

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.1950 of 2009
and M.P.No.1 of 2009

The New India Assurance Co.Ltd.,
Kongu Complex,
Opp. Bus Stand 34/35,
Bye Pass Road, Dharapuram Taluk,
Erode District.

... Appellant /3rd Respondent

Vs

1.M.Siddiq ...1st Respondent/Claimant
2.N.Balsamy ...2nd Respondent/1st Respondent
3.S.Palanisamy ...3rd Respondent/2nd Respondent
4.Vijayakumar ...4th Respondent/4th Respondent

5.The Managing Director,
T.N.S.T.C. Coimbatore Ltd.,
Erode Division, Chennimalai Road,
Erode - 2. ...5th Respondent/5th Respondent
(2nd and 3rd respondents in the C.M.A
were set exparte before the lower court.)
(4th and 5th respondents in the C.M.A are
hereby given up as an unnecessary parties)

Appeal under Section 173 of the Motor Vehicles Act against
the judgment and decree dated 07.03.2008 made in MCOP No.751 of
2006 on the file of the Motor Accident Claims Tribunal, Fast
Track Court No.3, Dharapuram.

For Appellant : Mr.C.Ramesh Babu

For R1 : Mr.S.Kaithamalai Kumaran

For R2 and R3 : Exparte

JUDGMENT

This appeal is preferred by the Insurance Company against
the award of a sum of Rs.4,00,000/- towards compensation to the
1st respondent, due to the injuries sustained by him in a motor
vehicle accident.

2.The case in brief, is as follows:

On 13.07.2006, the 1st respondent herein was travelling in the TNSTC Bus bearing Registration No.TN 33 N 2026 from Dindugal to Dharapuram. At about 9.30 p.m., when the said bus was proceeding near Karuvelampalayam in front of Indian Hotel, the Van bearing Regn.No.TN 38 L 7981, came in a rash and negligent manner from the opposite direction and dashed against the bus. Due to the said impact, the 1st respondent sustained severe injuries. Stating so, he filed a claim petition claiming a sum of Rs.7,00,000/- with interest at 7.5% per annum from the date of petition. Challenging the same, the appellant Insurance Company has filed the present appeal.

3.The learned counsel for the appellant/Insurance Company has disputed only the quantum of compensation awarded by the Tribunal. According to him, the compensation of Rs.4,00,000/- awarded to the first respondent/claimant is exorbitant and excessive and hence, the same has to be reduced to some extent.

4.The learned counsel for the 1st respondent / claimant has submitted that the Tribunal has considered the oral and documentary evidence in proper perspective and has granted the compensation and hence the same does not require any interference by this Court.

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

6.There is no dispute with regard to the finding of the Tribunal on negligence and the liability of the appellant insurance company to pay compensation.

7.As regards the quantum of compensation, PW2/first respondent/claimant has deposed in his evidence that he was earning a sum of Rs.5,000/- per month as a tailor; and due to the fracture and injuries sustained in the accident, he could not do his work as before. In the absence of any document to prove the income of the first respondent/claimant, the Tribunal has fixed the income at Rs.3,000/- per month and arrived at the annual income at Rs.36,000/-. P.W.2/Doctor deposed that the first respondent/claimant sustained extensive loss of muscles over the right shoulder and right hand, elbow humerus bone, Ulna etc. and crush injury over the abdomen region affecting the Urinary bladder and testicles. He further assessed the permanent disability of the first respondent/claimant at 62% and issued Ex.P32 disability certificate. However, the Tribunal has taken the disability of the claimant only at 50%. Taking note of the age of the injured, the Tribunal has adopted the multiplier of 12 and determined the compensation under the head "loss of

income" at Rs.2,16,000/- (Rs.36,000/- X 12 X 50/100), which, in the opinion of this Court, is fair and reasonable and hence, the same is hereby confirmed.

8.Further, the Tribunal has awarded Rs.42,000/- towards pain and suffering, Rs.1,21,000/- towards medical expenses, Rs.5,000/- towards transportation and extra nourishment, Rs.10,000/- towards loss of earning during treatment period and Rs.6,000/- towards future medical expenses. The amounts so awarded by the Tribunal under the above heads are just and reasonable and hence, the same need not be interfered with by this Court.

9.In the result, this Civil Miscellaneous Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed. The appellant/Insurance Company is directed to deposit the entire compensation as awarded by the Tribunal, along with interest and costs, 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 shall transfer the same to the savings bank account of the first respondent/claimant through RTGS, within a period of one week thereafter.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gbi/rk

To

The Judge,
Motor Accident Claims Tribunal,
Fast Track Court No.3,
Dharapuram.

Copy to

The Section Officer,
VR Section, Madras High Court.

+1cc to Mr.C.Ramesh Babu, Advocate Sr.70678

+1cc to Mr.S.Kaithamalai Kumaran, Advocate Sr.71297

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srg 17/03/2020