

C.M.A.(MD)No.947 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
WEB COPY

Dated : 25.03.2025

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.M.A.(MD)No.947 of 2024

and

C.M.P.(MD)Nos.10014 of 2024 and 2670 of 2025

United India Assurance Co. Ltd.,
Rep. By its Branch Manager,
Office No.53, Kayalpattinam Post,
Tiruchendur.

... Appellant

Vs.

1.Saraswathi

2.Raju

... Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree passed in M.C.O.P.No.927 of 2019 dated 10.11.2023, on the file of the Motor Accident Claims Tribunal/Principal Subordinate Court, Tirunelveli.

For Appellant	: Mr.J.S.Murali
For R1	: Mr.Jothi Ramalingam
For R2	: Mr.N.Pragalathan



C.M.A.(MD)No.947 of 2024

JUDGMENT

WEB COPY

This Civil Miscellaneous Appeal has been filed by the appellant/insurance company, challenging the award passed by the learned Motor Accident Claims Tribunal (Principal Subordinate Judge), at Tirunelveli, in M.C.O.P.No.927 of 2019, dated 10.11.2023.

2.For the sake of convenience, the parties are arrayed herein as per the ranking in M.C.O.P.No.927 of 2019.

3.The factual matrix of the present case, briefly stated, are as under:-

The claimant is the injured. The first respondent is the owner of the vehicle. The second respondent is the insurance company with which, the two wheeler involved was insured. On 17.12.2018, at about 08.00 a.m., while the claimant and her daughter were working along Arumuganeri – Kamarajapuram street, in north – south direction, along the extreme left of the mud road, one Mahindra Centro bearing registration No.TN-69-AT-7218 belonging to the first respondent driven in a rash and negligent manner dashed against the claimant and her daughter, as the result of which, the claimant sustained serious fracture and injuries and was given first aid in Tiruchendur Government Hospital and thereafter, sent for higher treatment at Thoothukudi Government Hospital,



C.M.A.(MD)No.947 of 2024

wherein she took treatment as inpatient from 18.12.2018 to 21.01.2019.

Arumuganeri Police Station has registered FIR in Crime No.293 of 2018 under Sections 279 and 337 of IPC. The claimant was a coolie at the time of accident and she has sustained 40% disability. Seeking to compensate for her permanent disability, she has laid M.C.O.P.

4.The learned Tribunal has examined one witness and 5 documents were marked on the side of the petitioner/injured and two witnesses were examined and 5 document were marked on the side of the second respondent. One Court document was marked. On the basis of the arguments, evidence deposited and documents marked, the learned Tribunal has proceeded to pass an award of Rs. 10,85,000/- to the petitioner/claimant. Challenging the same, this Civil Miscellaneous Appeal is filed.

5.The learned counsel appearing for the appellant categorically submitted that the Appeal is laid on the ground of liability and quantum. The rider of the two wheeler did not possess any driving licence at the time of the accident and hence, the learned Tribunal ought not to have passed an order of pay and recover. The learned Tribunal ought to have fastened the entire liability on the owner of the vehicle, i.e., second respondent herein. That apart, the learned



C.M.A.(MD)No.947 of 2024

Tribunal ought not to have preferred multiplier method for injury case and gone by percentage of disability sustained and also pressed for modifying the award and allowing the Appeal.

6.The learned counsel for the first respondent/claimant submitted that the case is not one of injury alone but one of permanent disability. Further he submitted that the Hon'ble Supreme Court has made it clear that even in the case of permanent disability, the multiplier method can be adopted in ***Parminder Singh*** Case and pressed for dismissal of the Appeal.

7.Heard the learned counsels on either side and carefully perused the materials available on record.

8.The case in hand is one with respect to an accident, which had happened because of the rash and negligent riding of a two wheeler by the first respondent therein. The learned counsel for the appellant insisted that the rider of the two wheeler i.e., first respondent therein did not possess any driving licence at the time of the accident and the learned Tribunal ought not to have awarded compensation under pay and recover mode and insisted that the liability ought to have been fastened on driver cum owner i.e., first respondent



C.M.A.(MD)No.947 of 2024

therein.

WEB COPY

9.However, the learned counsel for the first respondent/claimant relied upon ***Parminder Singh v. New India Assurance Company Limited and Others*** reported in ***(2019) 7 Supreme Court Cases 217*** and submitted that the Hon'ble Supreme Court in similar circumstances had allowed the principle of pay and recover and the relevant portion of the same is extracted as follows:-

“7.1.This Court in Shamanna v. Oriental Insurance Co. Ltd., (2018 9 SCC 650) held that if the driver of the offending vehicle does not possess a valid driving licence, the principle of “pay and recover” can be ordered to direct the insurance company to the pay the victim and then recover the amount from the owner of the offending vehicle.”

