

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 19.01.2017

Judgment Pronounced on : 04.08.2017

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

C.M.A.Nos.67 of 2007 and 3685 of 2006
and MP.No.1 of 2007 in CMA.No.67 of 2017

C.M.A.No.67 of 2007

Oriental Insurance Co., Ltd.,
 Motor Third Party Cell,
 No.8, Esplanade, 'UIL Buildings',
 Chennai-600 108. ... Appellant

Vs.

1. N.Rajagopalan
2. The Managing Director,
 Tamil Nadu State Transport Corporation,
 (Kumbakonam Division-I) Limited,
 New Railway Station Road,
 Kumbakonam-612 004.
3. K.Gowri ... Respondents

C.M.A.No.3685 of 2006

N.Rajagopalan ... Appellant

Vs.

1. Tamil Nadu State Transport Corporation,
 (Kumbakonam Division-I) Limited,
 rep. By its Managing Director

2. K.Gowri

3. The Oriental Insurance Co., Ltd.,
 Motor Third Party Cell,
 No.8, Esplanade, 'UIL Buildings',
 Chennai-600 108.

...Respondents

Prayer in both CMAs: Civil Miscellaneous Appeals filed under Section 173, against the judgment and decree dated 29.06.2006 made in MACT.OP.No.1584 of 2000, on the file of the II Small Causes Court (Motor Accidents Claims Tribunal), Chennai.

In CMA.No.67 of 2007 :

For Appellant : Mr.R.Sivakumar
 For Respondents : Mr.N.M.Muthurajan [for R1]
 Mr.D.Venkatachalam [for R2]
 R3 - Exparte

In CMA.No.3685 of 2007 :

For Appellant : Mr. N.M.Muthurajan
 For Respondents : Mr. R.Sivakumar [for R1]
 Mr.D.Venkatachalam [for R3]
 R2 - Exparte

COMMON JUDGMENT

These twin appeals are preferred, one by the Insurance Company of one of the vehicles involved in the accident, and the other by the claimant, seeking enhancement of compensation awarded in M.A.C.T.O.P.No.1584 of 2000, on the file of the II Small Causes Court [Motor Accidents Claims Tribunal], Chennai.

2. On 19.11.1999 at about 7.00 hours, an Ambassador car bearing Registration No.TSJ 7779 while travelling along Sirkazhi to Thiruvavoor Main Road, a bus bearing Registration No.TN-49-N-1017 belonging to the second respondent in C.M.A.No.67 of 2007, (who is the first respondent in C.M.A.No.3685 of 2006) dashed against it, and due to the impact the driver of the car and a passenger of the car died while two other passengers of the car suffered injuries. One of the passengers, who suffered injury has moved the Tribunal seeking a compensation of Rs.17,50,000/- whereas the Tribunal had passed an award for Rs.4,13,970/- payable with interest at 7.5% per annum. In determining the liability, the Tribunal has apportioned the negligence

component equally on the driver of the car and the driver of the bus. Accordingly State Transport Corporation [the second respondent in C.M.A.No.67 of 2007, the first respondent in C.M.A.No.3685 of 2006] and the Insurance Company of the car are directed to pay the compensation amount determined in the ratio 50:50. Challenging the negligence-part and contending that the driver of the bus alone was negligent for the accident, the Insurance Company has preferred C.M.A.No. 67 of 2007. The claimant on his part has come forward with his separate appeal in C.M.A.No.3685 of 2006, seeking enhancement of compensation awarded by the Tribunal.

3. On negligence :

The accident *per se* is not disputed. The accident had occurred on the western track of a north-south running road. It was a head on collision with the bus going along its lane from south to north, when the car had come from the opposite direction but not in its track but on the track intended for on-coming vehicle from south to north. The evidence on record indicate that car had to travel along the right-hand track essentially because of some road maintenance work carried on the left-hand half of the road. Primarily, it is the duty of the car driver to exercise greater caution as it travelled along the track intended for vehicles coming from opposite side. However, there is no appeal by the State Transport Corporation. Given the facts and evidence in the case, the Court is satisfied that Tribunal's view on apportioning negligence is in order.

4. On quantum :

The claimant is stated to be aged 46 years at the time of accident and was running a Travels Company under the name of 'KRU Travels', and claimed to have earned Rs.10,000/- per month at the relevant time. Due to the accident, he had suffered fracture to his head of right femur and right hip, fracture to his left femur besides head injury and other allied simple injuries. He was first admitted in Thanjavur Medical College Hospital and thereafter he was shifted to Christian Medical College Hospital, Vellore, and he was hospitalised for a total period of 291 days. PW-2, the doctor who assessed the disability of the victim, has determined it at 80%.

5. The Tribunal even in the absence of any documentary evidence to support the income of the claimant reckoned the monthly income of the victim at Rs.10,000/- after considering the different avocation in which he was engaged himself. In arriving at the total compensation amount the permanent disability of the victim at 75% and awarded a compensation at Rs.1,000/- for every percentage of disability. On the other head of pecuniary damage viz., loss of income, it has granted compensation only for five months. The amount awarded for various pecuniary and non-pecuniary damages by the Tribunal is tabulated herein below:-

Heads	Amount Awarded by Tribunal
Towards permanent disability	75,000.00
Pain and suffering	25,000.00
Towards extra nourishment	5,000.00
Towards medical expenses	63,848.78

Heads	Amount Awarded by Tribunal
Towards Medical Bills	47,783.44
Ext.P9 : Rs. 13,671.71	
Ext.P10 : Rs. 13,631.65	
Ext.P11 : Rs. 11,952.75	
Ext.P13 : Rs. 2,170.00	
Ext.P14 : Rs. 5,507.33	
Ext.P15 : Rs. 850.00	
Towards transportation	27,311.75
Towards Loss of earning	50,000.00
Towards Mental Agony	1,00,000.00
Towards loss of income and assistance	20,000.00
Total :	4,13,969.97 (rounded off to) 4,13,970.00

6. Given the nature of injury it cannot be said that the claimant has suffered 100% functional disability since he was only running a Tourists Travels and Video Company. However, he may have to engage a staff if only he has to run his business efficiently and with a degree of professionalism that his business demands.

