

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 24.10.2018

CORAM

THE HONOURABLE TMT.JUSTICE S.RAMATHILAGAM

CMA.No.499 of 2006

and

C.M.P.No.1839 of 2006

The New India Assurance
Co., Ltd.,
Motor Third Party Cell
No.45, Moore Street,
Chennai-600 001

.... Appellant/2nd Respondent

Versus

1.K.Mohan
2.Sri Siva Subramanianadar
College of Engineering,
No.21, Balaraman Road,
Adayar, Chennai- 600020.

.... Respondents/Petitioner/1st
Respondent

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and Decree dated 11.01.2005 made in M.C.O.P.No.340 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.3, Poonamallee.

For Appellant : Mr.S.Ramalingam

For 1st Respondent: Mrs.Y.Jayanthi Bhaskar
For Mr.J.Mahalingam

For 2nd Respondent : No Ready in Notice

JUDGMENT

This Civil Miscellaneous Appeal is directed against the Judgment and Decree dated 11.01.2005 made in M.C.O.P.No.340 of 2003 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Fast Track Court No.3, Poonamallee.

2. The brief facts leading to the claim application are as follows :-

On 19.04.2003 at about 3.00 p.m., when the petitioner was standing on the western side of the 100 Feet Road, near Vadapalani bus stop, the bus bearing Registration No. TML 3099 was driven by its driver in a rash and negligent manner, dashed against the petitioner, who was standing and caused grievous injuries. Hence, the claimant has claimed a sum of

Rs.3,00,000/- as compensation for the loss of income, pain and suffering, disability and loss of earning power.

3. The respondent/Insurance Company in the counter statement has denied the mode of accident and also the rash and negligent driving on the part of the driver of the bus. It is also stated that the petitioner was also guilty of contributory negligence and hence, the liability has to be apportioned on him with greater percentage. The other aspects regarding age, income and occupation of the petitioner were also denied.

4. The Tribunal, after analysing the evidence and documents placed before it, has given a finding that the accident had occurred only due to the rash and negligent driving on the part of the driver of the bus and awarded a sum of Rs.2,05,605/- as compensation under various heads as under:

Heads	Amount awarded by the Tribunal
For Disability	40,000.00
For Pain and sufferings	40,000.00
For Medical Expenses	2,605.00
For Loss of Income	1,20,000.00
For Nourishment and Transport expenses	3,000.00
TOTAL	2,05,605.00

Aggrieved against the said award, the Insurance Company who is the 2nd respondent in the claim application has preferred this appeal.

5. In the grounds of appeal, the appellant/Insurance Company has stated that PW2, doctor is not the person who treated the petitioner and assessed the disability and no document was filed before the Tribunal for the permanent disability and also the continuous treatment taken by the claimant as spoken by PW2. Hence, on the whole, the sum awarded by the Tribunal is excessive.

6. Heard both sides and perused the documents available on record.

7. On the side of the appellant, it is argued that at the time of accident, the claimant was standing in the road and the bus which was driven by its driver caused the accident by his rash and negligent driving. It is very much argued by the appellant that the occupation of the petitioner has been

mentioned as driver of the auto. But, there is no such document has been filed along with the claim application. But, subsequent to the accident, the driving license of the claimant was renewed. So, whether at the time of accident, he was driving the auto and his occupation was also an Auto driver and he has incurred disability which resulted in the loss of income has not been properly proved before the Tribunal. Whereas, the Tribunal has considered the evidence of the petitioner and arrived the loss of income by taking the monthly income at Rs.3000/- though there is no evidence or documents filed on the side of the respondent/claimant.

8. On the other hand, it is argued by the learned counsel for the respondent/claimant that in the absence of filing any cross objection, the Tribunal can assess the disability and the loss of earning power.

9. It is argued on the side of the appellant that the claimant has renewed his driving license subsequent to the accident and there is also no such fracture which deprived him from continuing his profession as auto driver. Further, the disability at 40% has been assessed only by the Doctor who has not given treatment to the claimant. Even, for the nature of injury, treatment and disability, nothing has been spoken before the Tribunal, whether the said injury and disability prevents him to continue his profession as an auto-driver. Because the nature of injury stated as only a fracture injury and for which, he underwent surgery and further, after renewing the license what proves that he would be able to continue his profession in the manner.

10. On the side of the respondent/claimant, it is argued that the Tribunal has taken the monthly income at Rs.3000/- and deducted 1/3rd towards personal expenses is not proper. Further, even in the absence of any documentary proof, the income of a person has to be taken at Rs.4,500/- per month as minimum wages. Hence, the argument advanced by the appellant is that when the petitioner is able to continue his profession as auto-driver, the loss of income that has been calculated by the Tribunal is not justified.

11. It is seen from the award that the Tribunal after considering the arguments made by both sides, has awarded the loss of income and the future earning capacity. It is also seen from the records that by renewal of driving license subsequent to the accident, the claimant is able to continue his occupation as he was doing earlier, otherwise the license would not have been renewed. The other grievance raised by the respondent/claimant is that the income has been fixed at Rs.4,500/- and taken 1/3 is not proper. On a perusal of the award by the Tribunal, it is observed that what disability has

been taken as Rs.40,000/- and the loss of income has been calculated for five years. However, it is observed that the claimant was under treatment for a long period on various dates viz., 10.07.2003, 15.07.2003, 05.08.2003, 01.09.2003, 06.09.2003, 01.10.2003, 15.10.2003, 29.10.2003, 11.12.2003, 12.12.2003, 13.12.2003, 12.02.2004, 08.06.2004 and 07.12.2004. The period of treatment taken by the claimant and the surgery done to the claimant have been proved before the Tribunal. Hence, the disability at 40% has been properly taken by the Tribunal while calculating the loss of income.

