

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 27.02.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.671 of 2015

S.Palanivelu

... Appellant

..VS..

1.The Correspondent,
Kongu Nadu Matric Higher Secondary School,
Velagoundampatti Post,
Tiruchengode Taluk,
Namakkal Taluk and District.

2.M/s.United India Insurance Company Ltd.,
No.2, Dr. Sankara Road,
Namakkal District.

... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decretal Order dated 26.09.2014 made in MCOP.No.195 of 2013 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal.

For Appellant : Mr.Ma.P.Thangavel

For Respondents : Mr.T.Ravichandran for R-2

JUDGMENT

Being not satisfied with the quantum of compensation awarded by the Tribunal, dated 26.09.2014 made in MCOP.No.195 of 2013 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal, the petitioner/claimant filed this present appeal for enhancement of award amount.

2. For the sake of convenience, the parties will be hereinafter referred to in this judgment as arrayed before the Tribunal.

3. The case of the petitioner is that on 18.07.2012 at about 09.00 a.m., when the petitioner was riding his two wheeler bearing Registration No.TN-28-L-9651, on the left side of the first cut road, near Police Quarters in Earnapuram to Kathapalli Road, the first respondent bus bearing Registration No.TN-28-J-6505, which was insured with the second respondent, came at high speed dashed against the two wheeler, in which the petitioner was proceeding resulting in multiple grievous injuries and fracture in the head, legs

and hands of the petitioner, causing him permanent disability. The petitioner was aged about 38 years and was employed as driver in a private transport company was earning a sum of Rs.12,000/- per month. Due to the injuries suffered by him, he is unable to attend to his driving work resulting in loss of income to him. Hence, the petitioner seeks a sum of Rs.5,00,000/- as compensation from the respondents, who are the owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the second respondent/Insurance company filed counter contending that the manner of accident as claimed by the petitioner is not true. The negligence on the part of the petitioner only caused the accident. The petitioner was not having valid licence to drive the two wheeler. The failure of the petitioner to implead the driver of the first respondent school bus as well as the insurer of the two wheeler is fatal to the claim. The petition averments regarding the age, avocation and income of the petitioner is denied. The claim of the petitioner is exorbitant. Hence, the second respondent-Insurance Company seeks dismissal of this petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1, medical experts were examined as P.W.2 and P.W.3 and produced documents Ex.P1 to Ex.P15 to prove his claim. On the side of the respondents, neither oral nor documentary evidence was let in.

6. The Tribunal, on the basis of materials available on record, found the driver of the first respondent bus alone caused the accident and awarded a sum of Rs.1,84,697/- as compensation to the petitioner. Not being satisfied with the quantum of compensation awarded by the Tribunal, the petitioner/claimant has come forward with this present appeal.

7. Heard the learned counsel appearing for the petitioner/appellant and the learned counsel appearing for the second respondent and perused the materials available on record.

8. The learned counsel appearing for the petitioner/claimant contends that the Tribunal failed to appreciate the petitioner's evidence properly. Due to multiple grievous injuries and fracture suffered by the petitioner, he is suffering from 30% permanent disability and there was malunion in the right leg as well as elbow, the petitioner is not able to use his right leg to drive the vehicle and as such the

avocation of driving of the petitioner is affected. The Tribunal ought to have fixed 100% functional disability, but failed to do so. The Tribunal also failed to consider the future prospects properly and the multiplier applied is not correct. The future medical expenses was not provided for and the quantum of award passed under different heads is very nominal. Hence, the petitioner seeks to entertain the appeal and to enhance the award amount.

9. Per contra, the learned counsel appearing for the second respondent-Insurance Company contends that the Tribunal has not taken into consideration the material aspects perfectly and passed an award which is on the higher side. The negligence of the petitioner who was riding the two wheeler alone caused the accident, but, the Tribunal has wrongly fixed the negligence on the part of the first respondent bus driver as cause for the accident. The reasoning of the Tribunal for awarding such huge amount as compensation is not justified. Thus, the respondent seeks dismissal of this appeal.

10. The petitioner has come forward with this appeal on the issue of quantum of award. The negligence aspect of claim is not seriously disputed in the appeal. The petitioner, who deposed as

P.W.1 clearly stated that as he was riding his two wheeler on the left side of the road, the first respondent bus came at high speed and dashed against the two wheeler resulting in grievous injuries to him. The respondent has not chosen to examine the driver of the first respondent bus or any other person to contradict the version of P.W.1 about the manner in which the accident occurred. Further, on the basis of complaint lodged, the police registered Ex.P1 First Information Report against the first respondent driver only. After completing investigation, the police laid charge sheet against the driver of the first respondent bus as evidenced by Ex.P4 and the driver also admitted his guilt, and was convicted in the criminal case as per Ex.P5 copy of the judgment. It is therefore clear from the oral evidence of P.W.1 as well as the contents of Ex.P1, Ex.P4 and Ex.P5 that the driver of the respondent bus alone caused the accident due to his negligence. Thus, the finding of the Tribunal on the negligence aspect is just and proper.

