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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.NAGAMUTHU

AND

THE HONOURABLE MR.JUSTICE V.S.RAVI

C.M.A(MD)No.1067 of 2015

The Branch Manager,
The New India Assurance Company Limited,
Balamore Road,
Opposite to Anna Stadium,
Balamore Road, Nagarkovil,
Kanyakumari District.

.. Appellant/ Respondent-3
(in the M.C.O.P.No.297 of 2009)

Vs.

1. Yesurajan

.. Respondent No.1/ Petitioner
(in the M.C.O.P.No.297 of 2009)

2. Ramesh(Driver)

.. Respondent No.2/
Respondent No.1
(in the M.C.O.P.No.297 of 2009)

3.R.Paulraj

.. Respondent No.3/
Respondent No.2
(in the M.C.O.P.No.297 of 2009)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, to set aside the order and decreetal order dated 21.01.2013 passed in M.C.O.P. No.297 of 2009 on the file of the learned I Additional Subordinate Judge (Motor Accidents Claims Tribunal), Nagercoil and to allow the Appeal with cost and render justice.

For Appellant

: Mr.K.Murugesan, Advocate

For Respondents

: No Appearance

**JUDGMENT**

(Judgment of the Court was made by V.S.RAVI,J.)

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This appeal has been filed by the Insurance Company/appellant questioning the correctness of the award passed by the Tribunal dated 21.01.2013, in M.C.O.P.No.297 of 2009 by awarding a compensation of Rs.10,76,000/- to the injured petitioner, by the learned I Additional Subordinate Judge (Motor Accident Claims Tribunal), Nagercoil.

2. It is clearly stated in the petition filed by the respondent No.1/petitioner that on 20.12.2001, he has travelled along with one Muthu in a Tata 407 Lorry (Tempo) bearing Registration No.TN 72-D-6613, which has been driven by the respondent No.2/respondent No.1, namely, Ramesh. As, some of the wooden pieces have fallen down and the vehicle has been stopped and the injured petitioner and another loadman Muthu have climbed to the top of the load and when they are arranging the wooden pieces, the driver of the said vehicle, without noticing the loadmen, has suddenly moved the vehicle and the petitioner has been thrown out, forcibly on the road and the petitioner has got grievous injuries and his spinal cord has suffered serious injuries in the accident. The respondent No.3/respondent No.2, namely, Paulraj is the owner of the said vehicle and the appellant / respondent No.3 is the insurer of the said vehicle.

3. Further, the petitioner has clearly pointed out in the petition as well in his evidence that due to rash and negligent driving of the driver of the said vehicle, the accident has occurred and he has suffered permanent disability. Further, as per Ex.P.6, namely, Judgment copy of C.C.No.811 of 2001 dated 09.04.2002 and also the Ex.P.1, F.I.R.-attested copy dated 20.12.2001, it is found that a criminal case has been filed as against the driver of the said vehicle and also he has admitted the offences under Sections.279 and 338 I.P.C., and also paid the fine amount in C.C.No.811 of 2001 dated 09.04.2002 before the Judicial Magistrate Court, Boodhapandi.

4. Thereafter, the Lower Court has determined the age of the petitioner, at the time of the accident, based upon the Ex.P.4, Wound Certificate and also fixed the permanent disability based upon the evidence of P.W.2, Dr.Ramesh, who has examined the injured petitioner and also ascertained the permanent disability and grievous injuries suffered by the injured petitioner and also considering the circumstances that the cooli work has been done by the injured petitioner.



5. Further, considering the age and employment and the evidences on record, the Lower Court has rightly fixed the monthly income as Rs.4,500/- and also rightly fixed the compensation amount, as per the principles mentioned in the citation reported in **2009 (6) SCC Page 122**, in the case of **Sarla Verma V. Delhi Transport Corporation**. In the said judgment, it is clearly observed as follows:-

" Held : Assessment of compensation though involving certain hypothetical considerations, should nevertheless be objective. Further, the compensation awarded does not become 'just compensation' merely because the Tribunal considers it to be just. 'Just compensation' is adequate compensation which is fair and equitable, on the facts and circumstances of the case, to make good the loss suffered as a result of the wrong, as far as money can do so, by applying the well-settled principles relating to award of compensation.

Justice and justness emanate from equality in treatment, consistency and thoroughness in adjudication, and fairness and uniformity in the decision-making process and the decisions. .. When the factors/inputs are the same, and the formula/legal principles are the same, consistency and uniformity, and not divergence and freakiness, should be the result of adjudication to arrive at just compensation."

Furthermore, the Lower Court has rightly declined to award the amount mentioned in the Ex.P.15, towards the medical expenses incurred by the injured petitioner for Rs.60,310/-, as the injured petitioner has not established the same, by any acceptable and believable material records. Further, the Lower Court has rightly fixed the annual income as Rs.54,000/- and correctly fixed the multiplier as 17 and thereafter, based upon the annual income of the petitioner, the loss of earning is fixed at Rs.9,18,000/- and further, the Lower Court has rightly fixed the medical expenses as Rs.1,25,000/- based upon Ex.P.14 Receipt of Dhiraviam Hospital, Transport Expenses as Rs.1,000/-, Extra Nourishment as Rs.2,000/- and the Pain and Sufferings as Rs.30,000/-. Thereafter, the Tribunal has fixed a total compensation of Rs.10,76,000/- and also fixed interest only at 7.5%. In such circumstances, it is found that the Tribunal has awarded the said just and proper



amount for the claimant by taking into consideration the relevant facts and circumstances. Further, as per Ex.P.3, namely, the Report of the Motor Vehicles Inspector, the said vehicle has been insured with the appellant on the date of accident, and R.2 is the owner and R.1 is the driver, at the time of the said accident.

6. Though, in the grounds of Appeal, the Insurance Company has stated that the second respondent has not followed the terms and conditions of the Insurance Policy, issued to him, the Insurance Company has failed to establish the various submissions raised in the present Civil Miscellaneous Appeal. It is found that the appellant/Insurance Company has raised untenable grounds in the Civil Miscellaneous Appeal, just to protract the payment of the said amount of compensation payable to the claimant, namely, the cooli worker, due to the permanent disability suffered by the said claimant.

7. On a proper appreciation of evidences and materials on record, the Tribunal has come to the correct conclusion, that the accident has occurred due to the rash and negligent driving of the driver of the Tata 407 Lorry(Tempo) bearing Registration No.TN 72-D-6613, insured with the third respondent/ appellant herein and the said finding of the Tribunal is neither defective nor infirm and it does not warrant any interference by this Court. Further, the material on record would be enough to prove that the Insurance Company/appellant herein, is liable for the said compensation amount payable to the claimant.

8. Though, the learned counsel for the Insurance Company/appellant herein has contended that the Tribunal has committed an error in awarding the amount, as ordered, it is found that the Insurance Company/appellant herein has not raised any tenable objection to interfere with the award passed by the Tribunal. For the above mentioned discussions, it is crystal clear that the contention of the appellant/ Insurance Company is untenable and unsustainable.

9. **In the result**, this Civil Miscellaneous Appeal is dismissed and award passed in M.C.O.P.No.297 of 2009 dated 21.01.2013 on the file of the learned I Additional Subordinate Judge (Motor Accidents Claims Tribunal), Nagercoil stands confirmed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



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To

The I Additional Subordinate Judge,
(Motor Accident Claims Tribunal),
Nagercoil.

+1cc to Mr.K.Murugesan, Advocate Sr.No.52483
pmu
AA/AMF/SAR-I/28.10.2015/5p-3c

C.M.A. (MD) No.1067 of 2015
04.09.2015