

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY
C.M.A.No.1283 of 2018
and
C.M.P.No.10291 of 2018

The Oriental Insurance Company Limited,
3rd party Claims Hub, 31/312, 13th Street,
Phase II, Sathuvachari, Vellore. Appellant/3rd respondent

Vs

1.Devaki 1st Respondent/Petitioner

2.The Managing Director
Tamil Nadu State Transport Corporation Limited,
Rangapuram, Vellore - 9. 2nd Respondent/1st Respondent

3.P.Ramesh 3rd Respondent/2nd Respondent

PRAYER : Civil Miscellaneous Appeal filed against the
Decree and Judgment dated 19th day of December 2017 made in
M.C.O.P.No.47 of 2014 on the file of the Motor Accident Claims
Tribunal (Sub Court), Vaniyambadi.

For Appellant : Mr.S.Manohar

For Respondents : Mr.F.Terry Chellaraja

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appeal has been preferred by the insurance company,
against fixing of entire liability on the driver of the tipper
lorry belonging to the 3rd respondent and insured with the
appellant/insurance company and a sum of Rs.11,71,600/- awarded
by the Tribunal for the disability sustained by the 1st
respondent/claimant due to the injuries caused in the accident,
which occurred on 12.10.2013, when the 1st respondent/injured
claimant was travelling in the 2nd respondent/transport
corporation's bus from Chennai to Vellore, which was hit by the

tipper lorry.

2. Heard Mr.S.Manohar, learned counsel appearing for the appellant and Mr.F.Terry Chellaraja, learned counsel appearing for the 1st respondent/claimant.

3.Mr.S.Manohar, learned counsel appearing for the insurance company would submit that the finding of the Tribunal, fixing the entire liability on the part of the insured vehicle viz., tipper lorry is erroneous, especially, when Ex.P.1-FIR had been registered against the driver of the transport corporation bus. Further he would submit that the 2nd respondent/transport corporation bus, which was going from Chennai to Vellore, suddenly, without any signal tried to enter into Sriperumputhur town by turning right and in that process, the tipper lorry, which was coming from Vellore to Chennai dashed against the bus. Because of the negligent act of the driver of the transport corporation bus by not making any signal to turn right and turning the vehicle with speed, the accident happened and therefore, negligence was on the part of the driver of the transport corporation. Further he would submit that at least some contributory negligence has to be fixed on the driver of the transport corporation. He would rely upon the evidence of the claimant, who deposed that the bus was driven rashly and negligently and therefore, the negligence has to be fixed on the driver of the transport corporation also.

4.On the other hand, Mr.F.Terry Chellaraja, learned counsel appearing for the 1st respondent/claimant would support the award, not only with regard to negligence and in fact he seek for enhancement of compensation by re-determining the monthly income at Rs.10,000/- as the accident occurred in the year 2013.

5.No doubt that Ex.P.1-FIR was slapped on the driver of the transport corporation. Merely because FIR has been registered against the driver of the transport corporation, it cannot be concluded that the driver of the transport corporation was responsible for the accident. FIR has to be corroborated by further evidence. Moreover, FIR was registered based on the complaint given by none other than the driver of the tipper lorry. No one could expect that the driver of the tipper lorry, would give complaint, admitting his negligence and therefore, the contention of Mr.S.Manohar, learned counsel appearing for the appellant that the driver of the bus alone has to be blamed for the accident, has to be rejected necessarily.

6.PW1 viz., the claimant, who was also passenger of transport corporation bus in her evidence has categorically stated that she was seated in the back side of the bus and therefore, there was no possibility of viewing the accident. In fact, she made allegations against both the driver of the transport corporation as well as driver of the tipper lorry.