11. The fact that the offending vehicle belongs to the first respondent and the same was insured with the second respondent is not disputed. The petitioner also produced Ex.P9 copy of the driving licence and as such, the respondents who are the owner and insurer of the offending vehicle are liable to pay compensation.

12. According to P.W.1, he was employed as driver in Sivasakthi Transport at Namakkal earning a sum of Rs.12,000/- per month. He also stated that he was aged about 38 years at the time of the accident. The petitioner has not produced any documentary evidence for his income and age. The Tribunal, in the absence of any other document, fixed the age of the petitioner at 39 years on the basis of Ex.P6 Discharge Summary, wherein, the age of the petitioner is mentioned as 39 years. This Court finds the same conclusion is appropriate.

13. The petitioner has suffered various multiple injuries. The Doctor who deposed as stated that the petitioner has suffered fracture at Right Tibial Condyle and PCL, Avulsion Fracture Right knee and he assessed the disability at 30%. Another Doctor who deposed as P.W.3 stated that the petitioner suffered fracture in his lower jaw and he assessed the disability at 30%. However, the Doctors who deposed as P.Ws.2 and 3 have not enclosed any calculation sheet with Ex.P13 and Ex.P15 disability certificate issued by them. Admittedly, the petitioner was not treated by P.W.2 and P.W.3. In such circumstances, taking into account the evidence available on record, it will be appropriate to fix the permanent disability suffered by the petitioner at 30%.

Admittedly, the petitioner was doing driving work and as he suffered fracture in his right leg, it will not be possible for him to drive the vehicle as he used to. In such circumstances, it is clear that he has suffered functional disability and hence the same is fixed at 30%. The petitioner claims that he was working as driver, earning a sum of Rs.12,000/- per month. However, no proof of his income was produced by the petitioner. As such, it will be appropriate to fix his monthly income at Rs.6,500/-. The petitioner being aged 39 years, the multiplier to be applied is 15. As such the loss of earning suffered by the petitioner is calculated as follows:-

$$\text{Rs.6,500/-} \times 12 = 78,000/- \times 15 = \text{Rs.11,70,000/-} \times 30/100 \\ = \text{Rs.3,51,000/- as loss of earning power.}$$

14. Taking in to consideration, the petitioner has suffered 30% partial permanent disability and also compound fracture in his Head, legs, both hands and chest, he would have taken treatment continuously and also suffered heavy pain. Hence, the amount awarded by the Tribunal is modified as follows:-

S1 No	Heads	Amount awarded by the Tribunal	Awarded by this Court
1.	Temporary Loss of Income	15,000.00	-
2.	Transport to Hospital	5,000.00	10,000.00
3.	Extra-nourishment	5,000.00	10,000.00
4.	Medical Expenses	69,897.00	69,897.00
5.	Pain and sufferings	10,000.00	20,000.00
6.	Loss of Amenities	-	10,000.00
7.	Loss of earning power		3,51,000.00
8.	Partial permanent disability	80,000.00	-
	Total	1,84,897.00	4,70,897.00

Accordingly, the amount awarded by the Tribunal is enhanced to Rs.4,70,897/- and the same is rounded to Rs.4,71,000/-.

