*, Rs.30,000/- per month. Accordingly, he filed claim petition seeking Rs.1,00,00,000/- as compensation from the first respondent who is the owner cum driver of the Truck and the second respondent who is its insurer.

First respondent's case :

4. The first respondent remained absent and was set *ex-parte* before the Tribunal.



Second respondent's case :

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5. The 2nd respondent – Insurance Company filed counter denying the petition averments and stating that the petitioner was travelling as an unauthorized passenger and hence, second respondent is not liable to pay compensation to the petitioner. Accordingly, the second respondent prayed to dismiss the original petition.

Tribunal :

6. Before the Tribunal, in order to prove the petitioner's case, the petitioner examined himself as P.W.1, one Rajaraman was examined as P.W.2 and Ex-P.1 to Ex-P.15 were marked. On the side of the respondents, one Tmt.Bama, attached to Regional Transport Office, Virudachalam was examined as R.W.1, and Ex-R.1 & Ex-R.2 were marked. The disability certificate issued by Medical Board attached with Government Hospital, Perambalur was marked as Ex-C.1.

7. The Tribunal after hearing both sides and considering the evidence available on record, came to the conclusion that the accident occurred due to the negligence on the part of 1st respondent. It was the duty of Driver as well as the owner of the vehicle to check the tyre quality



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and its air before journey, but they did not do so. Since the petitioner was travelling as an unauthorized passenger, the first respondent alone is liable to pay the compensation. However, as the first respondent's vehicle was insured with the second respondent, the second respondent shall pay and recover the same from the 1st respondent. As regards quantum of compensation, the Tribunal held that the petitioner has failed to prove his income and accordingly, it took notional income at Rs.8,000/- per month. Adding 40% future prospects to it, applying the multiplier of 16, and considering functional disability at 80%, the Tribunal awarded Rs.17,20,320/- as compensation under the head 'loss of income' and also awarded compensation under various other heads as detailed hereunder:

Sl.No.	Head	Amount Rs.
1	For Loss of income (Rs.11,200x12x16x80%)	17,20,320.00
2	For Transport to hospital	10,000.00
3	Medical Bills	1,48,087.00
4	For Extra Nourishment	25,000.00
5	Attender's Charge	25,000.00
6	For Pain and sufferings, mental agony	1,00,000.00
7	Loss of amenities	50,000.00
8	Future medical expenses	50,000.00
9	Damages to cloth	1,000.00
	Total	21,29,407.00
	Rounded off to	21,29,400.00



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8. Feeling aggrieved by the Award passed by the Tribunal, the

second respondent / Insurance Company has preferred this Civil Miscellaneous Appeal.

Arguments :

9. Mr. P. Sankaranarayanan, learned Counsel for the appellant/ 2nd respondent / Insurance Company argued that the petitioner was working as a 'load man' in M.M.S. Fisheries factory under P.W.2 - Rajaraman. The petitioner was travelling in the vehicle as an unauthorized person at the time of the accident. Hence the second respondent is not liable to pay any compensation. The Tribunal erred in directing the second respondent to pay the compensation amount and later recover it from the first respondent. Therefore, the Award passed by the Tribunal is to be interfered with. Accordingly, the learned Counsel prayed to allow this Civil Miscellaneous Appeal.

10. Per contra, Mr. S.P.Yuaraj, learned Counsel appearing for the first respondent/petitioner would argue that the petitioner was working under P.W.2 – Rajaraman as a load man in M.M.S. Fisheries factory. However, he accompanied the first respondent's driver on the fateful day



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as a cleaner in the Truck. Hence, he cannot be said to be an unauthorized

passenger. Further, the learned counsel brought notice of this Court to Ex-

P.9- Registration certificate and Ex-P.10 – Insurance Policy of the first respondent's Truck and argued that the seating capacity of the Truck is three persons and hence, the Insurance Policy covers up to three people in the cabin. Hence, pay and recovery ordered by the Tribunal is not right. Further, the Tribunal has taken a meager amount as notional income. The petitioner is also taking steps to file an appeal seeking enhancement of compensation. In these circumstances, he prayed to modify the award fixation, thereby directing the insurance company to pay the entire compensation amount.