10.The learned counsel for the appellant had relied upon the judgment of the Hon'ble Supreme Court in the case of ***Oriental Insurance Co. Ltd v. V.Nanjappan and Others*** reported in ***AIR 2004 SC 1630***, and the relevant portion of the same is extracted as follows:-

“7.....

At the same time, the observations of this Court in Baljit Kaur’s case (supra) also need to be noted. In para 21 of the judgment, it was observed as follows:

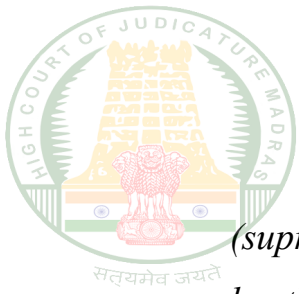
“21.The upshot of the aforementioned discussions is that



WEB COPY

instead and in place of the insurer the owner of the vehicle shall be liable to satisfy the decree. The question, however, would be as to whether keeping in view the fact that the law was not clear so long such a direction would be fair and equitable. We do not think so. We, therefore, clarify the legal position which shall have prospective effect. The Tribunal as also the High Court had proceeded in terms of the decision of this Court in Satpal Singh (supra). The said decision has been overruled only in Asha Rani (supra). We, therefore, are of the opinion that the interest of justice will be sub-served if the appellant herein is directed to satisfy the awarded amount in favour of the claimant if not already satisfied and recover the same from the owner of the vehicle. For the purpose of such recovery, it would not be necessary for insurer to file a separate suit but it may initiate a proceeding before the executing court as if the dispute between the insurer and the owner was the subject matter of determination before the tribunal and the issue is decided against the owner and in favour of the insurer. We have issued the aforementioned directions having regard to the scope and purport of Section 168 of the Motor Vehicles Act, 1988, in terms whereof it is not only entitled to determine the amount of claim as put forth by the claimant for recovery thereof from the insurer, owner or driver of the vehicle jointly or severally but also the dispute between the insurer on the one hand and the owner or driver of the vehicle involved in the accident inasmuch as can be resolved by the tribunal in such a proceeding."

8. Therefore, while setting aside the judgment of the High Court we direct in terms of what has been stated in Baljit Kaur's case



C.M.A.(MD)No.947 of 2024

(supra) that the insurer shall pay the quantum of compensation fixed by the Tribunal, about which there was no dispute raised, to the respondents-claimants within three months from today. For the purpose of recovering the same from the insured, the insurer shall not be required to file a suit. It may initiate a proceeding before the concerned Executing Court as if the dispute between the insurer and the owner was the subject matter of determination before the Tribunal and the issue is decided against the owner and in favour of the insurer. Before release of the amount to the insured, owner of the vehicle shall be issued a notice and he shall be required to furnish security for the entire amount which the insurer will pay to the claimants. The offending vehicle shall be attached, as a part of the security. If necessity arises the Executing Court shall take assistance of the concerned Regional Transport authority. The Executing Court shall pass appropriate orders in accordance with law as to the manner in which the insured, owner of the vehicle shall make payment to the insurer. In case there is any default it shall be open to the Executing Court to direct realization by disposal of the securities to be furnished or from any other property or properties of the owner of the vehicle, the insured. The appeal is disposed of in the aforesaid terms, with no order as to costs.”

11. In view of the aforesaid settled law, I am of the considered view that that in the instant case, the principle of pay and recover is confirmed and the insurer shall adopt the dictum of the **Nanjappan** case for recovery, after paying

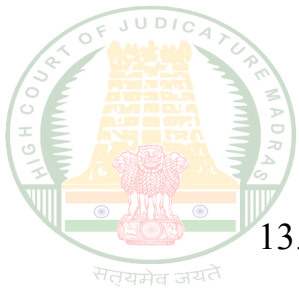


C.M.A.(MD)No.947 of 2024

to the claimant.