7.The very fact that the lorry hit the rear side of the transport corporation bus would denote that the bus came from the left side (Chennai to Vellore direction) and turned right to enter into Sriperumputhur town and in that process, it almost crossed the right side and during the crossing, the tipper lorry came and hit the rear side of the transport corporation bus. When the bus was turning from left to right, it cannot turn at high speed as it is a long vehicle carrying passengers. Further, the driver of the tipper lorry should have applied brake and slowed down the tipper lorry as a last chance for avoiding accident and collusion. Therefore, the Tribunal rightly determined the negligence on the part of the driver of the tipper lorry. Further the driver of the bus, who was examined as RW1 categorically stated that when the bus almost crossed the road, on seeing the bus, the driver of the tipper lorry drove the vehicle rashly and negligently from Vellore to Chennai direction, and hit the rear left side of the bus near back door. To prove that the tipper lorry dashed the bus on the rear side, Ex.R2(s) photographs were marked. Further, the Tribunal reasoned that the insurance company did not take any steps to summon the lorry driver to examine as witness to prove the otherwise of the accident. In the absence of any rebuttal evidence, contradicting RW1/driver of the bus, the Tribunal was right in holding the accident occurred because of the sole negligence of the driver of the tipper lorry, which was insured with the appellant/insurance company. Hence the said finding cannot be disturbed.

8.The evidence of PW1 revealed that she was working as agriculturist cum construction worker, earning about Rs.10,000/- per month. Undoubtedly there was no evidence with regard to her earning. Therefore, the Tribunal took a sum of Rs.6,000/- as notional income. The Honourable Supreme Court in the judgment delivered in Syed Sadiq Vs.United India Insurance Company, reported in 2014 (1) TNMAC 459, fixed the monthly income at Rs.6,500/- for a vegetable vendor, who sustained injuries in the accident which occurred in the year 2008. Whereas, in this case, the accident occurred during the year 2013 and therefore, the monthly income should be re-determined. Accordingly, this Court re-determines the monthly income of Rs.6,000/- to Rs.8,000/-.

9.It is proved that the age of the claimant is "35", as per Ex.P2-discharge summary and Ex.C1-Medical board report. If the claimant is aged about "35" years, the future prospects, which was awarded by the Tribunal has to be 40%, as per the Constitution Bench's judgment of the Honourable Apex Court in National Insurance Company Limited V. Pranay Sethi and others, reported in 2017 (2) TN MAC 609 (SC). If 40% is added towards future prospects the monthly income would be at Rs.11,200/- (Rs.8,000/- + 40% of Rs.8,000/-).

10.The claimants's hip was fractured and injury sustained by the claimant is very serious as she is unable to walk without clutches. The claimant was referred to Medical Board attached to Government Medical College Hospital, Vellore. As per Ex.P.C1-Medical Board report, the disability is 70%. The Tribunal based on Ex.C1, rightly determined the disability at 70%. Similarly, it determined the loss future income at 70%.

11.Mr.F.Terry Chellaraja, learned counsel appearing for the claimant would submit that though the claimant sustained 70%, her loss of income is 100%. Considering the fact that she is not able to walk without the help of clutches, this Court take 70% as loss of earning capacity. As already said the age of the claimant is "35". Therefore, the appropriate multiplier as per the judgment of the Honourable Supreme Court in Sarla Verma & Others .Vs. Delhi Transport Corporation & another, reported in 2009 (2) TNMAC 1 (SC) is "16" and the loss of income would be at Rs.15,05,280/- (Rs.11,200/- x 12 x 16 x 70/100).

12.Partial loss of earning:

The Tribunal has awarded a sum of Rs.36,000/- towards partial loss of earning. The same is deleted as this Court adopts the multiplier method to calculate the loss of income.

13.Transportation:

The Tribunal has awarded a sum of Rs.15,000/- under this head. The same is confirmed.

14.Pain and suffering:

The Tribunal has awarded a sum of Rs.5,000/- under this head. As it is very low, this Court enhanced the same to Rs.50,000/-.

15.Loss of amenities:

The Tribunal has awarded a sum of Rs.2,000/- under this head. Since the amount is negligible, the same is enhanced to Rs.20,000/-.

16.Extra nourishment:

No amount was awarded by the Tribunal towards extra nourishment. Hence, this Court awarded a sum of Rs.15,000/- under this head.

