



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25-03-2026

CORAM

**THE HONOURABLE MR JUSTICE C.V. KARTHIKEYAN
AND
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**CMA No. 2306 of 2022
and
CMP No.17781 of 2022**

The Divisional Manager,
M/s. National Insurance Co. Ltd,
No.110, 2nd Floor, Nehru Street,
Pudhucherry.

Appellant(s)

Vs

1. Babu

2.Veeramani

Respondent(s)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of M.V.Act, 1988, against the Judgment and Decree dated 28.04.2022 made in MCOP.No.306 of 2021 on the file of The Motor Accidents Claims Tribunal, Additional Motor Accidents Claims Tribunal, Puducherry.

For Appellant(s): Mr.S.Arun Kumar

For Respondent(s): M/s.S.Kiruthika for R1
R2 – Not ready in notice

JUDGMENT

(Judgment of the Court was made by K.Rajasekar, J.)

This appeal has been filed by the Insurance Company /second respondent in MCOP.No.306 of 2021, on the file of the Motor Accidents Claims Tribunal, Additional Motor Accidents Claims Tribunal, Puducherry, challenging the quantum awarded in favour of the claim petitioner.



2.The case of the claim petitioner is that on 07.03.2021 at about 3.40 p.m., the claimant was driving his company vehicle, namely, Mini Load Carrier bearing registration No.PY 05 E 3578,m k TATA ACE on the Puducherry - Cuddalore road. While the vehicle was nearing to Thavalakuppam main road, a Tipper Lorry driven by the driver of the first respondent came in opposite direction with high speed and dashed against the vehicle driven by the claimant, which resulted in causing grievous injuries and subsequently, he was admitted in the hospital. He came forward with the claim petition seeking a sum of Rs.67,00,000/- as per Section 166 (1) of the Motor Vehicles Act, 1988.

3.The claim petition was resisted by the Insurance Company challenging both the negligence pleaded and also questioning the compensation claimed under various heads. The owner of the vehicle/first respondent therein had remained ex-parte.

4.Before the Tribunal, the claim petitioner was examined as PW1 and Exs.P1 to P22 were marked. On the side of the second respondent, RW1 was examined and Ex.R1 was marked. The disability certificate was also marked as Ex.C1.

5.Aggrieved over the fixing of negligence on the driver of the Lorry and also challenging the quantum of compensation, this appeal has been filed by the Insurance Company.



6.The learned counsel for the Insurance Company submits that the Tribunal has not properly appreciated the evidence adduced on the side of the Insurance Company/second respondent to show that the claim petitioner had also contributed to the accident and further, the quantum of compensation fixed is on the higher side. He further submitted that the Tribunal has fixed the monthly income of the claim petitioner treating him as a driver of the Lorry. However, the claimant has claimed that he is a proprietor and doing business and was having business income and in this regard, he has filed Income Tax returns. This income earned from the business has not at all been disrupted due to the injuries sustained by the claim petitioner. In such a case, granting compensation under the head loss of the earning capacity, that too, 100% is very high and prays to set aside the same.

7.The learned counsel for the first respondent/claim petitioner submitted that though the claim petitioner is continuing the business activities, he is not able to do it effectively, due to the amputation sustained by him. The business activities carried on by the claim petitioner is a sole proprietorship and the claim petitioner has given his fullest support for the purpose of the business activities and due to the loss of his leg and other injuries, his regular activities have been stalled and he was not in a position to do his business activities like he was doing earlier, which resulted in causing huge loss in his business activities.



Hence, she prays to confirm the Award of the Tribunal, fixing the loss of earning capacity to the extent of 100%. The learned counsel further submitted that as far as the negligence is concern, the Tribunal has rightly fixed the negligence on the driver of the Lorry and there is no evidence to modify or set aside the same and hence, prayed to confirm the Award.

8. We have considered the arguments advanced and perused the material records.

9. With regard to the negligence, the claim petitioner examined himself has PW1 and stated that while he was driving the TATA ACE vehicle on the left hand side of the road by following the traffic rules, the driver of the Lorry which came in the opposite direction entered into the middle of the road and thereafter, hit on the vehicle driven by the claim petitioner. However, to contradict this evidence, the Insurance Company has not examined any Eye witness to the occurrence. They have chosen to examine RW1 to speak about the registration of the case and filing of the final report and marked the rough sketch. It is further argued that since in the rough sketch, the place of accident had been recorded as middle of the road, the contributory negligence was pleaded over the driver of the claimant. After going through the rough sketch, the Tribunal has held that the accident has not occurred in the middle of the road. We have also gone through Ex.R1 rough sketch and it also shows that the



place of accident as middle of the road. However, there is no evidence adduced to show the manner in which the accident had occurred or how the vehicle reached the other side and caused the accident. In the absence of any clear evidence to establish the fact that the claim petitioner had also contributed to the accident, merely based on the rough sketch fixing the contributory negligence on the claim petitioner is not proper. Hence, we are of the view that the evidence adduced on the side of the claim petitioner is more probable and we agree with the finding given by the Tribunal.

