

THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.04.2019

Judgment Delivered on : 31.07.2019

CORAM:

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.818 & 92 of 2010

CMA.No.818 of 2010:

M.Soundarajan

... Appellant/Owner of the Vehicle

Versus

1.T.Dharmaraj (deceased)

2.The Branch Manager,

United India Insurance Co., Ltd.,

Jawharlal Nehru Street,

Pondicherry.

...2nd Respondent/Respondent

3.D.Rani

4.D.Varadharajan

5.R.Jayanthi

6.E.Lakshmi

... Respondents 3 to 6/Petitioners

[R3 to R6 brought on record as LR's of the deceased R1

T.Dharmaraj

vide Court order date 23/11/2018 made in CMPs.20363,20367,23070

of 2018 in C.M.A. 818/2010]

CMA.No.92 of 2010:

T.Dharmaraj (died)

1.D.Rani

2.D.Varadharajan

3.R.Jayanthi

4.E.Lakshmi

सत्यमेव जयते

... Appellants/Petitioners

[In view of the amendment to cause title made in

CMA.No.818 of 2010, this Court suo-motu brings on record

the LR's of the deceased T.Dharmaraj in CMA.No.92 of 2010]

Versus

1.Soundararajan

...1st Respondent/Owner of the Vehicle

2.The Branch Manager,

United India Insurance Co., Ltd.,

Jawharlal Nehru Street,

Pondicherry.

...2nd Respondent/Respondent

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Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 08.09.2009 passed in M.A.C.T.O.P.No.922 of 2006 on the file of the Motor Accident Claims Tribunal, II-Additional District Judge (FAC) at Pondicherry.

Mr.R.Natrajan : For Appellant in CMA.818/2010
& first Respondent in CMA.92/2010
Mr.V.Raghavachari : For Respondents 1, 3 to 6
in CMA.818/2010
& Appellant in CMA.92/2010
: Mr.J.Chandran - for R2 in both cases.

COMMON JUDGMENT

The appellant in CMA.No.818 of 2010 is the owner of the Bus, which met with an accident causing accidental injuries to the claimant. He preferred this appeal challenging the compensation awarded by order dated 08.09.2009 passed in M.A.C.T.O.P.No.922 of 2006 by the Motor Accident Claims Tribunal, II-Additional District Judge (FAC) at Pondicherry, and also challenging the exoneration of the Insurance company from its liability.

2.The claimant in M.A.C.T.O.P.No.922 of 2006 has filed CMA.No.92 of 2010, seeking enhancement of compensation for the accidental injuries sustained by him in the road accident on 26.05.2003. In this appeal, the legal heirs of the deceased claimants have not been brought on record.

3.Both the appeals are arising out of the common judgment rendered by the Tribunal in M.A.C.T.O.P.No.922 of 2006. Since both the parties involved in these two appeals are interlinked, these appeals are taken up for final disposal together.

4.For the sake of convenience the parties are referred to as per their ranking before the Tribunal.

5.The brief averments made by the claimant in the claim petition are that on 26.05.2003 at about 13.15 hours, when the claimant was travelling as a passenger in the bus bearing Registration No.PY-01-U-3249 from Shanmugapuram to Dharmapuri on Vazhudavur main road, near Saraswathi Travels, Muthirapalayam, Pondicherry, the driver of the bus had applied a sudden brake, due to which the claimant was thrown out of the bus and the left back tyre of the bus ran over his right thigh. Immediately the claimant was taken to the JIPMER Hospital, Puducherry, wherefrom, he was referred to G.H. Chennai, wherein his right leg was amputated.

6.Before the Tribunal, the first respondent was called absent and set ex-parte.

7.In the counter filed by the second respondent/Insurance company, before the Tribunal, they denied the claim of the claimant that the accident took place due to the rash and negligent driving of the first respondent's driver and further, contended that the claimant is bound to prove his age, occupation and the nature of injuries sustained by him and proof for the period of treatment taken by him, through documentary evidence.

8.In order to substantiate the claim, before the Tribunal, on the side of the claimant, PWs.1 to 3 were examined and Exs.P1 to P14 documents were marked. On behalf of the respondents neither oral nor documentary evidence was adduced.

9.On consideration of both the oral and documentary evidence, the Tribunal has held that the factum and the manner of the accident and rash and negligent driving on the part of the driver of the offending vehicle are proved and the Tribunal has further held that the first respondent/owner of the bus is liable to pay the compensation and directed him to deposit a sum of Rs.2,21,000/- along with interest at the rate of 7.5% p.a., from the date of petition, i.e., 09.08.2006, till the payment.

10.Being dis-satisfied with the finding rendered by the Tribunal on exonerating the Insurance company from the liability, the owner of the vehicle/ the first respondent has preferred CMA.No.818 of 2010, while having not satisfied with the quantum of compensation awarded by the Tribunal, the claimant has preferred CMA.No.92 of 2010.

11.There is no dispute that the claimant had sustained injuries, due to the fall from the moving bus of the first respondent. The claimant's son was an eye witness to the occurrence and he was examined as PW.3. He deposed that his father was standing inside of the bus by holding the rail though he was old, but he was unable to hold the rail properly and he fell down from the bus, due to the sudden brake applied by the driver. Further, PW.3 has denied the suggestion put to him by the learned counsel for the second respondent/Insurance company that his father sustained injuries, since he fell down on the road, as the bus started moving, when he was placed his foot on the first step of the foot board to enter into the bus. The evidence of PW.3 corroborates with the evidence of PW.1/claimant, who has also stated that he was travelling inside of the bus by standing and holding the rail(s).

