



C.M.A(MD)No.756 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2025**

CORAM

THE HON'BLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A(MD)No.756 of 2024
and
C.M.P(MD)No.8331 of 2024

HDFC ERGO General Insurance Company Ltd,
Door No.75-A, 3rd Floor, Tripura Arcade,
Trivendrum High Road, Palayamkottai,
Tirunelveli-2.

Represented by the Branch Manager. ... Appellant/2nd Respondent

Vs.

1.Velumanikandan ... Respondent/Petitioner

2.Sudharson Platinum Hospital Pharmacy,
Door No.4, Ground Floor, Salai Street,
Vannarpettai,
Tirunelveli-627 003. ... Respondent/1st Respondent

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the award in M.C.O.P.No.476 of 2021, dated 31.01.2024 on the file of Motor Accidents Claims Tribunal (Special Subordinate Court for MCOP Cases), Tirunelveli.

For Appellant : Mr.N.Shyllappakalyan



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For R1 : Mr.V.Sasikumar

For R2 : Mr.V.Shathuri Raja

JUDGMENT

Challenging the award of the Motor Accidents Claims Tribunal (Special Subordinate Court for MCOP Cases), Tirunelveli in M.C.O.P.No.476 of 2021, dated 31.01.2024, this Civil Miscellaneous Appeal is filed by the Insurance Company.

2. For the sake of convenience, the parties herein are referred to as per the ranking before the Tribunal.

3. The petitioner in the claim petition was the injured, namely, Velumanikandan, who was aged 21 at the time of accident. The first respondent was the owner of the vehicle involved in the accident and the second respondent is the insurance company i.e., the appellant herein. The claim of the petitioner is that on 14.11.2020, at about 14.00 hours, when he was standing with his TVS XL motorcycle bearing registration number TN72AR5826 in Thachanallur to Madurai Road, near Karaiyiruppu Vilakku for crossing the said road from west to east, a Jeep bearing registration No.TN72BH9469 belonging to the first respondent



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and insured with the second respondent driven by his driver in a rash and negligent manner, in a terrific speed without control and violating the traffic rules and regulations of the road, came from north to south and dashed against his motorcycle. As a result of which, he was thrown away from the motorcycle, sustaining grievous injuries in his left leg and head. Immediately, he was taken to the TVMC Hospital at Tirunelveli and was admitted as inpatient. On 15.11.2020, surgery was conducted to him and he was taking treatment for three months i.e., from 14.11.2020 to 06.03.2021. The petitioner was further admitted for higher treatment on 20.07.2021 to 08.09.2021. Thereafter, he had undergone treatment from 20.03.2022 to 02.05.2022 and 23.05.2022 to 22.06.2022. The Traffic Investigation Wing, Tirunelveli City Police, registered a case against the 1st respondent's driver in Crime No.246 of 2020 under Sections 279 and 337 of I.P.C. In the claim petition filed by the injured Velumanikandan, the learned Tribunal proceeded to examine the injured as P.W.1 and another person as P.W.2, petitioner side documents were marked as Exhibits P.1 to P.10 and petitioner side witness documents were marked as Exhibits X.1 and X.2. On the side of the respondent, two witnesses were examined and three documents were marked. On the side of the petitioner, the true copy of Accident Register cum Wound Certificate



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was marked as Exhibit X.1 and true copy of treatment particulars were further marked as Exhibit X.2. The disability certificate issued by the Medical Board for petitioner to an extent of 46% was marked as Exhibit C.1.

4. On the basis of the arguments putforth by both the parties and the materials available on record and the evidence deposed by either parties, the learned Tribunal proceeded to award compensation of Rs. 14,22,440/- to the petitioner. Challenging the same, the 2nd respondent Insurance Company is before this Court on two grounds.

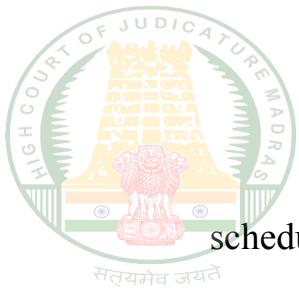
5. The learned counsel appearing for the Insurance Company submitted that the appeal is on two grounds. The first ground is on the quantum of the award and the second is on the ground of negligence. The accident which happened on the fateful day i.e., on 14.11.2020 was fully due to the negligence and mistake of the injured himself. The First Information Report was registered in Crime No.246 of 2020. Later, culminated in filing a final report before the Judicial Magistrate Court IV, Tirunelveli. In which, the case was closed as mistake of fact. The learned counsel for the Insurance Company further submitted that though



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the injured had made a case that the driver of the Jeep bearing Registration No.TN72BH9469 drove the Jeep in a rash and negligent manner from north to south in the Thachanallur to Madurai Road and dashed against him, after the enquiry, the Investigating officer came to a conclusion that on the basis of the witnesses of one Maharajan, Ramaya and Krishnaswami that on the fateful day, Velu Manikandan at about 2:00 p.m., in his motorcycle, came from the south to north direction along the Thachanallur to Madurai north-south road and while he was riding along the Karaiyiruppu turning, he suddenly crossed the road across the centre median from west to east. Only as a result of which, the Jeep which came from the north to south direction happened to dash against the injured vehicle without control and as such, the negligence could be fully attributed to the injured alone. Hence, the Tribunal has erred in fixing the negligence on the part of the driver of the Jeep.

