

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.4141 of 2005

and

Cros.Obj.No.7 of 2006

and

CMP No.20190 of 2005 and

CMP.Nos.9533 & 9534 of 2016

1. The Deputy Manager
The New India Assurance Co Ltd
Motor Third Party Cell
No.15, Moore Street
Chennai - 600 001 Appellant in CMA &
1st Respondent in Cross Objection
- Vs
1. Ginu G.George
2. Sadanandan
3. P.K.Balan Respondents in CMA &
Cross Objector/Respondents 2 & 3
in Cross Objection

Common Prayer: Appeal under Section 173 of the Motor Vehicles Act and Cross objection under Order 41 Rule 22 of Code of Civil Procedure against the judgment and decree dated 29.04.2005 made in MCOP No.325 of 2002 on the file of the Motor Accidents Claims Tribunal/Additional District cum Special Court under Essential Commodities Act, Coimbatore.

For Appellant : Mr.S.Manohar in CMA 4141/05
1st Respondent in Cross Obj 7/2006

For Respondents: Mr.R.Babu for Mr.S.Gunalan -R1
in CMA 4141/05 & Cross Objector in
Cross Obj 7/2006

C O M M O N J U D G M E N T

The Civil Miscellaneous Appeal and Cross objection have been preferred by the insurer and the claimant, as against the award passed by the Tribunal in MCOP No.325 of 2002 dated 29.04.2005.

2. The case of the claimant before the Tribunal was that on 23.08.2001, at about 1.15 am, when the claimant was going to Kerala from Bangalore in a bus bearing Reg.No. KL - SH-6768, due to the rash driving of the driver of the bus, it got capsized. Due to the said accident, the claimant sustained injuries all over his body. Stating that the accident had happened only due to the rash and negligent driving of the driver of the bus, the claimant has filed a claim petition before the Tribunal, claiming a compensation of Rs.12,00,000/-. As against the said claim, the Tribunal has awarded a sum of Rs.8,15,000/- as total compensation.

3. Branding the quantum as insufficient, the claimant has preferred the cross objection and branding the quantum as exorbitant, the Insurance Company has filed the Appeal.

4. Heard both sides.

5. The learned counsel for the appellant has submitted that the award of the Tribunal is against the law, weightage of evidence and probabilities of the case. The learned counsel further submitted that the name of the claimant / 1st respondent herein was not found in the list of injured passengers and he has also not produced any evidence or document to prove that he actually travelled in the bus. It is further submitted that the award passed by the Tribunal under the various heads are highly excessive and exorbitant.

6. Per contra, the learned counsel for the cross objector / claimant has submitted that the Tribunal failed to consider the age, education, avocation and salary of the claimant and awarded a lesser compensation under the head of loss of income. The Tribunal ought to have awarded a sum of Rs.1,00,000/- towards pain and sufferings, but only awarded a meagre sum of Rs.15,000/-. Hence, the award passed by the Tribunal has to be enhanced significantly.

7. Upon perusal of the award passed by the Tribunal, it is evident that the Tribunal has taken into consideration Ex.P.1 First Information Report, Ex.P.2 Observation Mahazar, Ex.P.3 Rough Sketch, Ex.P.4 Motor Vehicle Inspector's Report and Ex.P.7 Accident Register and the evidence of PW 1 and has come to the conclusion that the accident had happened only due to the rash and negligent driving of the driver of the bus.

8. As far as the contention raised by the appellant / Insurance Company with regard to the non-mentioning of the name of the claimant in the list of injured passengers is concerned, the Tribunal has relied upon Ex.P.7 Accident Register, in which it was clearly mentioned that due to the said accident only, the claimant was admitted in Kovai Medical Centre Hospital, Coimbatore, for taking treatment. hence, the contention of the appellant has no legs to stand

and the findings arrived at by the Tribunal on the negligence aspect do not required any interference by this Court.

9. As far as the quantum of compensation awarded by the Tribunal is concerned, the Tribunal has arrived at a compensation of Rs.8,15,000/- based on the following aspects:-

- ♦ The Tribunal has relied upon the documents such as Exs.P.5, Wound Certificate, Ex.P.6 Discharge Summary, Ex.Ps.8 to 32 series (with regard to the treatment taken) for arriving at the compensation of Rs.8,15,000/-.
- ♦ For the grievous injuries sustained by the claimant, he took treatment at Kovai Medical Centre Hospital, Coimbatore from 23.08.2001 to 27.12.2001 as inpatient.
- ♦ Surgeries were also performed for lumber spine L3-L4 translocation and paraplegic.
- ♦ Subsequently, he took treatment at Kerala Vaithiya Salai, Kerala.
- ♦ The claimant has produced medical bills for Rs.2,72,330/- and Rs.1,76,000/- towards his medical expenses.
- ♦ PW 2. Dr.Edmand, issued Disability Certificate to the claimant certifying that he suffered disablement at 75%
- ♦ The Tribunal has taken the monthly income of the claimant as Rs.2,000/- , 75% disability and awarded a sum of Rs.3,84,000/- as future loss of income.
- ♦ Moreover, on appearance of the claimant before the Tribunal, it was observed that the claimant was unable to stand, squat, climb the stairs and walk without any assistance.

The Tribunal, based upon the facts, materials, evidence and also the dictum laid down in the decisions of the Apex Court, has calculated the loss of income at Rs.3,84,000/-. Further, the Tribunal awarded Rs.5,000/- towards transport expenses and Rs.10,000/- towards extra nourishment, Rs.15,000/- towards pain and sufferings and Rs.1,000/- towards damages to clothings and articles and thus arrived the total compensation at Rs.8,15,000/-.

10. This Court is of the considered opinion that the compensation awarded by the Tribunal is reasonable, weight of evidence and based on settled principles and therefore, there is no ground to interfere with the award passed by the Tribunal below. That apart, the Tribunal has not awarded any sum towards non-pecuniary damages. Therefore, the grounds raised by the Insurance Company are liable to be rejected and they are rejected accordingly. The compensation awarded by the Tribunal is just, fair and reasonable.

11. In the result, this Civil Miscellaneous Appeal filed by the appellant/Insurance company/insurer is dismissed and the Cross Objection filed by the claimant/cross objector is also dismissed. No costs. The appellant / Insurance Company shall deposit the entire compensation amount, along with

interest and costs, as awarded by the Claims Tribunal, less the amount already deposited, if any, within a period of four weeks, from the date of receipt of a copy of this judgment. On such deposit being made, the Tribunal is directed to transfer the deposited amount to the Savings Bank Account of the claimant / respondent 1, through RTGS, one week thereafter. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

srk/vrn

To

1. The Motor Accident Claims Tribunal/ Additional District
cum Special
Court under Essential Commodities Act, Coimbatore

2. The Section Officer
V.R.Section
Madras High Court
Chennai 104

+1cc to Mr.S.Manohar, Advocate SR.No.67027

+1cc to Mr.S.Gunalan, Advocate SR.No.66984

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NRL (CO)
GMY (31/01/2020)

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