13.It is seen from the evidence of PW.1 and PW.3, that on the date of the accident, the claimant travelled along with his son, in the first respondent's bus by standing and holding the rail. The claimant was standing near the entrance of the bus, which was already fully packed. The driver of the private bus drove the vehicle in a rash and negligent manner and applied sudden brake, due to which, the claimant had lost his balance and fell down from the said bus, sustained grievous injuries, which resulted in amputation. Therefore, it is clear that the claimant travelled in the bus by standing and holding the rail. Due to the sudden application of brake, the claimant has been thrown out of the bus and sustained injuries, which has led to amputation of his leg.

14.In order to prove the disability suffered by the claimant. due to amputation, PW.2/Dr.K.Krishnakumar was examined, who had issued the disability certificate, which was marked as Ex.P14. Ex.P14 clearly shows that amputation above the knee on the right lower and PW.2 has evaluated the total permanent disability at 80%. The assessment made by PW.2/Doctor seems to be reasonable and justified.

15.On the other hand, though the second respondent/Insurance company has taken a plea of contributory negligence before the Tribunal, neither the driver nor the conductor was examined. The Tribunal has held that the Insurance company cannot be held to liable to pay compensation, merely because, it was covered under policy. Hence, this Court gave its anxious consideration to the said finding rendered by the Tribunal. Since negligence was on the part of the driver of the first respondent, the Insurance company is liable and since at the time of the accident, there is a valid coverage, as admitted by the second respondent in the counter statement, the exoneration of Insurance company by the Tribunal is liable to be set aside and accordingly, the said finding of the Tribunal stands vacated and both the Insurance company and the owner of the vehicle are jointly and severally liable to pay the compensation to the claimant. Hence, the point is answered in affirmative and the CMA.No.818 of 2010 stands allowed.

18.On the point of compensation, I heard both sides and perused the records.

19.Taking into consideration that the injured worked as a Tailor and his right leg was amputated, as it could be seen from the medical records marked as Exs.P9, P10, P11, P13 and P14, and that the disability of the claimant was fixed at 80% by the Doctor/PW.2. This Court hereby confirms the said finding of the Tribunal regarding the disability.

20. Since the claimant was working as a Tailor and due to the amputation on his right thigh, he lost his earning capacity, and he cannot perform his work as before, this Court is of the considered view that the accidental injuries sustained by the claimant satisfy with the criteria laid down by the Honourable Supreme Court in the case of Rajkumar Vs. Ajaykumar & another reported in 2010 (2) TN MAC 581 SC, to award compensation by adopting multiplier '9' to the claimant's disability treating it as functional disability. The notional income of the claimant is arrived at Rs.3,000/- per month, which is arrived at Rs.2,59,200/- (Rs.3,000 x 12 x 9 x 80/100) towards loss of income.

21. In respect of 'pain and suffering' the sum of Rs.20,000/- is reduced to Rs.15,000/- and the sum of Rs.5,000/- was awarded towards 'Extra-nourishment' is hereby confirmed. The Tribunal towards 'Transport, attender and medical expenses', awarded a total sum of Rs.15,000/- which is split into separate heads and a sum of Rs.3,000/- each is awarded towards 'Transportation charges' and 'Attender charges' and a sum of Rs.5,000/- is awarded towards 'Medical expenses' as compensation. The Tribunal did not award any amount towards loss of amenities. This Court feels it just and proper to award a sum of Rs.3,000/- towards loss of amenities. Thus, the break-up details of the award amount modified and enhanced are as follows:-

Head	Amount awarded by the Tribunal	Amount granted by this Court
Disability	Rs.1,60,000/-	Rs.1,60,000/-
Loss of income	Rs.20,000/-	Rs.2,59,200/-
Pain and suffering	Rs.20,000/-	Rs.15,000/-
Extra-nourishment	Rs.5,000/-	Rs.5,000/-
Transport, attender and medical expenses	Rs.15,000/-	-
Damages	Rs.1,000/-	Rs.1,000/-
Transportation charges	-	Rs.3,000/-
Attender charges	-	Rs.3,000/-
Loss of amenities	-	Rs.3,000/-
Medical expenses	-	Rs.5,000/-
Total	Rs.2,21,000/-	Rs.4,54,200/-

22. In the result,

(i) the CMA.No.818 of 2010, filed by the owner of the vehicle is allowed as the Insurance company as well as the owner of the vehicle are jointly and severally liable to pay the compensation to the claimant.

(ii) the CMA.No.92 of 2010, filed by the claimant is partly allowed by enhancing the compensation amount awarded by the Tribunal from Rs.2,21,000/- to Rs.4,54,200/-.

(iii) the Insurance company as well as the owner of the vehicle are directed to deposit the enhanced amount of compensation as determined in this appeal together with costs and interest rate of 7.5% per annum, after adjusting the amount, if any, already deposited, within a period of eight weeks from the date of copy of this Judgment.

(iv) On such deposit being made, the claimant is permitted to withdraw the same with accrued interest, less the amount if any, already withdrawn.

(v) The claimant shall pay necessary Court fee, if any, on the enhanced compensation.

(vi) There shall be no order as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

klt
To

1. The Motor Accident Claims Tribunal,
II-Additional District Judge (FAC), Pondicherry

2. The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 CC to Mr.V.Raghavachari, Advocate sr 65288, 65287

+2 Ccs to Mr.R.Natrajan, Advocate sr 65281.

C.M.A.Nos.818 & 92 of 2010

CNR (CO)
SP(10/02/2021)

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