

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.01.2015

CORAM

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

C.M.A. No. 1188 of 2011

&

M.P. No. 1 of 2011

M/s. ICICI Lombard General Insurance
Company Ltd.,
rep. By its Branch Manager,
'ICICI Bank Tower',
Bhandhira Karla Complex,
Mumbai Town,
Maharashtra State

...Appellant/2nd Respondent

Vs.

1. Ravichandran

2. G. Velmurugan

3. Ashok

4. United India Insurance Company Limited,
rep. By its Branch Manager,
No.42, Madathu Street,
I Floor, Kumbakonam,
Kumbakonam Munsif
(Respondents 2 & 3 are set ex parte
in the Lower Court)

...Respondents/Petitioners/
Respondents 1, 3 & 4

Prayer: Civil Miscellaneous Appeal as against the judgment and
decree dated 26.02.2010 passed in M.C.O.P. No. 286 of 2007 by the
Motor Accidents Claims Tribunal (Addl. Subordinate Judge) at
Mayiladuthurai.

For Appellant : Mrs.R. Sreevidhya

For Respondents : Mr.A. Prakash for
Mr.S.Kumaradevan for R1

Mr.S.K. Krishnamurthy for R4

Exparte for R2 & R3

J U D G M E N T

This Civil Miscellaneous Appeal has been preferred by the Insurance Company as against the fastening of liability on them, in respect of the accident, which occurred on 01.07.2007, in which the 1st respondent lost his right hand, while travelling in the bus, belonging to the 3rd respondent and insured with the 4th respondent, when the said bus was hit by a milkvan insured with the appellant Insurance Company.

2. Heard Mrs.R. Sreevidhya, learned counsel for the appellant and Mr.A. Prakash, learned counsel for R1/claimant and Mr.S.K.Krishnamurthy, learned counsel for R4.

3. The only contention raised by the learned counsel for the appellant is that when two vehicles were involved in the accident, negligence should have been fixed equally on both the vehicles. Moreover, according to the learned counsel, the 1st respondent got injured because of his negligence, as he had held his hand outside the window of the bus.

4. However, the Tribunal, taking into consideration, Ex-P1, FIR and Ex-P2, the report filed by the Transport Department and the evidence of the 1st respondent and P.W.2, the eye-witness to the occurrence, came to the conclusion that it was the milkvan, which was driven in a rash and negligent manner, and that it dashed against the bus, in which the 1st respondent was travelling, resulting in severing of his right hand. The FIR was filed against the driver of the milk van, which was insured with the appellant. Taking into consideration all these facts, the Tribunal rightly came to the conclusion that negligence on the part of the driver of the milk van had contributed to the accident and directed the appellant Insurance Company to pay the compensation.

5. Though arguments were advanced only on the negligence aspect, yet, a perusal of the award in toto, shocks the conscience of this Court, as the quantum awarded by the Tribunal is too low, for a bachelor, aged about 32 years, who is stated to be a loadman. Though the 1st respondent/claimant claimed a sum of Rs.6000/- as his monthly income, the Tribunal took only Rs.2500/- as income per month. In the year 2007, it was impossible to hire the services of even a maid for Rs.2500/-. Moreover, in the absence of any proof regarding income for a vegetable vendor, in respect of an accident, which occurred in 2008, the Honourable Apex Court, in its judgment rendered in Syed Sadiq V. Divisional Manager, United India Insurance Co. Ltd. reported in 2014 (1) TN MAC 459 (SC) determined the monthly income as Rs.6500/- . Since the accident in this case took place on 01.07.2007, this Court determines Rs.5000/- as the monthly income of the 1st respondent/claimant. Based on the evidence of P.W.3, Doctor and also considering the severing of the claimant's right hand, the percentage of disability was rightly determined by the Tribunal at 80% and the said determination is confirmed. As per the age of the 1st respondent, the appropriate multiplier to be adopted is 17. Therefore, taking the monthly income as Rs.5000/-, disability at 80% and applying multiplier 17, "Loss of Income" is calculated as hereunder:

Loss of Income :: Rs.5000 x 12 x 17 x 80/100
 :: Rs.8,16,000/-

6. The 1st respondent/claimant was a bachelor at the time of accident and he is compelled to remain so for the rest of his life on account of the disability suffered by him in the accident in question. Even if he intends to marry, the prospects may not be bright and therefore, for "Loss of Marital Prospects", a sum of Rs.1 lakh is awarded. Similarly, for "Loss of Amenities", a sum of Rs.30,000/- is awarded. The sum of Rs.15,000/- awarded towards "Transportation Expenses" and the sum of Rs.20,000/- awarded towards "Pain and Suffering" are confirmed. A sum of Rs.15,000/- is awarded towards "Extra Nourishment". In all, the compensation payable to the 1st respondent/claimant comes to Rs.9,96,000/- rounded off to Rs.10 lakhs. The rate of interest awarded by the Tribunal at 7.5% per annum remains intact. The Civil Miscellaneous Appeal is dismissed. No costs.

7. Though the appeal has been preferred by the Insurance Company, by re-appreciating the evidence on record and applying the law, as on date, this Court, invoking Order XLI Rule 33 CPC, has enhanced the compensation from Rs.5,07,300/- to Rs.10 lakhs, even in the absence of appeal/cross-appeal by the 1st respondent/claimant,

only to award just and reasonable compensation.

8. The appellant is directed to deposit the entire amount, as per the modified award passed by this Court, with interest and costs, before the Tribunal, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the 1st respondent/claimant is permitted to withdraw only 50% of the amount deposited, within a period of two weeks thereafter. The remaining amount shall be re-invested in any one of the Nationalised Banks, in interest bearing Fixed Deposit, at least for a period of three years.

Sd/-
Assistant Registrar(LA)

//True Copy//

Sub Assistant Registrar

nv

To

1. The MACT (Addl. Sub Court),
Mayiladuthurai.

2. The Section Officer,
V.R.Section, High Court,
Madras.

1 CC to Mrs.R. Sreevidhya, Advocate SR.No. 3685

1 CC to Mr.S.Kumaradevan, Advocate SR.No. 2937

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TEJ (CO)
PSI (25.02.2015)

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