11. Mr.R.Krishnasamy, learned Counsel for the 2nd respondent/ 1st respondent would argue that the first respondent's Truck was insured with the second respondent / Insurance Company and hence, if at all any compensation is to be paid, the liability solely rests upon the second respondent. The Tribunal was not right in ordering pay and recovery. Accordingly, he prayed to modify the Award to the extent that liability is wrongly fastened upon the 1st respondent and dismiss the Civil Miscellaneous Appeal.



Discussion :

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12. This Court has considered the submissions of the counsels for either side and perused the evidence available on record. The points that arise for consideration in this Civil Miscellaneous Appeal are:-

- (i) *Whether the petitioner was travelling as an unauthorized person in the lorry bearing Registration No.TN-18-J-0612, or as a cleaner / authorized person in the said lorry?*
- (ii) *Whether the insurance company is liable to pay the compensation or not?*

Point Nos. (i) & (ii)

13. On January 2, 2018 at about 12.15 hours, when the petitioner, employed as a load man under P.W.2 in his fishery, was travelling in Mahindra Navistar Truck bearing Registration No.TN-18-J-0612 which was loaded with iron rods, while on the Trichy-Chennai Highway near Venganoor Bus-stop, the front right side tyre of the lorry suddenly burst, and the driver lost control of the Truck and consequently, the Truck toppled. Due the accident, the petitioner sustained grievous injuries and his left leg had to be amputated below knee. There is no dispute with regard to the aforesaid facts now and moreover, the said facts



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are proved vide First Information Report (FIR), Ex-R.2 – Motor Vehicle

Inspection Report [M.V.I. Report] and the evidence of P.W.2. The M.V.I.

Report reveals that the accident happened not due to any mechanical defects but due to burst of front right side tyre while the lorry was running on the road. P.W.2 – Rajaraman deposed that the petitioner was working as a load man for the past 8 years under him in his fishery. The main contention in this Civil Miscellaneous Appeal is whether the petitioner was an authorised passenger of the lorry or not.

14. Contention of the petitioner is that though he was working as a load man under P.W.2 in his fishery, he travelled in the lorry bearing Registration No.TN-18-J-0612 driven by first respondent, only as a cleaner and hence, he is not an unauthorized person. Contention of the second respondent is that the deceased being a load man under P.W.2, can only be considered as an unauthorised person.

15. The nature of work of a cleaner and a load man, though not identical, are closely related and often interchangeable. Work of a load man is responsible for loading the goods onto the vehicle while the cleaner assists the driver as needed. Neither role requires significant skills,



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and individual often perform both task interchangeably. To be noted, the

Motor Vehicles Act, 1988 is a beneficial and social welfare legislation and

a lenient approach should be taken when deciding claim petitions. Merely

because the petitioner was employed as a load man under P.W.2 in his

fishery, he cannot automatically be deemed an unauthorised passenger as

contended by the second respondent. On the fateful day, the petitioner

could have boarded the Truck in the capacity of a cleaner for additional

income, possibly at the request of first respondent who is also his relative.

It is not the case of the insurance company that the petitioner was not

travelling in the Truck at the time of the accident nor that the occupation

of the vehicle exceeded more than three persons. Admittedly, no one else

other than the petitioner and the first respondent were travelling in the

Truck; there was no other person to act as a cleaner. It is not easy to drive

a Truck, which is bigger in terms of size when compared to other normal

ones, in the absence of a cleaner. Moreover, it is natural for people in such

roles to take up any additional job, that comes their way in order to earn

additional income. These facts and circumstances makes the petitioner's

contention that the petitioner was travelling as a cleaner in the first

respondent's lorry plausible. Admittedly, as per Ex-P.9 - Registration



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Certificate three persons can travel in the cabin. Hence, the petitioner being a cleaner and the cabin capacity of the lorry being three, the petitioner was not an unauthorised person and there appears to be no violation of Insurance Policy terms.

16. In Ex-P.10 – Insurance Policy issued by the second respondent for the first respondent's lorry, it has been mentioned as follows:-

“

Schedule of Premium

Own Damage	Liability
Basic OD Cover	Basic TP Cover
GVW above 12000KG	Compulsory PA cover for owner driver, LL to paid driver conductor cleaner employed for oprn

”

17. Thus, it is clear that the Insurance Policy is a package policy which covers the cleaner also. Hence, the insurance company is solely liable to pay the compensation to the petitioner who travelled in the Truck as cleaner at the time of the accident. The Tribunal without considering the nature of the policy, directed pay and recovery, which is erroneous.



