

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2017

CORAM:

THE HONOURABLE DR.JUSTICE S.VIMALA

C.M.A. No.1718 of 2017 and
CMP.No.9298 of 2017

The Divisional Manager,
The New India Assurance Co. Ltd.,
1,Bharathi Road, Cuddalore. ... Appellant/
2nd Respondent

Versus

1.Ekalingam ...R1 Petitioner

2.M.Balasubramanian ... R2/R1

3.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Division 1, Salamedu, Vazhuthareddy, ...R3/R3
Villupuram ...Respondents

PRAYER : Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the Judgment and decree made in M.A.C.T.Op. No.1583 of 2003 on the file of the Motor Accidents Claims Tribunal (Principal Subordinate Judge) at Cuddalore dated 06.02.2006.

For Appellant : Mr.M.Krishnamoorthy

JUDGMENT

The appeal has been filed by the Insurance Company challenging on negligence as well as quantum of compensation.

2. The claimant Ekalingam, aged 53 years, worked in the Marine boat fishing and loading cargo to the ships and earning a sum of Rs.10,000/- per month, filed the claim petition for compensation. When the claimant was travelling as a passenger in the bus belonging to the respondent/corporation, the bus collided with the lorry which was insured with the insurance company due to which he sustained injuries in the accident on 19.05.2003.

He suffered the following injuries:

1. Amputation of Right hand upto shoulder,
2. Grievous injury over face,
3. Grievous injury over head,
4. Grievous injury over Right leg,
5. Grievous injury over Left Foot,
6. Grievous injury over hip and
8. Multiple, grievous injuries all over the body"

3. Contending that there is a total loss of earning capacity because of amputation and permanent disablement the claimant has claimed a sum of Rs.15,00,000/-.

4. The Tribunal passed the award directing the respondents 1 and 2 in the claim petition to (jointly and severally) pay a sum of Rs.10,57,600/- as compensation with interest at the rate of 7.5% per annum. This award is under challenge by the insurance company.

5. It is the contention of the learned counsel for the appellant that the negligence was on the part of the driver of the bus belonging to third respondent and therefore, the award should have been passed only as against the third respondent. The further contention is that in any event the quantum of the compensation is excessive and it is disproportionate to the earnings and occupation of the claimant and therefore the award has to be reduced.

6. In order to appreciate the contentions raised, it is necessary to look into the details of award passed by the Claims Tribunal.

7. It is the case of the claimants that only because of the negligence on the part of the mini lorry driver, the accident had taken place. The fact remains that First Information Report has been registered and final report has been filed only as against the driver of the lorry. Even assuming that the claimants were sitting in a posture with hands protruding outside the bus, there is no evidence to show that it was the cause for the accident. It is also pointed out that the mini lorry driver has not been examined.

8. In the absence of the best evidence being made available, it is not open to the appellant to contend that there was no negligence on the part of the mini lorry driver. Therefore, the finding on negligence does not require any interference.

9. So far as the quantum of compensation is concerned, the Doctor has certified the disability of the claimant at 90%, the claimant has suffered amputation of his hand above elbow and he

has also suffered multiple fractures in the right hand. When the disability is certified as 90% then the impact of disability upon the earning capacity of the injured has to be considered.

10. The Tribunal has taken the age of the claimant as 53 and his earnings has been fixed at Rs.7,000/- per month. When the disability is 90% on account of amputation of hand above elbow, it is impossible to carry load to the ship or to function as a boatman. Therefore, the loss of earning capacity should have been considered as total and permanent. But the Tribunal has taken 90% of the income as loss of income and has calculated at Rs.6,300/-. Calculating the annual loss at Rs.75,600 (6300 x 12) and adopting multiplier 11, the quantum of loss of dependency has been fixed as Rs.8,31,600/-. The loss of dependency awarded thus cannot be said to be excessive. It is relevant to point out that the future prospective increase in income has not been considered at all. The award for the pain and suffering and medical expenses at Rs.1,50,000/-, extra nourishment at Rs.75,000/- and transport expenses at Rs.1,000/-, has been ordered by the Tribunal. The injuries has a direct impact on the functional ability of the claimant and therefore the award passed by the Tribunal need not be interfered with. Therefore, the award passed by the Tribunal is confirmed.

11. In view of the above reasonings, the appeal filed by the insurance company is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

vsi2/sai

To

1. Principal Subordinate Judge,
Cuddalore.

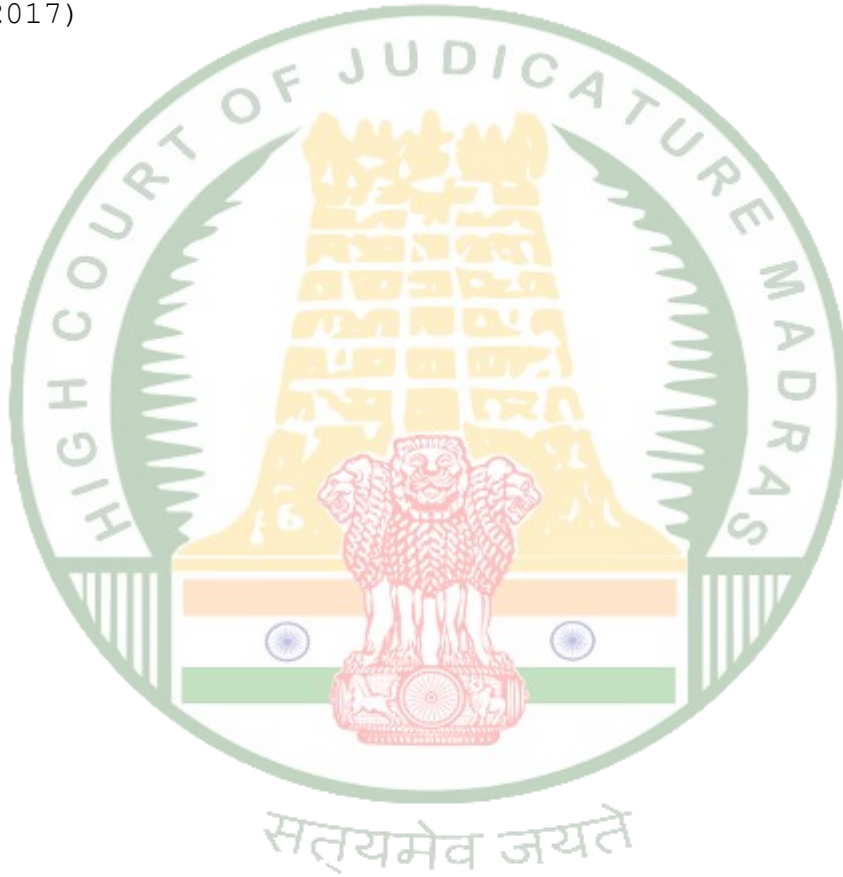
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2. The Section Officer, VR Section,
High Court, Madras.

+lcc to Mr.M.Krishnamoorthy, Advocate Sr. 43115

C.M.A. No.1718 of 2017

KS (CO)
VR(01/08/2017)



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