

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.08.2017

CORAM : THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

CMA.No.835 of 2003
and CMP.No.6017 of 2003
and Cros.Obj.No.20 of 2017

CMA.No.835 of 2003 :
The New India Assurance Co. Ltd.
12, New Hospital Road,
Gobichettipalayam. Appellant/3rd Respondent

Vs.

1.M.Palanisamy
2.Rajammal
3.Moorthy

4.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Erode. Respondents/Petitioner and
Respondents 1,2 &4

(4th respondent is deleted in the lower Court.
Hence not a necessary party).

Cros.Obj.No.20 of 2017
M.Palanisamy Cross Objector/1st Respondent
in CMA

Vs.

1.The New India Assurance Co. Ltd.,
12, New Hospital Road,
Gobichettipalayam.

2.Rajammal
3.Moorthy

4.The Managing Director
Tamil Nadu State Transport Corporation Ltd.,
Erode. Respondents/Appellant &
Respondent 2 to 4 in CMA

(R2 and R3 remained exparte in the trial Court and R4 deleted
in the trial Court vide decree dated 14.1.2003 made in

MCOP.No.51 of 2002 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Additional District Judge, Gobichettipalayam. Hence R2, R3 and R4 were given up/dispensed with in this Cross Objection.)

Prayer in CMA.No.835 of 2003 : Civil Miscellaneous Appeal preferred under 173 of the Motor Vehicles Act,1988 against the judgment and decree dated 14.01.2003 passed in MCOP.No.51 of 2002 on the file of the Motor Accident Claims Tribunal, Fast Track Court No.II, Additional District Court, Gobichettipalayam.

Prayer in Cros.Obj.No.20 of 2017 : Cross Objection filed under Order 41 Rule 22 of CPC to set aside the judgment and decree dated 14.01.2003 made in MCOP.No.51 of 2002 on the file of the Motor Accidents Claims Tribunal, Fast Track Court No.II, Additional District Court, Gobichettipalayam.

In CMA.No.835 of 2003 :

For Appellant : Mr.R.Sivakumar
For Respondents : Mr.Tranquebar Doraivasu
for Mr.R.T.Doraisamy [for R1]
R4 - Given up
R2,3-No appearance

In Cros.Obj.No.20 of 2017:

For Cross Objector: Mr.Tranquebar Doraivasu
for Mr.R.T.Doraisamy
For Respondents : Mr.R.Sivakumar [for R1]
R2 to R4 - Given up

COMMON JUDGMENT

The insurance company of the offending lorry whose driver was allegedly negligent, leading to a road accident has come forward with this appeal.

2. The claimant was a driver of the Tamil Nadu State Transport Corporation. While he was on duty, the lorry insured with the appellant came rashly and negligently and dashed against the State Transport Corporation bus, of which the claimant was the driver. The accident had taken place on 18.06.2000 at about 11.30 p.m. In the accident while the claimant suffered injuries, the driver of the lorry was killed on the spot. For the injuries suffered, the claimant moved the Tribunal with a claim of Rs.5,00,000/- as against which the Tribunal passed an award for Rs.3,73,650/- with interest at 9% p.a. The Tribunal found the driver of the lorry entirely responsible for the accident, and accordingly fastened the liability to pay the compensation amount with interest at 9% per annum jointly and

severally on the owners of the lorry (who are the legal heirs of the deceased lorry driver himself, arrayed as respondents 1 and 2 before the Tribunal), as well as its insurer, the appellant herein. Challenging essentially the quantum of compensation awarded by the Tribunal, the insurance company has preferred the appeal. The claimant too has preferred his cross objection seeking enhancement of the compensation to the extent he had lost before the Tribunal.

3. On the aspect of negligence, the Tribunal had meticulously collated the evidence available, which includes taking note of the width of the road, the Motor Vehicle Inspector's report that rules out any mechanical failure of the vehicle, for entering the finding that the driver of the lorry was entirely responsible for the occurrence of the accident. On going through the evidence, I find no infirmity or error in the finding of the Tribunal.

