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C.M.A.No.4205 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.08.2025

C O R A M

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
AND
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

C.M.A.No.4205 of 2019 and
C.M.P.No.23734 of 2019

The Branch Manager,
Reliance General Insurance Co. Ltd.,
Erode.

... Appellant/II Respondent

-VS-

1. Mr.R.Somasundaram
2. Mr.S.Krishnan

... I Respondent/Petitioner

... II Respondent/I Respondent

Prayer: Appeal filed under Section 173 of the Motor Vehicles Act, 1988 to set aside the decree and judgment dated 23.04.2019 passed in M.C.O.P.No.698 of 2012 by the Hon'ble Motor Accident Claims Tribunal, Chief Judicial Magistrate Court at Tiruppur.

For Appellant : M/s.C.Bhuvanasundari

For R1 : Mr.K.Myilsamy

ORDER

(By J.Nisha Banu,J.)

Feeling aggrieved by the Award dated 23.04.2019 passed in M.C.O.P.No.698 of 2012 by the Motor Accident Claims Tribunal, Chief



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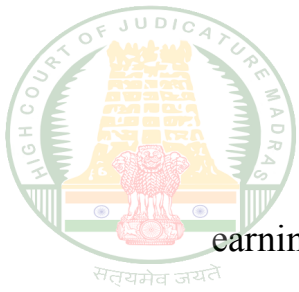
Judicial Magistrate, Tiruppur (in short 'Tribunal'), the appellant / Insurance

Company preferred this Civil Miscellaneous Appeal.

2. For the sake of convenience, the parties herein are referred to as per their array in the Tribunal.

Brief facts put forth by the claimant/injured:-

3. On 29.08.2012 at about 03.30 p.m., while the claimant – Somasundaram was driving a Vehicle (not specified as to the type of vehicle) bearing Regn.No.TN-39-BZ-7776 in Coimbatore-Salem National Highways No.47 from East to West direction, a lorry bearing Regn.No.KA-01-B-8545, driven by its driver in a rash and negligent manner dashed against the vehicle of the claimant. On account of the accident, the claimant sustained grievous injuries on his right elbow and suffered bone fracture. According to the claimant, the accident occurred due to the rash and negligent driving of the driver of the lorry. Before the Tribunal, the 1st respondent – owner of the lorry and the 2nd respondent - insurer of the lorry, were arrayed as the respondents. At the time of accident, the claimant was aged about 36 years and he was a Supervisor in a Textile Company and



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earning a sum of Rs.12,000/- per month. Stating that the lorry was insured with the 2nd respondent – insurance company and the accident occurred due to the careless and reckless driving of the driver of the lorry, the claimant filed the Claim Petition before the Tribunal seeking compensation of Rs.25,00,000/- (Rupees Twenty Five Lakhs only) along with interest and costs from the 2nd respondent – insurance company.

The case of the 2nd Respondent in the counter:-

4. The driver of the lorry bearing Regn.No.KA-01-B-8545 was not in possession of a valid and effective driving licence at the time of accident and there is no document produced in proof of issuance of policy in favour of the 1st respondent's lorry. The claimant was also responsible for the accident, as he had not noticed the oncoming vehicle and it was for the claimant to prove that the the lorry was driven by its driver in a rash and negligent manner and caused the accident. In the absence of proof of negligence on the part of the driver of the lorry, the 2nd respondent is not liable to pay compensation to the claimant. Further, the claimant has to prove the age, income and occupation and according to the appellant insurance company, the age of the injured was 40 years at the time of



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accident. As per the statutory demand, the concerned Police ought to have forwarded all the relevant documents to the insurance company within 30 days from the date of information, which was not adhered to. Stating that the amount of compensation claimed is unsustainable and excessive, the 2nd respondent prayed to dismiss the claim petition.

5. Before the Tribunal, the petitioner was examined as P.W.1, one Yuvaraj, Co-Worker was examined as P.W.2 and Dr.Senthilkumar as P.W.3. Ex.P1 to Ex.P11 were marked by P.W.1. On the side of the respondents, neither any witness nor exhibits were marked. The disability certificate issued by Tiruppur Medical Team was marked as Court Exhibits (C.Ex.P1).