6. He further relying upon the order passed by this Court in *M/s.National Insurance Company Limited, Madurai-20 Vs. K.Kannan & Another* reported in *2022 (1) TNMAC 538* submitted that, the Tribunal ought not to have adopted multiplier method, since there was no scheduled injuries. The injury sustained by the injured was not a



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schedule injury and as such, the Tribunal ought to have adopted only the Percentage Method for calculating the compensation. On that basis, he pressed at least to modify the award adopting the said proposition.

7. Per contra, the learned counsel for the injured relying upon the judgment passed by the Hon'ble Division Bench of this Court in the case of **Gnanamani & Others Vs. Vimalanadhan & another** reported in **2021 (2) TNMAC 8** submitted that, mere closure of F.I.R as mistake of fact will not be a ground to conclude that the injured was at fault and pressed for dismissal of the appeal.

8. Heard the learned counsel on either side and perused the material available on record.

9. The Tribunal took into account of the fact that the 1st respondent who is the owner of the offending Jeep did not come forward to contest the case as against the petitioner. It was also carefully recorded by the Tribunal that F.I.R was registered as against the 1st respondent's driver. Though the 2nd respondent Insurance Company had examined the 1st respondent's driver Ganesh Mani Iyer as RW1, in his examination-in-



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chief, he had deposed that on 14.11.2020, when he was driving a Jeep proceeding towards Tirunelveli City on the Madurai to Tirunelveli Main Road from north to south and when he was approaching near Karaiyiruppu Vilakku, at that time, a rider of the TVS XL motorcycle came from south to north in a high speed and without noticing the Jeep, hit against the Jeep and it was the rider of the motor vehicle who was responsible for the cause of accident. He had also further deposed that, the police after thorough investigation, closed the case as mistake of fact as he was not responsible for that accident. The Tribunal had further recorded that the 2nd respondent Insurance Company in order to substantiate the evidence of RW1 Ganesh Mani Iyer, examined one Ganapathi, Special Sub Inspector of Police, TIW, Tirunelveli City Police as RW2, through whom marked the rough sketch as well as final report. During cross examining RW2, the said Ganapathi had admitted that negative final report was not served to the defacto complainant, namely the injured and the closure report is still pending before the Judicial Magistrate Court-IV at Tirunelveli.

10. Relying upon the argument of the learned counsel for the injured, who submitted before the Tribunal that the mere closure of



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criminal complaint as mistake of fact is not a ground to conclude that the petitioner was not at fault, on the basis of several judgments in ***Gnanamani & Others Vs. Vimalanadhan & another*** reported in 2021 (2) TNMAC 8, ***M.Raghu Vs. Managing Director, TNSC (Villupuram Division (III), Kancheepuram*** in 2022 (2) TNMAC 206, ***Managing Director, TNSC Limited, Tiruchirappalli Vs. Neela & Another*** in 2019 (2) TNMAC 153 and ***Divisional Manager, National Insurance Company Limited, Puducherry Vs. Vetrivel & Another*** in 2020 (20 TNMAC 246, the Tribunal proceeded to conclude that it is the duty of the 2nd respondent Insurance Company to prove that the accident has occurred solely due to the negligence on the part of the petitioner or that the petitioner had contributed negligence for the cause of accident. Recording the fact that the 2nd respondent Insurance Company had failed to examine any independent witness to support the evidence of RW1, the Tribunal considering the evidence of the injured and F.I.R, came to a definite conclusion that, the accident had happened only due to the rash and negligent driving of the 1st respondent's driver and held that the 1st respondent's driver alone was responsible for the cause of accident and had proceeded to decide the question of compensation and quantum payable to the petitioner on that basis.



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11. The Tribunal proceeded to fix the notional income as Rs.

