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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE S.RAMATHILAGAM

C.M.A.No.336 of 2006
and
CMP.No.1072 of 2006

- 1.S.Palaniswamy,
M/s. Nataraja Transports,
New Extension Street, Palladam.
- 2.The New India Assurance Company Ltd.,
Divisional Office, Kumaran Complex,
Kumaran Road, Trippur. ... Appellants/Respondents 2 & 3

Versus

- 1.K.Sekar ... Respondent/Petitioner
- 2.P.R.Muthuswamy
- 3.V.Shanmugam
- 4.M/s.Samraj & Company,
390 A, 100 Feet Road,
Tatabad,Coimbatore - 641 012.
- 5.United India Insurance Company,
Divisional Office, Bank of Baroda Buildings,
State Bank Road,
Coimbatore.

... Respondents/Respondents 1, 4, 5 & 6

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and judgment dated 07.10.2003 made in MCOP.No.695 of 1996 on the file of Motor Accident Claims Tribunal and Additional District Court (Fast Track Court No.5), Coimbatore at Trippur.

For Appellants : Mr.S.Manohar

For Respondents : Mr.K.Govi Ganesan, for R1

: Mr.S.Kesavan, for R4



J U D G M E N T

This appeal has been filed by the Appellants/M/s. Nataraja Transport and the New India Assurance Company Limited, against the Judgment and decree dated 07.10.2003 made in MCOP.No.695 of 1996 on the file of Motor Accident Claims Tribunal and Additional District Court (Fast Track Court No.5), Coimbatore at Tiruppur.

2. The brief facts, leading to the filing of the Claim petition by the first respondent herein, are as follows:-

On 02.03.1995, when the first respondent was traveling in the Bus bearing Registration No.TN-39 A3443 from Coimbatore to Palladam as a passenger, at about 06.30 pm, a mini lorry bearing Registration No.TN-37-E-8944 came in the opposite direction. At that time, the driver of the bus, in which the first respondent was travelling, drove the bus in a rash and negligent manner and suddenly hit the mini lorry. In the impact, some of the passengers, including the first respondent, sustained injuries. For the injuries sustained in the said accident, the first respondent has filed the claim petition claiming a sum of Rs.2,00,000/- (Rupees Two Lakhs only) as compensation.

3. The third respondent in the claim petition namely New India Assurance Company Limited / Second Appellant herein has filed a counter statement stating that on the date of accident, the bus was driven by its driver slowly and in a careful manner but it was the driver of the mini lorry, who had driven in a rash and negligent manner and caused the accident. The third respondent had denied the fact that the claimant has travelled in the bus at the time of accident. The third respondent also contended that at the time of accident the bus was carrying more number of passengers than the permitted number as per the permission issued by the transport authorities. The third respondent also denied the age, occupation and other details furnished in the claim petition and prayed for dismissal of the claim petition.

4. Before the Tribunal, several claim petitions were filed either by the injured themselves or by the legal heirs of the persons, who died in the accident. One among them is the claimant, who filed the claim petition in MCOP.No.695 of 1996.

5. Before the Tribunal, the claimant examined himself as PW.61 and Dr. Kannanppan, who assessed the disability of the claimant was examined as PW.62. The claimant had also filed documentary evidence under Ex.P235 dated 28.04.1195, which is the wound certificate issued in his favour.



6. The Tribunal upon analysing the oral and documentary evidence, concluded that the claimant engaged himself as Tailor and he was the only bread winner in his family. The Tribunal has also found that the claimant was admitted in the Government Medical College Hospital, Coimbatore as an in-patient from 12.03.1995 to 15.04.1995 and thereafter, he has taken treatment in private hospital as well for the injuries sustained by him in the accident.

7. As per the evidence of the Doctor, he assessed the disability of the claimant at 30%. The Tribunal also rendered a finding that the claimant, who was aged 30 years at the time of accident, who is engaged in Tailoring business, could not effectively continue his avocation, as before. Accordingly, the Tribunal has applied the multiplier method by fixing the multiplier 17 based on his age at the time of accident. The Tribunal has fixed the monthly income of claimant at Rs.5,000/- (Rupees Five Thousand Only). Resultantly, the Tribunal arrived at a sum of Rs.3,06,000/- towards loss of income due to disability suffered by him. That apart, a sum of Rs.5,000/- was awarded by the Tribunal towards grievous injury and a sum of Rs.2000/- was awarded towards extra nourishment, taking the total compensation to Rs.3,13,000/-.

8. Aggrieved by the quantum of compensation awarded by the Tribunal, the Insurance Company and the owner of the vehicle have come up with this appeal.

9. The learned counsel appearing for the Insurance company would mainly contend that the Tribunal, out of the total compensation of Rs.3,13,000/-, has directed the Insurance Company to pay 50% of the compensation. The learned counsel would vehemently contend that even in the claim petition in column No.11, the injuries sustained by the claimant were indicated as i) Severe Head Injuries, ii) Fractures left femur (thigh bone) and iii) Multiple bodily injuries.

