

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

Reserved on : 07.06.2017

Delivered on : 29.06.2017

WEB COPY

CORAM :**THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM****and****THE HONOURABLE MR. JUSTICE P.VELMURUGAN****C.M.A. (MD) No.580 of 2016**

The Divisional Manager,
The United India Insurance Co.Ltd,
Bharathiya Salai,
Cantonment,
Trichy -1

... Appellant

Vs.

1.I.Royappan.
2.P.K.Jaleel,

... Respondents

PRAYER : Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against judgment fair and decreetal order dated 03.11.2015 passed in MCOP.No. 143 of 2010 on the file of the Motor Accidents Claims Tribunal (3rd Additional Sub Judge), Trichy.

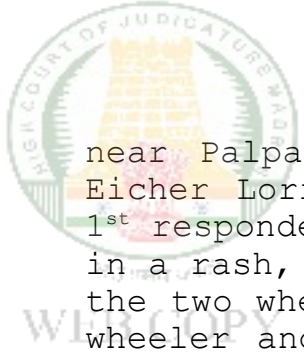
For Appellant : Mr.G.Prabhu Rajadurai

For respondents : Ms.T.Kokilavane
for Mr.C.Padmaraj**JUDGMENT**(Judgment of the Court was delivered by **P.VELMURUGAN, J.**)

The Civil Miscellaneous Appeal in C.M.A.(MD)Nos.580 of 2016 has been filed by the appellant Insurance Company, against the order dated 03.11.2015 passed in MCOP.No. 143 of 2010 on the file of the Motor Accidents Claims Tribunal / III Additional Sub Judge, Trichy.

2.For the sake of convenience, the parties are referred to according to their litigative status before the Tribunal.

3.The case of the claimants, before the Tribunal, as per the Claim Petition is that on 19.08.2009, at about 1.40 pm, the injured Royappan was riding his motor cycle bearing Registration No.TN45 AD 4327 on the extreme left side of the Trichy- Chennai by pass road



near Palpannai ring road from North to South. At that time, the Eicher Lorry bearing Registration No.TN 72 C1172, belonging to the 1st respondent, came from the opposite direction driven by its driver in a rash, negligent and in an uncontrolled manner and dashed behind the two wheeler. Due to which the injured was thrown out of the two wheeler and sustained multiple grievous injuries all over the body and particularly multiple fracture in right leg and also crushed injuries. Immediately he was rushed to Maruti Hospital, Trichy and his leg was amputated. Subsequently, he was referred to Ganga Hospital, Coimbatore, where he was given treatment till the filing of the claim petition.

4.It was further claimed that, the accident was occurred purely due to rash and negligent driving of driver of the 1st respondent lorry, against whom a case was also registered in Cr.No.217 of 2009. Only due to the accident, his leg was amputated and he could not walk and work as he did earlier. The injured had spent Rs.3,00,000/- towards medical expenses.

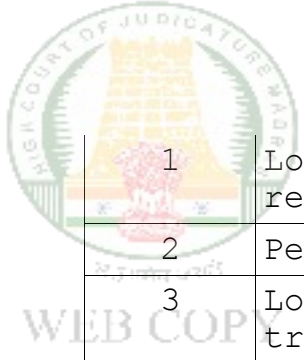
5.He was aged 40 years at the time of accident and he was working as Junior Engineer Grade -I, in Southern Railways, Trichy and was getting Rs.30,000/- per month. Due to the injuries sustained in the accident, the claimant has been thrown out of his employment. Hence, the claimant has claimed a sum of Rs.75,00,000/- as compensation from the 1st and 2nd respondent, since, the accident had occurred only due to rash and negligent driving of the driver of the 1st respondent lorry, which is insured with the 2nd respondent.

6.The case of the 2nd respondent/insurance company, before the Tribunal as per the counter is that the accident had occurred only due to rash and negligent riding of the claimant. The claimant had to prove his age, occupation and income and he had to prove the nature of injuries sustained and treatment given to him. The compensation claimed by the claimant is highly excessive and the claim petition has to be dismissed.

7.Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.15 were marked and on the side of the respondents, no witness was examined and no document was marked.

8.After considering all the facts and circumstances of the case and oral and documentary evidence let in by the parties, the Tribunal has held that the accident had occurred due to the rash and negligent driving of the 1st respondent only and as the 2nd respondent is the insurer of the first respondent lorry, he is liable to pay the compensation and awarded a sum of Rs.23,06,440/- as compensation with cost and interest at 7.5% per annum from the date of petition and details of the same are as under:-

Sl. No.	Head	Award (Rs)
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1	Loss of income after retirement	10,80,000/-
2	Permanent Disability	2,40,000/-
3	Loss of income during treatment	1,47,759/-
4	Attendant Charges	30,000/-
5	Pain and sufferings	1,00,000/-
6	Extra Nutritious Charges	20,000/-
7	Transportation	20,000/-
8	Loss of amenities	2,00,000/-
9	Loss of expectation of life	1,00,000/-
10	Medical expenses	3,68,681/-
	Total	23,06,440/-

9. Aggrieved by the impugned award passed by the Tribunal, the 2nd respondent Insurance Company has filed the present Civil Miscellaneous Appeal, stating that the Tribunal has wrongly fixed the liability on the driver of the 1st respondent lorry and the award passed by the Tribunal is highly excessive.

10. Considering the facts and circumstances of the case, documents placed before the Tribunal and award passed by the Tribunal, the following points arise for consideration:-

(i) Whether the accident occurred due to rash and negligent riding of claimant's vehicle bearing Registration No. TN45 AD 4327.

