IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 23.04.2018

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The Honourable Mr. Justice S.BASKARAN

Civil Miscellaneous Appeal No.1018 of 2010

The New India Assurance Co. Ltd.,
Kongu Complex, Opp. Bus Stand,
No.34/35, Bypass Road,
Dharapuram. ... Appellant

..vs..

1.S.Kalaiyarasu
2.K.Rathinasamy
3.M/s.Associated Bus Company,
No.105-A, Udumalai Road,
Dharapuram Post,
Erode District. ... Respondents

This Civil Miscellaneous Appeal has filed under Section 173 of Motor Vehicles Act, 1988, against the Fair and Decreetal Order dated 18.01.2006 made in MCOP.No.205 of 2004 on the file of the Motor Accident Claims Tribunal/First Additional Subordinate Judge, Gobichettipalayam.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Mr.Ma.Pa.Thangavel

JUDGMENT

Being aggrieved over the finding of the Tribunal, dated 18.01.2006 made in MCOP.No.205 of 2004 on the file of the Motor Accident Claims Tribunal/First Additional Subordinate Judge, Gobichettipalayam, the 3rd respondent-Insurance Company filed this present appeal for setting aside the finding of the Tribunal.

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 04.10.2003 at about 10.00 p.m., while the petitioner was sleeping on the extreme southern side of the petrol bunk with his co-worker, the first respondent drove the bus bearing Registration No.TN-33-X-9177, in a rash and negligent manner at high speed lost control, ran over the left thigh of the petitioner and crushed the same. The injury occurred due to the negligent driving by the first respondent vehicle driver and owner of the second respondent bus which was insured with the 3rd respondent-Insurance Company. Thus, the petitioner states that he suffered compound fractured with loss of skin and tissues, injuries on head, chest and hip and he is unable to attend his normal work

resulting in loss of earning to him. Thus, the petitioner sought for a sum of Rs.5,00,000/- as compensation from the respondents who are the driver, owner and insurer of the offending vehicle.

4. On the other hand, opposing the claim petition, the 3rd respondent-Insurance Company filed counter contending that the accident does not occur in the manner alleged by the petitioner. It is not correct for the petitioner to claim that he was injured in the accident which took place on 04.10.2003 involving the bus bearing Registration No.TN-33-X-9177. The claim of the petitioner about the injuries suffered by him is denied. The compensation sought for by the petitioner is highly excessive. The petitioner himself is responsible for the accident as the accident occurred near the compound wall of the petrol bunk and the said place is not the place for sleeping. The driver of the second respondent bus did not possess valid and effective driving licence. Thus, the 3rd respondent sought for dismissal of the petition.

5. Before the Tribunal, the injured petitioner examined himself as P.W.1 and two 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 negligence of the driver of the second respondent bus alone caused the accident, awarded a sum of Rs.3,43,770/- as compensation to the petitioner. Being aggrieved over the finding of the Tribunal, the 3rd respondent-Insurance Company has come forward with this present appeal.

7. Heard the learned counsel appearing for the 3rd respondent-Insurance Company/appellant and the learned counsel appearing for the petitioner/claimant and perused the materials available on record.

8. The learned counsel appearing for the appellant/3rd respondent-Insurance Company contends that the quantum of award passed by the Tribunal is highly excessive. The Tribunal has fixed the income of the petitioner wrongly at Rs.3,000/- per month without any basis. The age of the petitioner was wrongly fixed at 39 years. The Tribunal ought not to have applied the multiplier method. The amount awarded by the Tribunal is highly excessive. Thus, the third

respondent Insurance Company sought for setting aside the award passed by the Tribunal by entertaining the appeal,

9. Per contra, the learned counsel appearing for the petitioner/claimant contends that considering the nature of injuries suffered by the petitioner which prevented him from working as labour, resulting in loss of income to the petitioner, the Tribunal has passed a just and proper award and the same needs no interference. Thus, the petitioner/claimant sought for dismissal of the appeal.