10. According to the learned counsel for the appellant, the Doctor, who was examined on behalf of the claimant, has assessed the disability of claimant only at 30%. Even as per the deposition of the claimant, for the injuries sustained by him, he could not continue his avocation as before. On the other hand, the claimant is still continuing his avocation and the injuries sustained by him are not a bar for him to continue his work. However, the Tribunal proceeded to award compensation by adopting multiplier method, which is not warranted in this case. At any rate, the amount of compensation awarded under the Head "loss of income due to disability" at Rs.3,06,000/- is excessive and on the higher side. The compensation awarded to the claimant is not befitting



the nature and extent of the injuries suffered by the claimant. Therefore, the learned counsel for the appellant prayed for allowing this appeal.

11. Per contra, the learned counsel for the claimant / 1st respondent would contend that the claimant was a Tailor by profession and he suffered severe injuries on his left thigh, which had a bearing on his profession as Tailor. The Tribunal, taking note of the period of hospitalization of the claimant, as an in-patient, and the nature of injuries sustained by him, has proceeded to award compensation by adopting multiplier method. Such a determination of compensation by the Tribunal, need not be interfered with by this Court. Hence, the learned counsel for the claimant / respondent prayed for dismissal of the appeal.

12. Heard both sides and perused the materials available on record. Admittedly, in an accident that took place on 02.03.1995, the claimant suffered injuries. According to the claimant, he is a Tailor by profession and by virtue of injuries sustained by him in the accident, he could not continue his profession, as a Tailor, as before and the injuries, which he had sustained, had a bearing on his profession. According to the claimant, he has lost his income in the profession, especially, when he sustained injuries in his left thigh.

13. It is an admitted fact that even in the claim petition in column No.11, the injuries said to have been sustained by the claimant were mentioned as follows:

- i) Severe Head Injuries,
- ii) Fractures left femur (thigh bone) and
- iii) Multiple bodily injuries.

14. It is also admitted that the Doctor, who deposed before the Tribunal on behalf of the claimant, has assessed the disability of the claimant only at 30%. Under such circumstances, in the opinion of the Court, the Tribunal ought not to have resorted to determine the compensation by adopting multiplier method.

15. In the modern days, as a Tailor, the claimant can utilize advance machines and it may not require human force. In such view of the matter, the injuries sustained by the claimant had no bearing as Tailor by profession. It is not stated in the deposition of the claimant, as PW.61, that he did not lose his avocation due to the injuries. Therefore, this Court feels that the compensation awarded by the Tribunal has to be re-assessed.



16. For 30% of disability suffered by the claimant, a sum of Rs.2,000/- can be awarded for each percentage of disability and consequently a sum of Rs.60,000/- would be quite reasonable to the claimant towards disability. For pain and sufferings, awarding a sum of Rs.5,000/- will be a reasonable compensation. For transportation and hospitalization, especially when the claimant suffered injuries in his left thigh, awarding a sum of Rs.10,000/-, will meet the end of justice. Similarly, another sum of Rs.10,000/- is awarded for extra nourishment. For medical expenses, a sum of Rs.30,000/- can be awarded as fair and reasonable compensation. Similarly, for loss of income during the period of treatment, a sum of Rs.10,000/- could be awarded. Thus, the total sum of Rs.1,35,000/- shall be a fair and reasonable compensation, break-up of which is given below:-

Heads	Amount awarded by the Tribunal	Amount Modified by this Court
Disability	Rs.3,06,000/- (5000*12*17/30%)	Rs.60,000/- (30 x 2000)
Severe Injuries	Rs.5,000/-	-
Pain and Sufferings	-	Rs.15,000/-
Transport for hospitalisation	-	Rs.10,000/-
Medical expenses	-	Rs.30,000/-
Extra Nourishment	Rs.2,000/-	Rs.10,000/-
Loss of Income	-	Rs.10,000/-
Total	Rs.3,13,000/-	Rs.1,35,000/-

17. In the result, the appeal is partly allowed modifying the compensation awarded by the Tribunal from Rs.3,13,000/- to Rs.1,35,000/-. Out of this sum of Rs.1,35,000/-, the Second appellant/Insurance Company is directed to pay 50% of compensation together with accrued interest and costs. The Insurance Company shall deposit the amount determined in this appeal to the credit of MCOP No. 695 of 1996 on the file of Motor Accident Claims Tribunal and Additional District Court (Fast Track Court No.5), Coimbatore at Trippur, within a period of six weeks from the date of receipt of a copy of this Judgment, after adjusting the excess amount if any deposited. In case the amount deposited by the Insurance Company is over and above the compensation amount determined in this appeal, the Insurance Company is at liberty to



withdraw the excess amount. On such deposit, the claimant is permitted to withdraw the entire compensation amount with accrued interest. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

klt

To

1.The Additional District Judge,
(Fast Track Court-V)
Motor Accidents Claims Tribunal,
Coimbatore at Tiruppur.

2. The Section Officer,
V.R Section,
High Court, Madras-104.

+1cc to Mr.K.Govi Ganesan, Advocate sr.69863
+1cc to Mr.S.Manohar, Advocate sr.69730

C.M.A.No.336 of 2006

kk(co)
nr 22/10/2019