12. It is argued on the side of the appellant/Insurance Company that there was no license at the time of accident and hence, the loss of income calculated for five years during the period of treatment is not justified. But, on considering the arguments and also the fact that any person without any efficiency of driving, can earn atleast Rs.100/- per day to run his family. Since there was no license on the date of accident, loss of income for the period of treatment has to be considered. But, the Tribunal has considered the income by applying the multiplier is not justified. Hence, it would be proper to calculate the loss of income only for the relevant period.

13. Accordingly, this Court is of the view that it would be quite proper and reasonable to take the monthly income at Rs.4,500/- and calculate it for six months i.e for the period of treatment undergone by him (June 2003 to December 2004). Since the disability is assessed at 40%, this Court considers that even if he renewed the license, he will not be efficient in driving the vehicle as he was driving prior to the accident. Hence, considering the above fact, this Court is inclined to calculate the loss of income for another six months. Therefore, for the total period of 12 months, the loss of income is assessed at Rs.54,000/- (Rs.4,500 x 12). It is seen from the award that no sum has been awarded for attendants charges, hence, a sum of Rs.10,000/- is awarded under the said head. Similarly, for the transport charges and nourishment, no sum has been awarded, hence, a sum of Rs.10,000/- each is awarded under the said heads. This Court does not want to alter sum awarded for the pain and sufferings and medical expenses since the same is quite reasonable.

14. This Court modifies the award passed by the Tribunal under various heads as follows:

Heads	Amount awarded by the Tribunal Rs.	Amount modified by this Court Rs.
For Disability	40,000.00	40,000.00
For Pain and Sufferings	40,000.00	40,000.00
For Medical Expenses	2,605.00	2,605.00
For Loss of Income	1,20,000.00	54,000.00 (4,500 x 12)
Nourishment & Transportation	3,000.00	10,000.00
For Attender's charges	--	10,000.00
For Transport charges	--	10,000.00
TOTAL	2,05,605.00	1,66,605.00

15. In view of the above, the sum awarded by the Tribunal is reduced from Rs.2,05,605/- to Rs.1,66,605/-. This Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

16. Accordingly, the Appellant/Insurance Company is directed to deposit the entire award amount, in respect of above Appeal as per the modified award passed by this Court, with interest and costs, before the Tribunal, after adjusting the amount, if any, already deposited, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the claimant's bank account through RTGS within one week thereon. The said amount shall carry the same rate of interest as awarded by the Tribunal, namely, 9% per annum.

सत्यमेव जयते

s/d-

Assistant Registrar (CS V)

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Sub-Assistant Registrar

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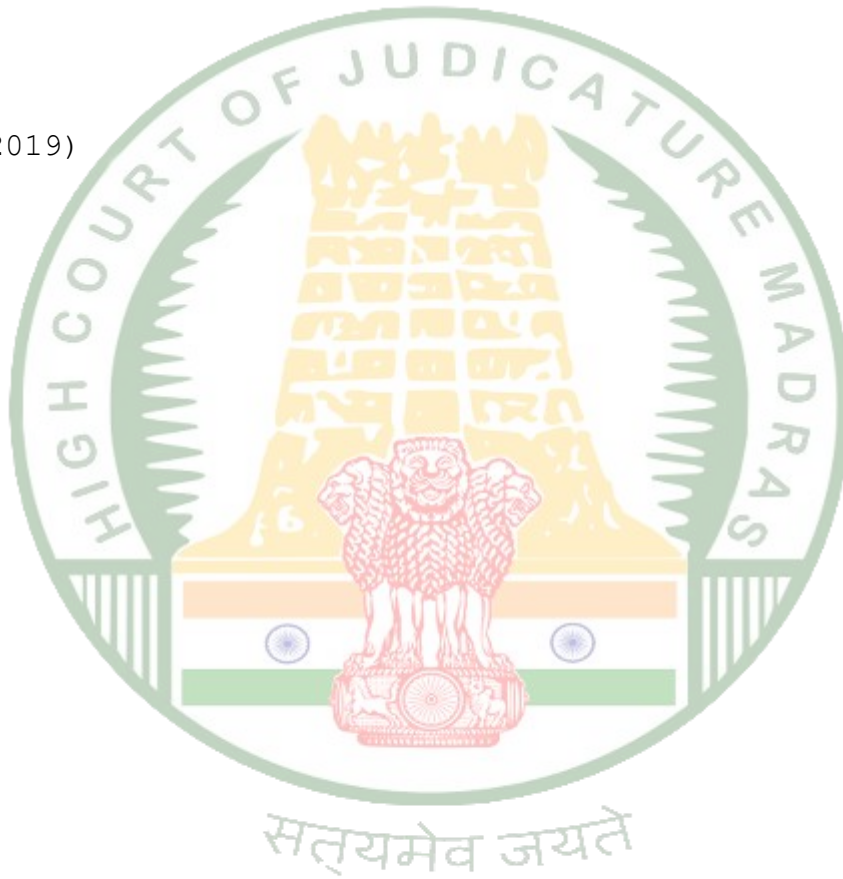
1. The Motor Accident Claims Tribunal,
Additional District Judge,
Fast Track Court No.3,
Poonamallee.

2. The Section officer
V.R.Section, High Court, Chennai.

+1 CC to Mr.S.Ramalingam, Advocate sr 73155.
+1 CC to Mr.J.Mahalingam, advocate sr 73529.

CMA.No.499 of 2006
and
C.M.P.No1839 of 2006

GJ(CO)
SP(15/05/2019)



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