Head	Amount (Rs.)
Total loss of income	1505280
Transportation	15000
Pain and suffering	50000
Loss of amenities	20000
Extra noursihment	15000
	1605280

17.Hence, the total compensation payable in this case is Rs.16,05,280/- rounded off to Rs.16,00,000/-

18.The interest awarded by the Tribunal at the rate of 6% per annum is on the lower side. Therefore, the rate of interest is enhanced to 7.5% per annum.

19.The Insurance company is directed to deposit the award amount as per the modified award passed by this Court, within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. On such deposit being made, the Tribunal is directed to transfer the entire award amount along with interest and costs to the bank account of the claimant through RTGS within a period of one week thereon.

20.The claimant is directed to pay the additional court fee, if any, within a period of two weeks from the date of receipt of a copy of this order, failing which, the enhancement made by this Court shall be automatically deleted. The necessity to include the above clause is only to see that the additional court fee is paid promptly, as many complaints are received from the registry stating that the claimant's counsel are not paying the additional court fee for the enhanced award amount and thereby delaying the copy being made ready, which prevented the insurance company or transport corporation to receive the order copy, so that they could file an appeal or to act upon the order passed by this Court. On payment of such additional court fee, the registry is directed to note/make entry about the payment of court fee in the Decree itself.

21. Accordingly, this appeal is dismissed, enhancing the award of the Tribunal from Rs.11,71,600/- to Rs.16,00,000/- with interest. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Court,
(Motor Accident Claims Tribunal)
Vaniyambadi.

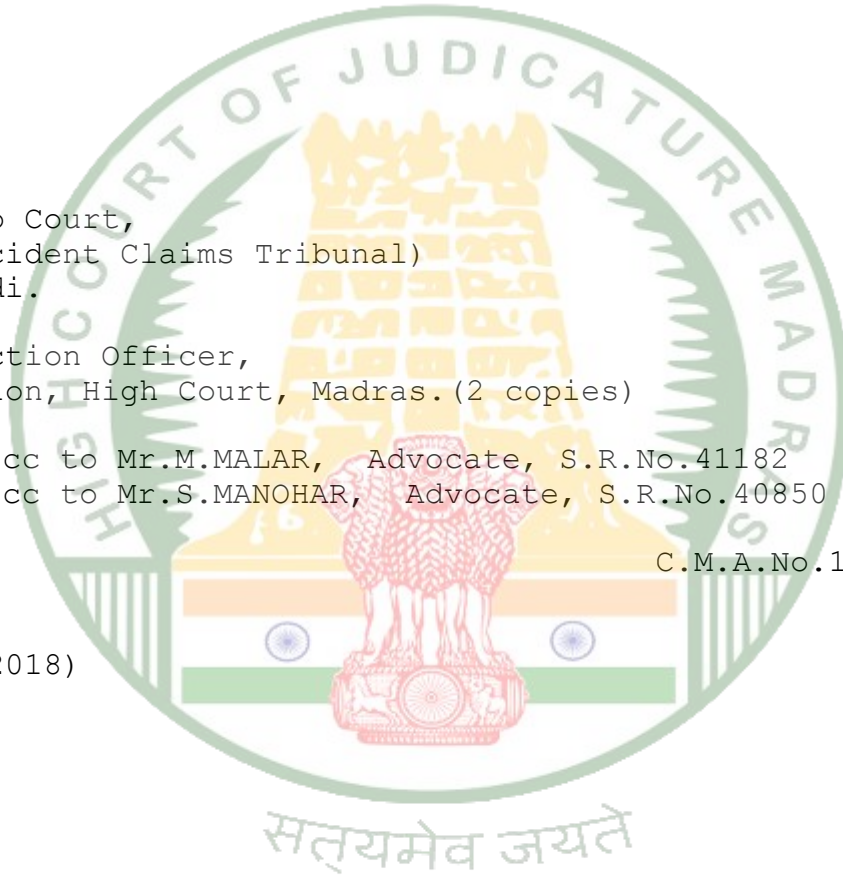
2. The Section Officer,
V.R. Section, High Court, Madras. (2 copies)

+1cc to Mr.M.MALAR, Advocate, S.R.No.41182

+1cc to Mr.S.MANO HAR, Advocate, S.R.No.40850

C.M.A.No.1283 of 2018

GP (CO)
TR (31/07/2018)



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