10.As regards the quantum is concerned, the Tribunal after taking note of the fact that the accident had taken place while the claim petitioner was driving the TATA ACE vehicle, treated him as a driver and fixed the notional income and after treating as driver, the loss of earning capacity was assessed to the extent of 100% and awarded compensation. We are of the view that this approach is not proper since there are materials produced before the Tribunal, more particularly to the fact that the claim petitioner was doing business activities and he has also produced the Income Tax returns showing the income earned by him.

11.It is also the further case of the claim petitioner that for the purpose of business activities, he drove the TATA ACE vehicle and during such process, he met with the accident and sustained injuries. Further, there are materials to



show that the claim petitioner was only involved in doing business activities and he is not a driver by profession. Since the claim petitioner has produced various documents to show that he is involved in business activities and more particularly, the Income Tax returns reveal that he was continuously filing his returns from the Assessment Years 2017-18, 2018-19 & 2019-20. Though it is contended by both sides that after the claim petitioner met with the accident, his business activities is still going on and his income has not been reduced or increased, except by marking Ex.P22 Income Tax returns filed prior to the accident, no other materials to substantiate the above contention have been produced by both sides. However, the fact remains is that the claim petitioner was doing business as a proprietor and his act of driving the TATA ACE vehicle during the time of business activities shows that he is actively involved in the business and at the time of accident, he was carrying goods to deliver. This shows that his contribution is very eminent in earning income for the purpose of business activities. Admittedly, now he has sustained amputation. Further, the Medical Board has assessed his disability to the extent of 83%. Though there are no evidence as stated in the earlier paragraph to show that whether these injuries has reduced the income of the claim petitioner, we are of the view that these injuries and disability would have resulted in causing serious hindrance on his physical activities, which directly affected the business activities carried on by him. Though it could not be considered as 100% of loss of earning capacity, we are of the view that this disability would be 25% based on the Income Tax



returns filed by the claim petitioner for the past three years and it is also an admitted fact that the business activities is going on. Apart from that, the burden to prove the loss of 100% earning capacity is on the claim petitioner, whereas, he has not come forward to adduce any such evidence to show that he has suffered loss of earning capacity to the extent of 100%.

12. Further, we are of the view that the compensation has been suitably awarded for the injuries suffered by him and also for the disability sustained by him. Accordingly, we fix the loss of income based on the Income Tax returns filed by him, which was marked as Ex.P22. For the Assessment Year 2019–2020, the Income Tax Return filed by the petitioner, in his individual capacity, discloses a gross total income of Rs.5,23,559/-. After deductions, the total income was computed at Rs.4,48,360/-. Accordingly, 25% of the total income is taken into account for determining the loss of earning capacity, which is assessed at Rs.14,57,170/- ($4,48,360 \times 25\% \times 13$). Insofar as the other heads of compensation are concerned, we are of the view that the amounts awarded, except under the head “pain and suffering” are just and reasonable. The compensation awarded towards pain and suffering is found to be on the higher side and is reduced to ₹3,00,000/-. The compensation awarded under the head “for permanent disability” is set aside and a sum of ₹2,00,000/- is awarded towards loss of amenities. The amounts awarded under the remaining heads are confirmed. In the award, it is held by the Tribunal there is violation of the



policy condition i.e., the offending vehicle was plied without a valid permit and the Tribunal has ordered pay and recover. Since no dispute has been raised before us, we have not decided this issue and accordingly, the same is also confirmed.

13. Accordingly, the amount awarded by the Tribunal is modified as follows:

S.No.	Description	Award Amount
1.	For Permanent Loss of earning	Rs.14,57,170/-
2.	For Extra Nutrition	Rs.30,000/-
3.	For Attendant fee	Rs.60,000/-
4.	For Medical Expenses	Rs.22,37,000/-
5.	For Travel Expenses	Rs.31,000/-
6.	For Pain and Suffering	Rs.3,00,000/-
7.	For Amenities	Rs.2,00,000/-
8.	For Artificial Leg	Rs.2,00,000/-
	Total	Rs.45,15,170/-

14. In the result, the Civil Miscellaneous Appeal is partly allowed. The compensation of **Rs.71,63,000/-** awarded by the Tribunal is hereby reduced to **Rs.45,15,170/-**. Appellant insurance company is directed to deposit the reduced compensation of **Rs.45,15,170/-** (Rupees Forty Five Lakhs Fifteen Thousand One Hundred and Seventy only), less the amount already deposited, together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six (6) weeks from the date of receipt of this judgment. On such deposit being made by appellant insurance company, claimant is permitted to



withdraw the amount along with accrued interest and costs, less the amount, if any already withdrawn by him, by filing necessary application before the Tribunal. No costs. Connected miscellaneous petition is closed.

(C.V.K.,J.) (K.R.S.,J.)
25-03-2026

Index: Yes/No
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To:

The Motor Accidents Claims Tribunal,
Additional Motor Accidents Claims Tribunal,
Puducherry.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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