6. The Tribunal, after considering the evidence available on record, held that the accident had occurred on account of the fault on the part of the driver of the lorry. Accordingly, the Tribunal held that the 2nd respondent / Insurance Company, being insurer of the lorry, is liable to pay the compensation to the claimant.



7. With regard to quantum of compensation, though there was no document produced in proof of income of the injured, on the basis of the age of the injured and occupation, the income of the injured was derived as Rs.9,000/- per month as per minimum wage specified. Therefore, the Tribunal had taken the said amount as the monthly notional income of the injured. The Tribunal, upon considering the percentage of the injured at 82% and adopting the multiplier method, computed the compensation as stated below:-

Sl.No.	Head	Amount
1.	Loss of income (9000x12x15x82/100)	Rs.13,28,400/-
2.	Medical Expenses as per Ex.P5	Rs.5,82,526/-
3.	Nutrition	Rs.50,000/-
4.	Transport Charges	Rs.25,000/-
5.	Pain and sufferings	Rs.1,00,000/-
6.	Mental agony	Rs.1,00,000/-
7.	Loss of Future Prospects	Rs.3,00,000/-
	Total	Rs.22,85,926/-

8. Feeling aggrieved by the quantum of compensation awarded by the Tribunal, the 2nd respondent / insurance company has preferred this appeal.



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9. Learned counsel for the appellant/insurance company would

argue that there is no fault purely on the part of the driver of the lorry and the injured was equally responsible for the accident. The Tribunal ought to have considered the aspect of contributory negligence on the part of the claimant. He would further argue that fixation of Rs.9000/- as minimum wage based on the evidence of P.W.2 is highly arbitrary. When a compensation had been awarded under the head 'pain and suffering', there is no need to award compensation under 'mental agony' separately. The fastening of the entire liability on the appellant/insurance company is erroneous and it requires modification and reduction of compensation.

10. Per contra, learned counsel appearing for the petitioner/injured would contend that the accident occurred only due to the rash and negligent driving of the 1st respondent's driver, which is evident from Ex.P1 / FIR registered under Sections 279 and 337 IPC. In the absence of any infirmity or illegality in awarding the amount of compensation, no interference is warranted and the appeal is liable to be dismissed.



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11. Heard the learned counsel on either side and perused the evidence and materials available on record.

12. The appellant / insurance company failed to examine the driver of the lorry. Once the claim petition was filed by the petitioner/injured, alleging that the driver of the lorry was responsible for the accident, the burden of proof lies on the appellant insurance company to establish that the accident had occurred on account of the mistake committed by the injured. As per Ex.P1 / FIR, the driver of the lorry, namely, Sudha Karthick alone was responsible for the accident. Though the appellant / insurance company disputed the issuance of policy, the appellant had not taken any steps to establish the said factum. It is not the case of the appellant that there is a breach of terms and conditions of the policy. The claimant had indicated the wrong policy number and there was no mention of expiry date in the petition, which cannot be put against the injured to deprive compensation. The Tribunal, instead of awarding lumpsum under the head 'pain and suffering and mental agony', split up the amount and awarded individually, which cannot be said to be excessive, especially



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when the manner in which the accident had occurred, was not denied by the appellant / insurance company. Once it was duly established through oral and documentary evidence that it was the driver of the lorry, who caused accident, on account of which, the claimant sustained irretrievable injuries. Therefore, the Tribunal came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the lorry, which, in our view, does not warrant any interference by this Court.

13. As regards the quantum of compensation is concerned, the Tribunal, having left with no other option, as no documentary evidence has been produced to prove the income of the injured fixed Rs.9,000/- as notional income of the injured. In the considered opinion of this Court and taking note of the grievous injuries suffered by the claimant that was assessed at 82%, the award of compensation arrived by the Tribunal to the tune of Rs.22,85,926/- is just and reasonable, warranting no interference by this Court and the appeal filed by the insurance company is liable to be dismissed.



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14. Accordingly, this Civil Miscellaneous Appeal filed by the

Insurance Company stands dismissed. Consequently, connected Civil

Miscellaneous Petition is closed.

(J.N.B.J.,) (M.J.R,J.,)
20.08.2025

Index: Yes / No

Internet: Yes / No

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To:

Motor Accident Claims Tribunal,
Chief Judicial Magistrate,
Tiruppur.



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