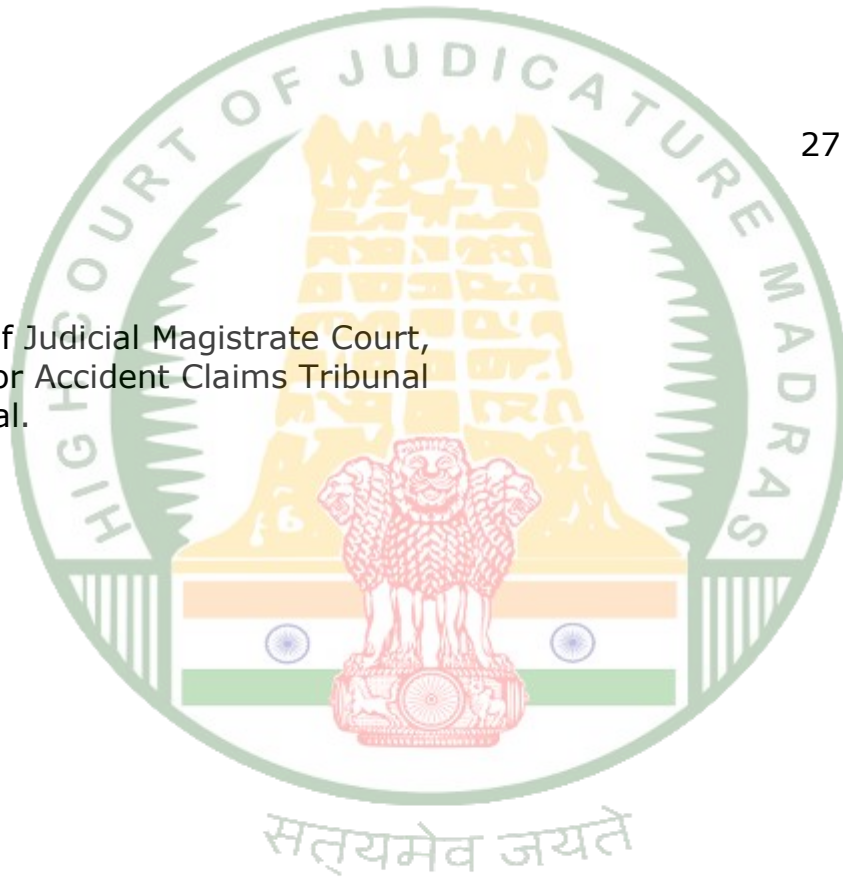
15. In the result, this appeal is partly allowed. No costs. The sum of Rs.1,84,897/- awarded by the Tribunal dated 26.09.2014 made in MCOP.No.195 of 2013 on the file of the Motor Accident Claims Tribunal/Chief Judicial Magistrate, Namakkal is hereby enhanced to Rs.4,71,000/-. The second respondent Insurance Company is directed to deposit the entire modified award amount of Rs.4,71,000/- with interest at the rate of 7.5% p.a. From the date of petition till the date of deposit the entire award amount, after deducting the amount that has already been deposited by them within a period of six weeks from

the date of receipt of a copy of this order. On such deposit, the petitioner/claimant is permitted to withdraw the entire award amount with accrued interest by filing necessary application before the Tribunal.

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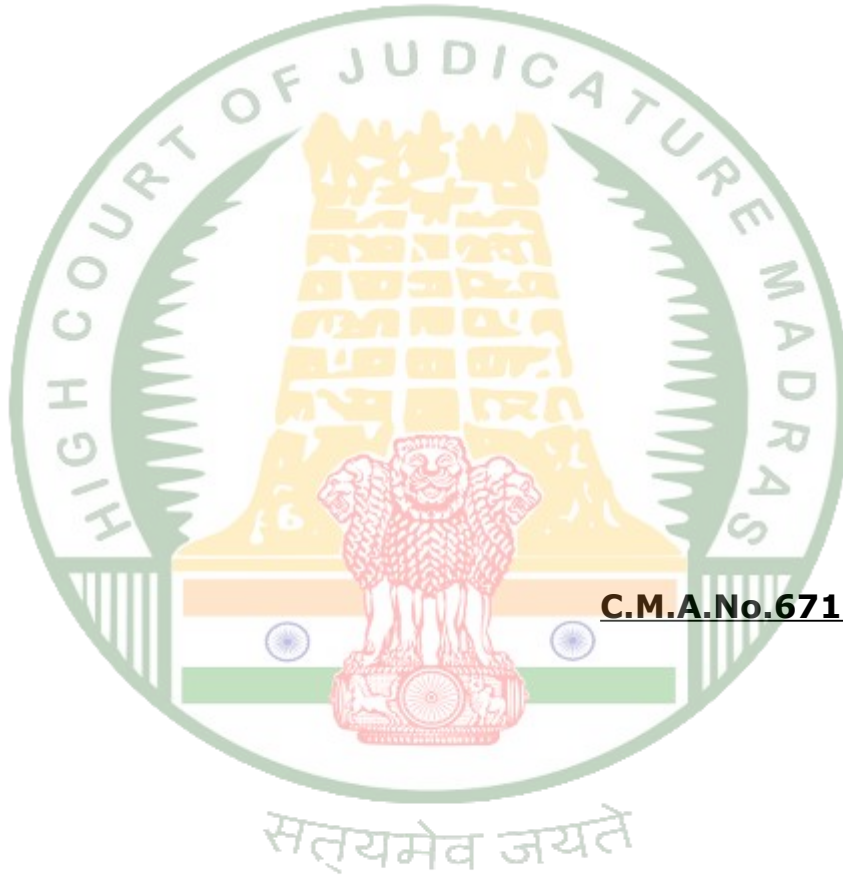
To
The Chief Judicial Magistrate Court,
The Motor Accident Claims Tribunal
Namakkal.



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