4. In an accident, where the claimant had miraculously escaped death, he still had suffered fractures to his left leg and right hand besides, lacerated injuries to other parts of the body. He was hospitalised at a Government Hospital, Gobi and thereafter, at Government Hospital in Erode and later at M/s Seethalakshmi Hospital at Gobi where open reduction by implanting plates was done to correct the fracture. In all, he was hospitalised for about 50 days and he was also on leave for three months. His movement of the right hand has reduced considerably and he could not lift heavy objects with his injured right hand. There was also disfiguration of his face due to scars caused by the injuries. P.W.3, the doctor who examined the claimant has assessed his total permanent disability at 55% (40% + 15% respectively towards functional disability and disfiguration of face). The Tribunal has evaluated the evidence and passed an award as below:

Heads of compensation	Amount awarded (Rs.)
Permanent disability	40,000
Disfigurement	10,000
Loss of income for 3 months	18,000
Medical expenses	53,150
Loss of future prospects	1,20,000
Transportation	1,500
Extra nourishment	2,000

Heads of compensation	Amount awarded (Rs.)
For grievous injuries	80,000
Pain and Sufferings : [For minor injuries Rs.9,000/- For grievous injuries Rs.20,000/- For implantation of metal plates Rs.20,000/-]	49,000
Total :	3,73,650.00

5. While the learned counsel for the appellant had argued that the compensation awarded is unjustly excessive, the learned counsel for the claimant/cross-objector has argued that the claimant was a driver by occupation and belonged to a salaried class, as he was working in the State Transport Corporation, but the fact remains that the accident had denied him other opportunities to earn a living as a driver both at present and even after his retirement and this must be reckoned by the Court for determining the compensation. In other words, it was argued by the counsel that the disability of the claimant must be reckoned as functional disability.

6. On reading the evidence on record, I have little hesitation to conclude that the injury suffered by the claimant has disabled him functionally. As already indicated, the medical evidence was to the effect that the movement of his right hand is largely affected. Merely because someone belongs to a salaried class or even was entitled to receive pension on superannuation does not mean one should be denied just compensation for what he has lost. Reading the evidence on record this Court considers that fixing the functional disability of the claimant at 25% would be ideal. The claimant at the time of accident was said to be earning around Rs.6,000/- per month and the same is reckoned as his monthly income. Since he was 48 years at that relevant time, a multiplier of 13 is adopted and accordingly the compensation payable on the head of functional disability of the claimant is assessed at [Rs.6000x12x13x25%] Rs.2,34,000/-. The award granted on few of the non-pecuniary heads appears to be very low, this Court felt it would be appropriate to enhance the compensation on the heads namely disfigurement, transportation, extra nourishment etc.. Since no compensation was granted for injuries suffered and for attendant charges by the Tribunal, I grant Rs.50,000/-

and Rs.10,000/- respectively. Even on the head of pain and suffering, the amount awarded is very low and hence it is enhanced from Rs.49,000/- to Rs.1,00,000/-. The amount of enhanced compensation thus arrived is tabulated below :

Heads of compensation	Amount awarded (Rs.)
Functional disability	2,34,000
Disfigurement	25,000
Loss of income for 3 months	18,000
Medical expenses	53,150
For injuries suffered	50,000
Transportation	1,500
Extra nourishment	8,000
Pain and Sufferings	1,00,000
Attendant charges	10,000
Total :	4,99,650 (rounded off to Rs.5,00,000/-)

7. In the result, the appeal is dismissed and the cross objection is allowed and the award amount of compensation is enhanced from Rs.3,73,650/- to Rs.5,00,000/-. However, the enhanced portion of the compensation [Rs.1,23,350/-] will carry interest only at 7.5% per annum. The claimant will not be entitled to any interest for the period of delay in preferring the cross objection. The appellant is directed to deposit the enhanced award of compensation along with interest at 7.5% and for the amount awarded by the Tribunal, it carries the interest as determined by the Tribunal. The said sum is directed to be paid within a period of six weeks from the date of receipt of a copy of the order, less any amount already deposited, and the

claimant is entitled to withdraw the same forthwith. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To

1.The Judge,
Motor Accidents Claims Tribunal,
II Additional District Court,
Fast Track Court No.II,
Gobichettipalayam.

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

+1cc to Mr.R.Siva kumar, Advocate, S.R.No.56102
+1cc to Mr.R.T.Dorasamy, Advocate, S.R.No.56015

CMA.No.835 of 2003
and Cros.Obj.No.20 of 2017

CNR(CO)
RS(13/10/2017)

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