7. Therefore, I reckon his functional disability at 25%. Accordingly, given his age, multiplier applicable is 13 and the total amount awardable on the head of loss of future earning capacity is Rs.3,90,000/- [10,000 X 12 X 13 X25%]. On the head of loss of earning, admittedly the victim was in hospital and under the treatment for close to 10 months and therefore, it would be defeating only grant him for loss of earning at Rs.10,000/- for one year i.e. Rs.1,20,000, for pain and suffering I enhance the compensation from

Rs.25,000/- to Rs.50,000/-. However, as to the other heads of non-pecuniary damages, the award of the Tribunal is confirmed. The break-up details of the revised award of compensation reads as below :

Heads	Enhanced Amount Rs.
Towards functional disability	3,90,000.00
Pain and suffering	50,000.00
Towards extra nourishment	5,000.00
Towards medical expenses	63,848.78
Towards Medical Bills	47,783.44
Ext.P9 : Rs. 13,671.71	
Ext.P10 : Rs. 13,631.65	
Ext.P11 : Rs. 11,952.75	
Ext.P13 : Rs. 2,170.00	
Ext.P14 : Rs. 5,507.33	
Ext.P15 : Rs. 850.00	
Towards transportation	27,311.75
Towards Loss of earning	1,20,000.00
Towards Mental Agony	1,00,000.00
Towards loss of income and assistance	20,000.00
Total :	8,23,943.97 (rounded off to) 8,23,950.00

In final, the revised compensation amount is accordingly determined at Rs.8,23,950/- This is apportioned equally between the insurance company and the State Transport Corporation.

8. In the result, the appeal in CMA.No.3685 of 2006 is allowed and the compensation awarded by the Tribunal is MCOP No.1584 of 2000 is enhanced from Rs.4,13,970/- to Rs.8,23,950/- and the first and third respondent before

the Tribunal are directed to pay the enhanced compensation amount to the claimant along with the accrued interest at the rate of 7.5% p.a. as determined by the Tribunal, less any amount already deposited, within a period of four weeks from the date of receipt of a copy of this order, and the claimant is permitted to withdraw the same forthwith. In so far the appeal in CMA.No.67 of 2007 preferred by the insurance company is concerned, this Court is of the view that the order of the Tribunal in apportioning the negligence on both the vehicles involved in the accident is in order and therefore, it is dismissed as devoid of merits. No costs. Consequently, connected miscellaneous petition is closed.

kmi/ds

04.08.2017

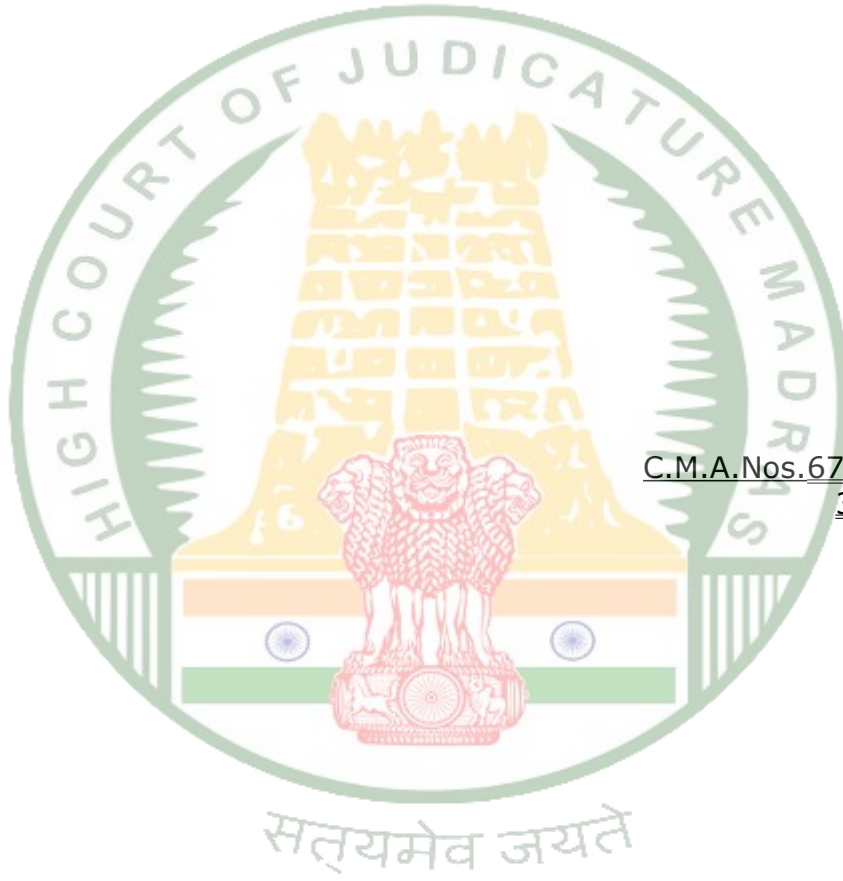
Index : Yes / No
Internet : Yes / No

To:

1. The Motor Accidents Claims Tribunal
Court of Small Causes No.II
Chennai.
2. The Section Officer
VR Section,
High Court of Madras
Chennai.

N.SESHASAYEE,J

ds



C.M.A.Nos.67 of 2007 and
3685 of 2006

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