



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.11.2017

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.M.A. (MD) .No.1098 of 2015

and

C.M.P. (MD) .No.2 of 2015

Royal Sundaram Alliance Insurance

Co. Ltd., Chennai - 600 014.

Rep. by its Branch Manager.

... Appellant/2nd respondent

Vs

1.N.Ganesan

... Respondent/Petitioner

2.A.R.Shanmugavel

3.Tamil Nadu State Transport Corporation,

(Madurai) Ltd.,

Bye Pass Road,

Madurai

Rep. by its Managing Director.

...Respondents /
1st & 3rd Respondent

PRAYER:- Civil Miscellaneous Appeal filed under Section173 of the Motor Vehicle Act, to set aside the fair and decreetal order dated 05.09.2014 made in M.C.O.P.No.110 of 2010, Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli.

For Appellant

: Mrs.K.R.Shiva Shankari

for Mr.S.Srinivasa Raghavan

For R.1

: Given up

For R.2

: Mr.J.Ashok

For R.3

: Mr.M.Kayalarasan

J U D G M E N T

The impugned award is questioned by the insurance company on the ground of quantum as well as negligence. The lorry insured by the appellant was coming from east to west and turned towards right. The bus belonging to the Transport Corporation (third respondent) was going from South to North. The bus had hit the lorry from behind. The lorry driver was examined



as D.W.1. On the side of the Transport Corporation no witness was examined. A passenger travelling in the bus had suffered injuries. He filed M.C.O.P.No.110 of 2010 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli. The Tribunal fixed the entire negligence on the lorry driver and awarded a sum of Rs.3,30,346/- with interest. The appellant is the insurer of the lorry and fastened with the liability. Aggrieved by the same this appeal has been filed.

2. Heard the learned counsel for the parties.

3. Since the bus had hit the lorry from behind, the negligence could not be fixed entirety on the lorry driver. It is also relevant to note here that the bus driver was not examined as witness by the Transport Corporation. Therefore, it would be an appropriate to fix 50% of the contributory negligence on the bus driver also. Therefore, the liability has to be shared by the appellant Insurance company and the third respondent Transport Corporation. As regards quantum the Tribunal erred in adopting the multiplier method. The compensation should therefore to be reworked as under:.

Sl.No	Heads	Amount in Rupees
1.	Disability compensation (40%) 40xRs.3,000	Rs.1,20,000/-
2.	Loss of income	Rs.10,000/-
3.	Pain and Sufferings	Rs.50,000
4.	Nourishment	Rs.5,000/-
5.	Transportation	Rs.5,000/-
6.	Attender	Rs.5,000/-
7.	Medical expenses and for future expenses	Rs.1,00,000/-
	Total	Rs.2,95,000/-
	Round off	Rs.3,00,000/-



4. Accordingly, the award made in M.C.O.P.No.110 of 2010 dated 05.09.2014 on the file of the Motor Accident Claims Tribunal (Additional Sub Court), Tirunelveli is modified as indicated above. The appellant insurance Company and the third respondent Transport Corporation are liable to pay Rs.1,50,000/- each with interest at 7.5% per annum and cost from the date of petition till the date of realization within a period of twelve weeks from the date of receipt of a copy of this order, less the amount already deposited, if any. On such deposit the claimant is entitled to withdraw the entire amount, by filing proper application before the Tribunal, less the amount already withdrawn by him, if any.

5. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

kml/dss

To

1. The Judge, Motor Accident Claims Tribunal
(Additional Sub Court), Tirunelveli.

2. The Managing Director
Tamil Nadu State Transport Corporation,
(Madurai) Ltd., Bye Pass Road, Madurai

Copy to:

1. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to MR.S.SRINIVASAN RAGHAVAN, Advocate SR.No.86213

+1 cc to MR.J.ASHOK, Advocate SR.No.86014

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