WEB COPY

12.The learned counsel for the appellant submitted that the learned Tribunal ought not to have awarded compensation under the loss of future earnings, but should have awarded partial permanent disability for every percentage of disability. However, the dictum of the Hon'ble Supreme Court of ***Raj Kumar v. Ajay Kumar*** reported in ***2010 (2) TNMAC 581 (SC)***, the Hon'ble Supreme Court has mandated that '*in case of permanent disability, ascertainment of the effect of the permanent disability on the actual earning capacity involves three steps: (i)the Tribunal has to first ascertain what activities the claimant could carry on in spite of the permanent disability and what he could not do as a result of the permanent ability. (ii)to ascertain avocation, profession and nature of work before the accident and injured's age, (iii)to find out whether the claimant is totally disabled from earning any kind of livelihood, or whether in spite of the permanent disability, the claimant could still effectively carry on the activities and functions, which he was earlier carrying on, or whether he was prevented or restricted from discharging his previous activities and functions.*'



C.M.A.(MD)No.947 of 2024

13.In the instant case, the injured was a coolie. The certificate for disability issued by the Medical Disability Board has been marked as Ex.C1 in which, the Board has certified 40% disability, likely to be improved. The kind of injury suffered was one of post traumatic sequelae of right elbow and right knee joint due to ulva and tibia fracture. In the note column of the certificate, there are two conditions, which are extracted as follows:-

“1.This condition is progressive/likely to improve/not likely to improve

2.Re-assessment is not recommended/recommended after a period of five months/years.”

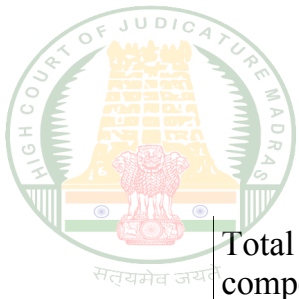
14.In which, the column 'likely to improve and recommended' are marked. If the case is one of permanent disability, the condition would have been one which is not likely to improve and re-assessment would not have been recommended. Since the same is likely to improved, the case is recommended for re-assessment after a period of five months. Hence, I am of the considered view that the nature of the disability cannot be one of permanent nature but the same is of temporary nature. In view of the same, the contention of the learned counsel for the appellant that the learned Tribunal should have gone by partial permanent disability towards every percentage gains momentum. The percentage fixed by the Board is 40% and the head of loss of future earning is



C.M.A.(MD)No.947 of 2024

deleted and the head partial permanent disability for every percentage is calculated at Rs.10,000/- and the head partial permanent disability would be calculated at Rs.4,00,000/- (10,000 x 40). The loss of income during the treatment for the period from 18.12.2018 to 21.01.2019 is fixed at Rs.12,000/-. All other heads are not interfered. Hence, the total compensation would be Rs. 6,57,000/-. In view of the above, this Civil Miscellaneous Appeal is partly allowed.

Head	Compensation awarded before learned Tribunal	Compensation awarded before this Court	Reduced/Enhanced/ Confirmed/ Deleted
(I)Transport Expenses:	Rs.10,000/-	Rs.10,000/-	Confirmed
(ii)Extra Nourishment:	Rs.25,000/-	Rs.25,000/-	Confirmed
(iii)Attender charges:	Rs.10,000/-	Rs.10,000/-	Confirmed
(iv)Pain and suffering:	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
(v)Mental Agony:	Rs.1,00,000/-	Rs.1,00,000/-	Confirmed
(vi)Loss of Future Earning:	Rs.8,40,000/-	-	Deleted
(vii)Partial Permanent Disability:	-	Rs.4,00,000/-	Enhanced
(vii)loss of income during treatment	-	Rs.12,000/-	Enhanced



C.M.A.(MD)No.947 of 2024

Total
compensation
awarded:

Rs.10,85,000/-

Rs.6,57,000/-

Reduced

15.The first respondent/claimant is entitled to a sum of Rs.6,57,000/- with interest at the rate of 7.5% from the date of the claim petition till the date of realization. The appellant/insurance company is directed to deposit the aforesaid amount with 7.5% interest from date of the claim petition till the date of realization and the amount if not deposited earlier, has to be deposited within a period of 8 weeks from the date of receipt of copy of this order. On such deposit, the first respondent/claimant is permitted to withdraw the award amount, after deducting any amount received by her earlier. The first respondent/claimant is not entitled for interest for the default period, if there is any. The appellant/insurance company is permitted to withdraw the excess amount, if any already deposited. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

25.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes
Mrn



WEB COPY



C.M.A.(MD)No.947 of 2024

To

- 1.The Motor Accidents Claims Tribunal,
(Principal Sub Judge), Tirunelveli.
- 2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.M.A.(MD)No.947 of 2024

L.VICTORIA GOWRI, J.

Mrn

C.M.A.(MD)No.947 of 2024

25.03.2025