

**(2011) 03 MAD CK 0563**

**Madras High Court**

**Case No:** Civil Miscellaneous Appeal No. 362 of 2011 and M.P. No's. 1 and 2 of 2011

The New India Assurance Co.  
Ltd.

APPELLANT

Vs

Thirunavukkarasu and B.  
Sivakumar

RESPONDENT

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**Date of Decision:** March 30, 2011

**Hon'ble Judges:** C.S. Karnan, J

**Bench:** Single Bench

**Advocate:** J. Chandran, for the Appellant; Udayakumar, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

C.S. Karnan, J.

The above appeal has been filed by the Appellant/New India Assurance Company Limited against the award and decree dated 18.10.2010 made in M.C.O.P. No. 696 of 2007, on the file of the Motor Accidents Claims Tribunal, Vth Small Causes Court, Chennai.

2. The short facts of the case are as follows:

On 22.11.2006, at about 09.00 a.m., the Petitioner was proceeding in a Mahindra Van bearing Registration No. TN21-C-5898 on the Bangalore High Road, when the vehicle was nearing Pappanchatram and was about to turn to the right side of the trunk road, the container lorry also simultaneously had turned in the same direction and at that time, the driver of the van had driven his vehicle in a rash and negligent manner and caused the accident. As a result, the Petitioner had sustained grievous injuries. Hence, the claim petition had been filed against the Respondents for compensation a sum of Rs. 1,50,000/- with interest.

3. The Insurance Company had filed a counter statement and resisted the claim petition. The Respondents denied the accident on 22.11.2006 at around 09.00 a.m. had happened. The Petitioner was a gratuitous passenger, in the said Mahindra Van.

The age, income and occupation of the claimant are denied. The vehicle was not in possession of valid records and the driver was not possessing a valid driving licence. Besides the claim amount is excessive. The Petitioner had conveniently omitted to include the owner and the Insurer of the container lorry bearing Registration No. TN39-AJ6599. Actually, 16 persons had been travelling in the Mahindra van, as per the vehicle permit only 12 persons are allowed to travel in the vehicle.

4. On the averments of both parties, the Tribunal had framed two issues for consideration, namely;

(i) Whether the Petitioner sustained injuries due to the rash and negligent driving of vehicle bearing Registration No. TN21-C-5898 by its driver?

(ii) If so, what is the just compensation that the Petitioner is entitled for and by whom it is payable?

5. On the side of the claimant PW1 and PW2 were examined and Ex.P1 to P12 were marked. On the side of the second Respondent RW1 and RW2 were examined and Exs.R1 to R3 were marked.

6. PW1 had adduced evidence stating that the driver of the offending vehicle bearing Registration No. TN21-C-5898 had driven it in a rash and negligent manner and caused the accident. In order to prove the same, FIR and sketch were marked. PW1 further stated that at the time of the accident, his age was 20 years and his avocation as an electrician, earning a sum of Rs. 10,000/- per month. Immediately, after the accident, he was admitted at Stanley Government Hospital, Chennai, wherein he had undergone treatment for about three weeks as inpatient, besides he had also undergone treatment at the Ramachandra Hospital, Porur. During the medical treatment period he had undergone surgical operation, femur interlocking and nailing was done. In order to prove the same, RW1 record keeper of the Government Hospital had rendered evidence.

7. PW2 doctor had examined the claimant and assessed the disability as 45%. He had adduced evidence stating that the claimant has stiffness in the right thigh and right knee movements are restricted up to 100 degrees. He has difficulty in walking fast, climbing and running.

8. On considering the evidences of the witnesses, the Tribunal had awarded a sum of Rs. 1,41,000/- with interest at the rate of 7.5% per annum. The compensation comprising of Rs. 18,000/- Rs.2,000/- Rs.3,000/-, Rs. 1,000/-, Rs. 6,917/-, Rs. 20,000/- and 90,000/- were granted towards loss of earnings, transport expenses, extra nourishment, damage to articles, medical expenses, pain and suffering and permanent disability respectively.

9. Aggrieved by the said award, the Insurance Company has filed the above appeal.

10. The learned Counsel for the Appellant argued that the award amount of a sum of Rs. 1,41,000/- is highly excessive and exorbitant. The offending vehicle capacity is for only 12 persons, but at the time of the accident, 16 persons were travelling, as such the policy condition was violated. The doctor assessed the disability as 45% which is on the higher side.

11. Learned Counsel for the claimant argued that the Tribunal had not considered the compensation under the head of "at tender charges. The claimant had undergone treatment at two different hospitals for not less than one month as an inpatient. During the medical treatment period, he had undergone a surgical operation, the same was confirmed through the evidence of RW1, who is attached to the Government Stanley Hospital as a Record Clerk. The claimant's age was 20 years and he is a skilled electrician. Considering all aspects, the Tribunal had properly assessed the compensation.

12. On considering the facts and circumstances of the case and arguments advanced by the learned Counsels on either side and on perusing the impugned award of the Tribunal, this Court is of the considered opinion that the doctor had assessed the disability as 45%, for which, there is no sound medical evidence, hence, this Court has reduced the disability as 35% and grants a sum of Rs. 70,000/- under the head of "disability". The Tribunal had awarded a sum of Rs. 18,000/- under the head of "loss of income during medical treatment period" and the amount may be treated as inclusive of "at tender charges". Therefore, this Court scales down the compensation from Rs. 1,41,000/- to Rs. 1,21,000/- which is fair and justifiable. This amount will carry interest at the rate of 7.5% per annum from the date of filing the claim petition till the date of payment of compensation. Hence, this Court directs the Appellant/Insurance Company to comply with this Court order within a period of six weeks from the date of receipt of this order. After such compliance being made, it is open to the claimant to withdraw the modified compensation amount with accrued interest thereon lying in the credit of M.C.O.P. No. 696 of 2007 on the file of the Motor Accidents Claims Tribunal, Vth Small Causes Court, Chennai, after filing a Memo along with this order.

13. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal on the file of Vth Small Causes Court, Chennai made in M.C.O.P. No. 696 of 2007, dated 18.10.2010 is modified. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.