

**(2011) 06 MAD CK 0443**

**Madras High Court**

**Case No:** C.M.A. No. 1688 of 2008 and M.P. No. 1 of 2008

The Branch Manager, United  
India Insurance Company Ltd.

APPELLANT

Vs

Manoharan and Ms. K. Kavitha

RESPONDENT

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

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

**Bench:** Single Bench

**Advocate:** T. Ravichandran, for the Appellant; V. Kumaravelan, for R-1, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

C.S. Karnan, J.

The above appeal has been filed by the Appellant / United India Insurance Company Limited, against the award and decree dated 29.04.2005, made in M.C.O.P. No. 236 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri.

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

On 13.09.2002, at 8.45 a.m., when the Petitioner was proceeding on his bicycle from Kokarappalli towards Chinnamuthur and when he was near Gandhi shop, some persons were unloading the bags of cattle feed stalked on a lorry parked ahead of him. When he near the lorry, the driver of the lorry, all of a sudden, started the lorry due to which two bags of cattle feed fell down on the top of the Petitioner. As a result, the Petitioner sustained injuries on his neck and hip, spinal cord and chest. He was admitted in the Krishnagiri - Government Hospital, wherein he received treatment for 15 days as an inpatient. The Petitioner was a painter earning Rs. 5,000/-to Rs. 6,000/-at the time of accident. After the accident, he is not able to do any work. Hence, he has filed the claim for Rs. 3,00,000/-against the Respondents. The first Respondent is the owner of the said lorry bearing Registration No. TN23-F-0091 and the second Respondent is its insurer.

3. The second Respondent / United India Insurance Company Limited, in his counter has resisted the claim denying the averments in the claim regarding manner of accident. It was stated that on the date of accident, the first Respondent's lorry loaded with cattle-feed bags and covered with tarpaulin cover was parked on the left side of the road and when the coolies who had come for unloading the bags were in the process of removing the ropes and tarpaulin from the lorry, the Petitioner had come on the left of the lorry, due to which some bags of cattle feed had fallen down on the Petitioner. As such, it was stated that the accident had occurred only due to negligence of the Petitioner. It was stated that the claim was excessive.

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

(i) Who was responsible for the accident (ii) Is the Petitioner entitled to get compensation? If so, what is the quantum of compensation?

5. On the Petitioner's side, the Petitioner was examined as PW1 and the doctor was examined as PW2 and five documents were marked as Exs.P1 to P5 viz., First Information Report, Wound Certificate, Insurance Policy, Medical Bills and permanent disability certificate, respectively. On the Respondents side, No. witness, No. documents.

6. PW1 adduced evidence that was in consonance with the averments made in the claim regarding manner of accident. The Tribunal after scrutiny of First Information Report and evidence of PW1 and further considering that No. contra evidence had been let in by the Respondents side to disprove the evidence of PW1, held that the accident had been caused due to the fault of the first Respondent's lorry driver and held that the second Respondent liable to pay compensation to the Petitioner. PW1 had further adduced evidence that he had sustained injuries in his neck, hip, spinal cord and chest and left hand in the said accident; that he had initially taken treatment at Krishnagiri Government Hospital and had subsequently taken treatment at St.John's Hospital, Bangalore and that he had spent a sum of Rs. 15,000/- on medical treatment. He further adduced evidence that he was a painter and was earning Rs. 5,000/- to Rs. 6,000/- per month before the accident and that he was not able to do any work after the accident. PW2, the doctor who had examined the Petitioner adduced evidence that in L4 bone in the spinal cord of the Petitioner had been displaced and the L5 bone had been fractured diagonally; that the flesh in these areas had been lightened; the doctor adduced evidence that the Petitioner had sustained 30% disability due to the above said grievous injury. Based on the oral documentary evidence, the Tribunal awarded a compensation of Rs. 2,20,000/- to the Petitioner. The breakup of compensation is as follows:

For injuries sustained by the petitioner	Rs.50,000/-
For damage to clothes	Rs.2,000/-

For medical expenses	Rs.25,000/-
For future medical expenses	Rs.5,000/-
For transport expenses	Rs.5,000/-
For nutrition	Rs.5,000/-
For loss of income during medical treatment period and convalescent period	Rs.10,000/-
For hospitality expenses incurred by petitioner by visit of relatives to see him during the period of hospitalization	Rs.5,000/-
For pain and suffering	Rs.50,000/-
For permanent disability sustained by petitioner	Rs.50,000/-
Loss of earning capacity due to permanent disability	Rs.13,000/-

7. Aggrieved by the said award passed by the Tribunal, the Appellant / United India Insurance Company Limited has filed the present appeal to set-aside the award passed.

