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**(2010) 10 MAD CK 0235**  
**In the Madras High Court**  
**Case No : C.M.A. (MD) No. 707 of 2009**

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|----------------------------------------------------|----|------------|
| P. Udhayakumar                                     | Vs | APPELLANT  |
| P. Pandiammal and The New India Assurance Co. Ltd. |    | RESPONDENT |

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**Date of Decision :** 04-10-2010

**Acts Referred:**

**Citation :** (2010) 10 MAD CK 0235

**Hon'ble Judges :** P.P.S. Janarthana Raja, J

**Bench :** Single Bench

**Advocate :** R. Subramanian, for the Appellant; N. Sathish Babu, for R1 and A.K. Baskarapandian, for R2, for the Respondent

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## Judgement

P.P.S. Janarthana Raja, J.—The appeal is preferred by the Appellant against the fair and decretal order dated 30.01.2004 passed in MCOP No. 600 of 1999 on the file of the IV Additional Subordinate Judge, Madurai.

2. When this matter came up for admission, the same was opposed by Mr. N. Sathish Babu, learned Counsel for the first Respondent and Mr. A.K. Baskarapandian, learned Counsel for the second Respondent, and by consent of the learned Counsel for both the parties, the CMA itself is taken up for final disposal.

3. Background facts in a nutshell are as follows:

The injured-Pandiammal met with motor traffic accident that took place on 09.10.1996 at about 6.30 a.m. She, along with others, travelled in a lorry bearing Registration No. TMP-9931 from Karisalpatty to Pulithevanpatty. The injured is a load-woman and she travelled in the said lorry along with other load-men. While the lorry was nearing Karisalpatty, the driver drove the lorry in a rash and negligent manner due to which the lorry went out of control and fell into the ditch. Due to the said impact, the injured-Pandiammal and others sustained injuries. The injured-Pandiammal claimed a sum of Rs. 1,00,000/- as compensation. The said lorry was insured with the second Respondent-Insurance

Company, who resisted the claim. On pleadings, the Tribunal framed the following issues:

1. Whether the accident took place due to the rash and negligent driving of the driver of the lorry belonging to the Appellant or not?
2. Whether the claimant is entitled to compensation? If so to what extent?

After considering the oral and documentary evidence, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the lorry belonging to the Appellant. It is pertinent to note that there are 8 claimants in the accident, and out of the 8 claimants, only 6 claimants have been covered under the Insurance Policy for loadmen. The remaining 2 claimants including the claimant in the present case, were not covered under the Policy. Therefore, for the two claimants, including the claimant in the present case, the Tribunal was of the view that only the owner of the lorry is liable to pay the compensation on the ground that they were not covered under the Insurance Policy. Therefore, the Tribunal fixed the liability on the owner of the vehicle, the Appellant herein and awarded a sum of Rs. 40,000/- as compensation with interest at 9% p.a. from the date of petition. The details of the compensation are as follows:

Rupees Pain and suffering 10,000/- Transport to hospital and nourishment 5,000/- Fracture, grievous injuries and 38% disability 15,000/- Future consequence of disability 5,000/-

Loss of income during the treatment period 5,000/- ----- 40,000/-  
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Aggrieved by that award, the owner of the lorry has filed the present appeal.

4. Learned Counsel for the Appellant has submitted that the Tribunal is wrong in fixing the liability on the owner of the vehicle and also the Tribunal is wrong in holding that there is no Insurance Policy covering the claim. Therefore, the finding given by the Tribunal that the owner of the vehicle has to pay the compensation, should be set aside, and it is only the Insurance Company liable to pay the compensation. Alternatively, it is submitted that the award passed by the Tribunal is excessive, exorbitant, without any basis and justification. Therefore, the award passed by the Tribunal is not in accordance with law and the same has to be set aside.

5. Learned Counsel for the second Respondent/Insurance Company has submitted that the Tribunal has correctly come to the conclusion that the Insurance Policy does not cover the claim in the present case and therefore the Tribunal has correctly fixed the liability on the owner of the vehicle, the Appellant herein. Learned Counsel for the first Respondent/claimant has submitted that the Tribunal has correctly awarded the compensation which is just, fair and reasonable. Hence the order passed by the Tribunal is in accordance with law and the same has to be confirmed.