18. It is true that neither the first respondent nor the petitioner

has preferred any appeal or cross objection *qua* pay and recovery. It is apposite to state here that the Tribunal while passing Award shall have the power of Civil Court. It is relevant to cite hereunder Section 169 of the Motor Vehicles Act, 1988:

“169. Procedure and powers of Claims Tribunals.—

(1) In holding any inquiry under section 168, the Claims Tribunal may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.

(2) The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnesses and of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the Claims Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(3) Subject to any rules that may be made in this behalf, the Claims Tribunal may, for the purpose of adjudicating upon any claim for compensation, choose one or more persons possessing special knowledge of any matter relevant to the inquiry to assist it in holding the inquiry.

(4) For the purpose of enforcement of its award, the Claims Tribunal shall also have all the powers of a Civil Court in the execution of a decree under the Code of Civil Procedure, 1908, as if the award were a decree for the payment of money passed by such court in a civil suit.”



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19. From the preamble of the Code of Civil Procedure, 1908

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“22. Upon hearing respondent may object to decree as if he had preferred separate appeal.— (1) Any respondent, though he may not have appealed from any part of the decree, may not only support the decree but may also state that the finding against him in the Court below in respect of any issue ought to have been in his favour; and may also take any cross-objection to the decree which he could have taken by way of appeal provided he has filed such objection in the Appellate Court within one month from the date of service on him or his



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pleader of notice of the day fixed for hearing the appeal, or within such further time as the Appellate Court may see fit to allow.

Explanation. — A respondent aggrieved by a finding of the Court in the judgment on which the decree appealed against is based may, under this rule, file cross-objection in respect of the decree in so far as it is based on that finding, notwithstanding that by reason of the decision of the Court on any other finding which is sufficient for the decision of the suit, the decree, is, wholly or in part, in favour of that respondent.

(2) Form of objection and provisions applicable thereto. —Such cross-objection shall be in the form of a memorandum, and the provisions of rule 1, so far as they relate to the form and contents of the memorandum of appeal, shall apply thereto.

* * * * *

(4) Where, in any case in which any respondent has under this rule filed a memorandum of objection, the original appeal is withdrawn or is dismissed for default, the objection so filed may nevertheless be heard and determined after such notice to the other parties as the Court thinks fit.

(5) The provisions relating to appeals by indigent persons shall, so far as they can be made applicable, apply to an objection under this rule.”

20. Thus, it is clear that in view of Order XLI Rule 22 of CPC, though the petitioner and the first respondent did not prefer any separate appeal or cross objection, they have every right to question the



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Award passed by the Tribunal *qua* pay and recovery as if they have preferred a separate appeal against the said finding.

21. As already alluded to *supra*, the Tribunal was not right in ordering pay and recovery and the same is set aside and further, it is held that the second respondent is solely liable to pay compensation to the petitioner.

22. As regards quantum of compensation, since it is stated that the petitioner/claimant is taking steps to file an appeal against the Award passed by the Tribunal for enhancement of compensation and since any enhancement made by this Court requires payment of suitable Court Fee, this Court is of the considered view that there is no need to interfere with the quantum of compensation awarded by the Tribunal in this Civil Miscellaneous Appeal. The petitioner may prefer an appeal attacking the quantum of compensation awarded by the Tribunal, if so desired or advised, subject to law. It is hereby clarified that this Court has not expressed any views on the merits of the case *qua* quantum of compensation. In the above circumstances, the appellant / Insurance Company may not have any grievance over the Award passed by the Tribunal. There is no merit in this Civil Miscellaneous Appeal.



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23. In light of the above, the Award dated May 25, 2022 made

in M.C.O.P.No.139 of 2018 on the file of the Motor Accidents Claims

Tribunal (Chief Judicial Magistrate, Perambalur) is modified by deleting the pay and recovery part and holding that the appellant / Insurance Company is solely liable to pay compensation to the petitioner. The appellant / insurance company is directed to pay the compensation amount as determined and directed by the Tribunal to the petitioner. In view of the facts and circumstances of this case, the parties shall bear their own costs. Consequently, connected Civil Miscellaneous Petition is closed.

[J.N.B., J.]

[R.S.V., J.]

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Index : Yes

Neutral Citation : Yes

Speaking Order : Yes

av/tk

To

The Motor Accident claims Tribunal
The Chief Judicial Magistrate
Perambalur.



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