8. The learned Counsel for the Appellant has argued in his appeal that the Tribunal after granting award for partial loss of earning and also loss of earning due to permanent disability and injury failed to see that the compensation granted under these heads also covers the mental agony suffered by the injured in his future life. Further, as per Ex.P4, the medical expenses bills, the medical expenses amount to Rs. 1943.75/-, but the Tribunal, without any documentary evidence, had awarded a sum of Rs. 25,000/- which is not sustainable. The quantum of compensation for disability of 30%, as assessed by the Doctor, is highly excessive. It was also stated that the Tribunal had fixed the fault on the first Respondent's lorry driver in the absence of documentary proof to show that he had been negligent.

9. The learned Counsel for the claimant argued that the doctor after examining the claimant and perusing the medical records had assessed the disability at 30%. The doctor further adduced evidence that the claimant's spinal cord bones L4 and L5 were dislocated and fractured and that these are permanent in nature and causing discomfort to the claimant. As such, the claimant is unable to perform his normal duty as a painter. The claimant had undergone treatment as an inpatient at St.John's Hospital for a period of three days, thereafter, he had undergone

treatment for a period of 15 days as inpatient at Government Hospital, Krishnagiri. Further, he underwent treatment as outpatient for a lengthy period. He had spent about Rs. 25,000/-towards medical expenses. The age of the claimant was 38 years and he was earning a sum of Rs. 5,000/-per month. After the accident, he is unable to perform his normal duty as a painter. Considering all aspects, the Tribunal had assessed the compensation properly. There is No. discrepancy in the said award. Therefore, the appeal is not maintainable and the award granted by the Tribunal does not deserve to be scaled down.

10. In view of 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 Tribunal had awarded Rs. 50,000/-under the head of pain and suffering is on the higher side. The Tribunal had awarded Rs. 50,000/-under the head of permanent disability. Again, the Tribunal had awarded Rs. 50,000/-under the head of injuries, which is not pertinent. Therefore, a modification is required in the said award. Hence, this Court restructures the compensation as follows:

Rs. 30,000/- towards loss of income due to disability;

Rs. 15,000/- towards pain and suffering;

Rs. 5,000/- for transport;

Rs. 5,000/- against nutrition;

Rs. 5,000/- for attender charges;

Rs. 10,000/- for loss of income during medical treatment and convalescent period;

Rs. 25,000/- towards medical expenses;

Further, this Court awards Rs. 25,000/-towards loss of amenities and comfort. In total, this Court awards Rs. 1,50,000/-as compensation to the claimants. This amount will carry interest at the rate of 7.5% per annum from the date of filing the petition till the date of payment of compensation.

11. The learned Counsel for the Appellant had submitted that the Appellant had deposited a sum of Rs. 3,01,000/-into the credit of M.C.O.P. No. 236 of 2003, on the file of the Motor Accidents Claims Tribunal, Sub Court, Krishnagiri. Out of this said amount, the claimant had already withdrawn a sum of Rs. 1,47,240/-.The balance amount i.e., a sum of Rs. 1,53,760/-with accrued interest thereon is available on the file of Sub Court, Krishnagiri in M.C.O.P. No. 236 of 2003. Considering this aspect, this Court is of the opinion, that the claimant is entitled to receive 55% of the said amount and the insurance company is entitled to receive 45%. This view had been taken by this Court on the basis of the submission of the learned Counsel. Therefore, this Court directs the learned Tribunal to permit the claimant to withdraw 55% of the available amount on the file of Sub Court, Krishnagiri. This Court permits

the Insurance Company to withdraw 45% of the amount available on the file of Sub Court, Krishnagiri in M.C.O.P. No. 236 of 2003, after filing a Memo along with this order.

12. Resultantly, the above Civil Miscellaneous Appeal is partly allowed. Consequently, the Award and Decree, passed by the Motor Accidents Claims Tribunal in M.C.O.P. No. 236 of 2003, dated 29.04.2005 on the file of Motor Vehicles Accidents Claims Tribunal, Sub Court, Krishnagiri is modified. There is No. order as to costs. Consequently, connected miscellaneous petition is closed.