6. Heard the counsel on either side and perused the materials available on record. The Tribunal has passed a common order for 8 claimants. On behalf of the claimants, P.W.1 to P.W.11 were examined and documents Ex.P1 to Ex.P28 were marked. On the side of the Insurance Company, R.W.1 and R.W.2 were examined and Ex.R1 to Ex.R4 were marked. The claimant in the present case has been examined as P.W.1. P.W.9 is the Doctor. After considering the oral and documentary evidence, the Tribunal held that the accident had occurred due to the driver of the lorry. The only dispute in the present case is, whether the Insurance Policy covers the claim in the present case. Learned Counsel for the second Respondent-Insurance Company has stated that 6 loadmen were covered in the Policy and the Tribunal has also correctly awarded the compensation for the claimants in the 6 MCOPs, and for the remaining 2 MCOPs including the claimant in the present case, they were not covered by the said Policy. Therefore, according to the counsel for the Insurance Company, only the owner of the vehicle is liable to pay the compensation to the claimant. Learned Counsel for the Appellant, vehemently contended that the injured-Pandiammal is not a load-woman and a premium of Rs. 50/- under non-fare paying passengers was also paid and therefore, there is a coverage of policy and hence, the Insurance Company is liable to pay the compensation. But, there is a categorical finding given by the Tribunal in the Common Order that the injured-Pandiammal is a load-woman along with other load-men. It is a question of fact. The Tribunal has correctly come to the conclusion there is no Insurance Policy and hence only the owner of the vehicle is liable to pay the compensation. Hence the finding of the Tribunal that only the owner of the vehicle, the Appellant herein, is liable to pay the compensation, is confirmed.

7. The alternative submission made by the learned Counsel for the Appellant is that the award passed by the Tribunal is excessive, exorbitant and without any basis and justification. The Tribunal has awarded a sum of Rs. 10,000/- towards pain and suffering and a consolidated sum of Rs. 5000/- towards transport to hospital and nourishment. The claimant sustained fracture in the left hand, injuries in the left hip, shoulder and all over the body. P.W.9-the Doctor, examined the claimant and determined the disability at 38%. After taking into consideration of the nature of injuries, it would be appropriate to award a sum of Rs. 5,000/- towards pain and suffering, as against the sum of Rs. 10,000/- awarded by the Tribunal. After taking into consideration of the fact that the injured-Pandiammal was in the hospital, definitely she would have incurred certain expenditure towards transport. Taking into consideration of the same, the amount awarded by the Tribunal at Rs. 5000/- towards transport to hospital and nourishment is very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 5000/- towards loss of income during the treatment period. It is very reasonable and hence the same is confirmed. The Tribunal has also awarded a sum of Rs. 15000/- towards fracture, grievous injuries and 38% disability. Taking into consideration the facts and circumstances of the case, and particularly there is no finding that such disability would affect

the earning capacity of the claimant, it would be reasonable to award a sum of Rs. 10000/- towards these heads, instead of Rs. 15000/- awarded by the Tribunal. After awarding a sum towards fracture, grievous injuries and 38% disability, the Tribunal has awarded a sum of Rs. 5000/- towards future consequence of disability. When the Tribunal has already awarded a sum towards fracture, grievous injuries and 38% disability, it ought not to have awarded another sum towards future consequence of disability. Hence the amount awarded by the Tribunal at Rs. 5000/- towards future consequence of disability is unwarranted and hence the same is deleted. The Tribunal has awarded interest rate at 9% p.a., from the date of petition. Taking into consideration the date of accident, date of award and also the prevailing rate of interest during the relevant time, the rate of interest fixed by the Tribunal at 9% p.a. is very reasonable and hence the same is confirmed. The details of the modified compensation are as under:

Rupees Pain and suffering 5,000/- Transport to hospital and nourishment 5,000/-  
Loss of income during the treatment period 5,000/- Fracture, grievous injuries  
and 38% disability 10,000/- ----- 25,000/- =====

The claimant is entitled to the modified compensation of Rs. 25,000/- with interest at 9% p.a. from the date of petition, as against Rs. 40,000/- with interest at 9% p.a. from the date of petition, awarded by the Tribunal.

8. It is stated that the Appellant has already deposited the entire award amount with interest. Under the circumstances, the claimant is permitted to withdraw the modified compensation of Rs. 25,000/- with interest at 9% p.a. from the date of petition, less the amount if any, already withdrawn. The Appellant is also permitted to withdraw the balance amount on making proper application.

9. With the above modifications, the Civil Miscellaneous Appeal is disposed of. Consequently, M.P.(MD) Nos. 2 and 3 of 2009 are closed. No costs.