

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 01.11.2019
CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

C.M.A.No.106 of 2010

S. Duraiswamy ...Appellant/Petitioner
Vs

1. S. Raj Kumar

2. United India Insurance Company Ltd.,
Mettur Road, II Floor, Muthiah complex,
Erode - 638 011. ...Respondent/Respondent's

Appeal filed under Section 173 of the Motor Vehicles Act against the Judgment and Decree made in M.C.O.P.No.371 of 2007 on the file of the Motor Accident Claims Tribunal (Chief Judicial Magistrate) Salem.

For Appellant : Mr. V.R. Rajasekar

For 1st Respondent : No appearance

For 2nd Respondent : Mrs. R. Sree Vidhya

JUDGMENT

This appeal is preferred by the Appellant/ claimant against the Judgment and Decree made in M.C.O.P.No.371 of 2007 on the file of the Motor Vehicle Accident Claims Tribunal (Chief Judicial Magistrate) Salem.

2.The brief facts of the case is that on 13.07.2007 at about 7.00 a.m, the appellant herein was driving the Tamil Nadu State Transport Corporation Bus, bearing Registration No: TN 30 N 0240 from Salem to Attur, and when the bus was going near Vaithiyagoundanputhur bus stop, a local town bus was moved from the bus stop and the appellant in order to over take the town bus, alighted the head light by making signal, at that time a lorry bearing Registration No: TN 28-T2659 came in the opposite direction with rash and negligent manner and dashed against the

Transport Corporation bus. In that process, both the appellant and the driver of the lorry sustained injuries and some of the passengers also sustained injuries. The appellant/claimant sought for compensation of Rs.10,00,000/- on the ground that the driver of the offending vehicle was responsible for the accident.

3. The claim was opposed by the 2nd respondent Insurance Company disputing the manner of accident and their liability to pay the compensation.

4. Tribunal, on a consideration of the materials and evidence available on record, has arrived at the total compensation of Rs.5,97,711/- with interest at the rate of 7.5% p.a., and 50% was deducted towards contributory negligence and quantified Rs.2,98,856/- as compensation from the date of petition till the date of deposit. Not being satisfied with the award amount the appellant has filed this present appeal.

3. The learned counsel for the appellant would contend that the accident had taken place due to the inattentive attitude of the driver of the lorry and also prays that the Tribunal awarded meagre amount as compensation, when compared to the injuries sustained by him. Hence, prays to enhance the compensation amount.

4. Per contra, the learned counsel for the 2nd respondent/Insurance company contended that the Tribunal erred in holding that the driver of the lorry is the cause for the accident. She further contended that the Tribunal fixed the liability on their part is not at all acceptable and prays to exonerate them from the liability.

5. Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

6. Before the Tribunal, injured was examined as P.W.1. He deposed that the accident had taken place due to the inattentive attitude of the driver of the lorry. The evidence of P.W.1 corroborates with the contents of Ex.P1/F.I.R, which supports the case of the claimant.

7. As regards the quantum of compensation awarded by the Tribunal is concerned, in the claim petition it was stated that the injured was working as a driver and earning a sum of Rs.6,000/- per month. Based on his avocation, the tribunal has fixed the annual income of the injured at Rs.1,08,000/- and

1/3rd amount (Rs.2,000/-) was deducted towards personal expenses and arrived at Rs.48,000/- (Rs.4,000x12=Rs.48,000/-) as annual income. The Tribunal determined the age of the deceased was 46 and applied the multiplier 13 and quantified Rs.2,49,600/- (Rs.48,000x13x40/100) under the head loss of earnings. Further the Tribunal has awarded Rs.10,000/-,Rs.25,369/-,Rs.5,000/-and Rs.5,000/- towards pain and sufferings, Transport Expenses, Extra Nourishment and attendant charges Respectively. Based on the medical receipts/Ex.4 and 9 the Tribunal awarded Rs.3,02,742/- Thus, the total amount was quantified as Rs.5,97,711/-. The injured is also responsible for the accident 50% is deducted towards contributory negligence and Rs.2,98,856/- was quantified as compensation.

8. In this case the permanent disability was determined as 50% and the Tribunal determined the income by applying multiplier method, which is not correct. Hence, this Court is of the view that even though the award amount is reasonable, but the multiplier method adopted by the Tribunal is not acceptable, we hereby confirm the same award by taking Rs.10,240/- as monthly income and quantified at Rs.61,440/- as loss of earnings and adding another two heads, disability and loss of amenities amount. Apart from this the amount awarded under other heads is also modified.

S.No	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court
1	Loss of earnings	Rs.2,49,600/-	Rs.61,440/-
2	Pain and sufferings	Rs.10,000/-	Rs.15,000/-
3	Transport Expenses	Rs.25,369/-	Rs.25,000/-
4	Extra Nourishment	Rs.5,000/-	Rs.25,000/-
3	Attendant charges	Rs.5,000/-	Rs.5,000
4	Medical Expenses	Rs.3,02,742/-	Rs.3,02,742
5	Disability	-Nil-	Rs.1,50,000/-
6	Loss of amenities	-Nil	Rs.13,529/-
	Total	Rs.5,97,711/-	Rs.5,97,711/-

The findings rendered by the Tribunal regarding fixing 50% of the negligence towards the claimant is hereby confirmed.

9. In the result, the Civil Miscellaneous Appeal is partly allowed and the second respondent/Insurance Corporation is directed to deposit 50% of the award amount, i.e Rs.2,98,856, as ordered by the Tribunal with interest, after deducting the amount if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant/claimant is entitled to withdraw the entire amount. The excess amount, if any shall be refunded to the 2nd respondent Insurance Company. No Costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1 .The Motor Vehicle Accident Claims Tribunal,
Chief Judicial Magistrate, Salem

2.The Section Officer,
VR Section, Madras High Court.

+1 cc to M/s.R.Sree vidhya Advocate sr91064

+1 cc to Mr.V.R Rajasekaran Advocate sr90911

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