10. The petitioner examined himself as P.W.1 and stated about the accident. The petitioner also produced a copy of the First Information Report registered by the police as Ex.P1 and also the rough sketch of the occurrence spot as Ex.P3. The police on completion of investigation filed Ex.P5 final report against the first respondent who was the driver of the second respondent vehicle. It is also clear from Ex.P6 that the first respondent driver admitted his guilt and paid fine amount as evidenced by Ex.P6 copy of the judgment passed by the Judicial Magistrate, Dharapuram in S.T.No.1164 of 2003. Thus, on the basis of Ex.P1 First Information Report, Ex.P2 Rough Sketch, Ex.P5 Final Report and Ex.P6 STC order copy, the

Tribunal correctly concluded that the negligence on the part of the first respondent driver alone caused the accident.

11. Admittedly, the vehicle bearing Registration No.TN-33-X-9177 belongs to the second respondent and the same was insured with the third respondent, which is evidenced by Ex.P4 Motor Vehicle Inspector's Report, and Ex.P14 copy of the Registration Certificate and insurance policy. As such, the respondents are liable to pay compensation as the driver, owner and insurer of the vehicle.

12. The petitioner who deposed as P.W.1 stated that he suffered fracture in his left thigh and to rectify the same, underwent surgery and plate was fixed in his left thigh. He further stated that skin grafting was done to correct the damage suffered in his thigh. P.W.1 further stated that he is unable to bend his left leg or walk freely. P.W.1 also stated that he finds it difficult to stand and walk for long time. The Doctor who examined and assessed the disability suffered by the petitioner deposed as P.W.2 and stated that the permanent disability suffered by the petitioner is 45%. The disability certificate issued by him is produced as Ex.P10. According to P.W.2 Doctor, the petitioner will find it difficult to walk without stick. The P.W.2 Doctor also further stated that there is no scope for improvement in the condition of the petitioner's leg. Thus, the Tribunal, on the basis of

P.Ws.1 and 2 evidence and Ex.P10 disability certificate and also by considering Ex.P11 and Ex.P12 X-rays and photos relating to the injuries suffered by the petitioner, fixed the disability at 45%. As the petitioner was aged about 39 years, the Tribunal adopted the multiplier 16 and by fixing the monthly income of the petitioner at Rs.3,000/-, the Tribunal awarded a sum of Rs.2,59,200/- as Disability Compensation. Further, on the basis of Ex.P7 medical bills, provided for a sum of Rs.74,740/- towards medical expenses. Aggrieved over the same and disputing the same conclusion, the learned counsel appearing for the third respondent-Insurance Company contended that the Tribunal wrongly assessed the disability and also awarded the higher amount of compensation by adopting multiplier method. However, in the case on hand, there is no contra evidence let in by the respondent to disprove the evidence of P.W.2 Doctor. Following the Ruling reported in **2017 (1)TNMACK 251 in P.ELANGOVAN Vs. S.MURALI AND OTHERS and 2013 (2) TN MAC 669, in M.THIRUNAVUKKARASU Vs. P.T.S.M.DHASTHAGIR AND 2)NATIONAL INSURANCE COMPANY LTD.,** in the absence of any contra evidence, the Court is found by the expert evidence let in by the petitioner. As such the Tribunal is justified in assessing the disability at 45% on the basis of P.W.2 evidence. Keeping in mind, the multiple fracture suffered and the difficulty that the petitioner finds while standing and walking for long time and doing sitting down bending his leg, the petitioner has definitely suffered functional disability and therefore the Tribunal is justified in applying the multiplier method to calculate the loss of income. Therefore, there is no substance in the grounds raised by the 3rd respondent Insurance company to set aside the award and the Tribunal just in fixing the monthly income at Rs.3,000/- for the petitioner and adopting multiplier method to asses the loss of earning suffered by the petitioner. As such, this Court finds nothing wrong in the calculation made by the Tribunal and the same needs no interference. In the light of the above said discussion, the appeal has to fail and point is answered accordingly.

13. In the result, the civil miscellaneous appeal is dismissed. No Costs. The Judgment and decree dated 18.01.2006 made in MCOP.No.205 of 2004 passed by the Motor Accident Claims Tribunal/First Additional Subordinate Judge, Gobichettipalayam is hereby confirmed.

23.04.2018

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To
The Subordinate Judge,
The Motor Accident Claims Tribunal,
Gobichettiplalayam.

S.BASKARAN.J.,

rrg

C.M.A.No.1018 of 2010

Dated: 23.04.2018