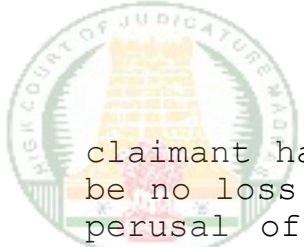
(ii) Whether the accident occurred due to rash and negligent driving of the driver of the 1st respondent lorry bearing Registration No. TN 72 C1172?

(iii) Whether the award passed by the Tribunal is just and reasonable?

Point Nos. i to ii

11. As far as the negligence aspect is concerned, the appellant has not seriously disputed the liability fixed by the Tribunal. On perusal of the oral and documentary evidence, the liability fixed by the Tribunal needs no interference of this Court and accordingly, these points are answered.

12. As far as the quantum of the compensation is concerned, the learned counsel for the appellants would submit that the Tribunal has not properly appreciated the oral and documentary evidence in this regard and awarded compensation which is high and excessive. Since the injured is a Government employee and he has been continuing in service even after the accident, there is no question of loss of income to the injured. However, the Tribunal has awarded RS.10,80,000/- as future loss of income after the retirement. Perusal of the award passed by the Tribunal would show that the



claimant has been continuously working in the Railways, there would be no loss of income for the claimant due to the accident. However, perusal of the award and deposition of P.W.3 would show that the claimant has availed 120 days leave on loss of pay for taking treatment, due to which, the claimant had lost income of Rs. 1,47,759/- and the Tribunal considered the said aspect and awarded the said amount as loss of income, which needs no interference of this Court, where as, the award passed towards future loss of income to the claimant is not acceptable. Hence, the contentions raised by the learned counsel for the appellant that since, the claimant has been continuously working even after the accident there would be no future loss of income for the claimant after the retirement is accepted and the award passed by the Tribunal towards loss of future income after retirement needs interference of this Court and the claimant is not entitled to any future loss of income after his retirement as well as loss of expectation of life and loss of amenities.

13. There is no dispute that the claimant sustained 80 % of permanent disability and therefore, the Tribunal has awarded a sum of Rs.30,000/- towards attendant charges. However, even in the claim petition itself, it is stated that the claimant has taken treatment as inpatient from 19.08.2009 to 7.10.2009. Since, his leg was amputated definitely, he would be taken care of by some attendants and hence, he is entitled Rs.15,000/- towards the same, as he was inpatient for a period of 60 days only.

14. The Tribunal has considered Ex.P.7 and Medical Bills (Rs. 40,856) and Ex.P.8, Bills for purchasing and fixing of artificial leg to the claimant, (Rs.3,27,825) and awarded Rs. 3,68,681/- and on perusal of Exs.P.7 and 8, We are of the view that the Tribunal has awarded just and reasonable compensation under this head.

15. The Tribunal has awarded Rs.1,00,000/- towards pain and sufferings, which is just and reasonable. For extra nourishment awarded Rs.20,000/- However, the leg of the claimant has been amputated and definitely he would have taken more extra nourishment and hence the same is enhanced to Rs.50,000/-. The Tribunal has awarded Rs.20,000/- towards transportation, which is just and reasonable no need to interfere with the same.

16. The claimant has sustained 80% permanent disability and hence, the Tribunal has awarded a sum of Rs.2,40,000/- towards the same. As already held that there would not be loss of income for the claimant due to the accident, the claimant is entitled to any compensation towards permanent disability, the same is just and reasonable. Since he is a Railways employee a best treatment will be given in the Railways Hospital itself to the Railways employee. Therefore, he is not entitled to any compensation for further

17. The compensation claimed by the claimant, the compensation

awarded by the Tribunal and the compensation modified by this Court are as follows,

Sl. No.	Head	The Award Claimed by Claimants	Award (Rs) by Tribunal	Awarded by this Court
1	Loss of income after retirement		10,80,000/-	--
2	Permanent Disability		2,40,000/-	2,40,000/-
3	Loss of income during treatment		1,47,759/-	1,47,759/-
4	Attendant Charges		30,000/-	15,000/-
5	Pain and sufferings		1,00,000/-	1,00,000/-
6	Transportation		20,000/-	20,000/-
7	Extra nourishment		20,000/-	50,000/-
8	Loss of amenities		2,00,000/-	--
9	Loss of expectation of life		1,00,000/-	--
10	Medical expenses		3,68,681/-	40,856/-
11	For Purchasing and fixing of artificial leg			3,27,825/-
	Total	75,00,000/-	23,06,440/-	9,41,440

18. In the result,

(i) C.M.A.(MD)No.580 of 2016 is partly allowed and the judgment and decree, dated 03.11.2015 passed in M.C.O.P.No.143 of 2010 are modified as shown above. No costs. Consequently, connected miscellaneous petitions are closed.

(iii) The appellants Insurance Company is directed to deposit the compensation amount, as modified by this Court along with proportionate interest and costs from the date of petition till the date of realisation, less the amount already deposited, if any, to the credit of MCOP.No. 143 of 2010 on the file of the Motor Accidents Claims Tribunal, III Additional Sub Court, Trichy, within a period of six weeks from the date of receipt of a copy of this judgment. The claimant is permitted to withdraw the entire amount that would be deposited by the appellant, less the amount already withdrawn, if any, with proportionate interest and costs, through RTGS by filing necessary Application before the Tribunal. The appellant is permitted to withdraw the excess amount, if any.

Sd/-

Assistant Registrar(Co)



Sub Assistant Registrar

To

1. The III Additional Subordinate Judge,
Motor Accidents Claims Tribunal,
Tiruchirappalli.

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

+1 cc to Mr.C.Padmaraj , Advocate in SR.No. 62797

Arul/dsk

AE/KP/SAR1/10.08.2017/6P/4C

**Judgment made in
C.M.A. (MD) No.580 of 2016
29.06.2017**