9,000/- per month and for future prospects making the injured entitled at 40%, fixed the notional income at Rs.9000 + Rs.3600 = Rs.12,600/- and adopted a multiplier of 18 on the basis of *Sarla Varma and Pranay Sethy* cases, had proceeded to award compensation under the head of loss of earning capacity as Rs.12,51,936/- (12600 x 12 x 18 x 46%). Though the Tribunal on the basis of the judgments relied upon by the learned counsel for the injured which are as follows : *Gnanamani & Others Vs. Vimalanadhan & another* reported in 2021 (2) TNMAC 8, *M.Raghu Vs. Managing Director, TNSCTC (Villupuram Division (III), Kancheepuram in 2022 (2) TNMAC 206, managing Director, TNSCTC Limited, Tiruchirappalli Vs. Neela & Another in 2019 (2) TNMAC 153 and Divisional Manager, National Insurance Company Limited, Puducherry Vs. Vetrivel & Another in 2020 (20 TNMAC 246, had proceeded to conclude that the closure of final report by police cannot be a conclusive proof to fasten the liability on the injured or deceased observed that, the Insurance Company ought to have proved the same by means of independent witnesses. I am of the considered view that, since the injury sustained by the injured was not a scheduled injury, the Tribunal ought to have adopted percentage method while calculating the*

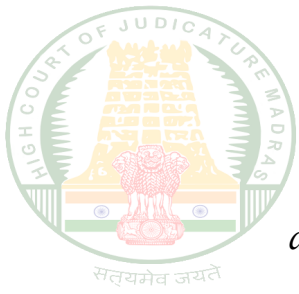


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compensation under the head of loss of earning capacity instead of adopting multiplier method. This Court in a case of ***M/s.National Insurance Company Limited, Madurai-20 Vs. K.Kannan & Another*** reported in **2022 (1) TNMAC 538** has dealt with a similar case and the relevant portion of the same is extracted hereunder:

7.Considering the above, it is very much clear that the application of multiplier method in all cases of injury or disablement is not automatic and that the tribunal is duty bound to take into consideration various factors such as nature and the extent of disablement, avocation of the injured and the impact on the avocation, due to disability suffered. In the present case, the claimant is 57 years old. Admittedly, he sustained fracture in his leg and the Doctor, who had issued disability certificate under Ex.P.10 had categorized the same as partial permanent disability and fixed the percentage at 38%.

8.The tribunal, by observing that the percentage of disability assessed for a single limb of the body is excessive, that the injured has taken treatment for only five days as in-patient and that though the claimant has pleaded that he could not move his right leg, he is able to walk, has fixed the percentage of disability at 28%. Thereafter, the tribunal has fixed the monthly income and then proceeded to calculate the compensation for loss of earning capacity by adopting multiplier method. Admittedly, there was no amputation of



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any limb of the body. Even the tribunal has specifically observed that though the claimant had sustained fracture in his leg, he is able to walk.

9.Considering the above and on applying the settled legal position, this Court has no hesitation to hold that the application of multiplier method adopted by the tribunal is not proper. As rightly contended by the learned counsel for the appellant, percentage method is to be applied, but at the same time, the disability percentage fixed by the Medical Officer is to be taken into account and as such, the claimant is entitled to get Rs.1,14,000/- (3000x 38).

12. Even in the instant case, percentage of disability is arrived at 46% and the notional income is fixed at Rs.9,000/-. At this point of time, the learned counsel for the injured submitted that, at the time of accident, the injured was working in a sweet stall and was earning Rs.600/- per day. Deducting 4 sundays, notional income of the injured is fixed at Rs. 15,600/-. Since the petitioner was hospitalized for 8 months and had undergone treatment for that period of time, loss of earning capacity is calculated at Rs.1,24,800/- (15600 x 8). As far as the head of disability is concerned, it is calculated at Rs.4,14,000/- (46 x 9000). Under the head of medical expenses, though the treatment particulars of the injured was marked as Exhibit P.7, only Rs.500 has been awarded. The same is



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enhanced to a tune of Rs.25,000/-. As far as the other heads are concerned, I am not inclined to interfere with the same. The total amount of compensation is tabulated as follows:

S.No.	Description	Tribunal	High Court	Award confirmed or enhanced
1.	Loss of earning capacity	Rs. 12,51,936/-	Rs.1,24,800/-	Reduced
2.	Medical expenses	Rs.500/-	Rs.25,000/-	Enhanced
3.	Loss of convenience	Rs.50,000/-	Rs.50,000/-	Confirmed
4.	Pain and suffering	Rs.50,000	Rs.50,000/-	Confirmed
5.	Transport expenses	Rs.10,000/-	Rs.10,000/-	Confirmed
6.	Attendant charges	Rs.50,000/-	Rs.50,000/-	Confirmed
7.	Extra nourishment	Rs.10,000	Rs.25,000/-	Enhanced
8.	Disability	-----	Rs.4,14,000/-	-----
Total compensation awarded		Rs. 14,22,440/-	Rs.7,48,800/-	Reduced

13. The award is modified to the extent as stated above. The appellant Insurance Company is directed to deposit the amount with accrued interest within a period of two (2) weeks from the date of receipt of copy of this order. The claimant is permitted to withdraw the same. The claimant is directed not to press the E.P before the Tribunal, till then.



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WEB COPY 14. In view of the above, this Civil Miscellaneous Appeal stands allowed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

21.02.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Motor Accidents Claims Tribunal
(Special Subordinate Court for MCOP Cases),
Tirunelveli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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L.VICTORIA GOWRI,J.

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Judgment made in
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