

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.1552 of 2015

The Oriental Insurance Complany Ltd.,
A.A.Complex, First Floor,
159, Kumaran, Tirupur. ... Appellant

Vs.

1.Karthik @ Karthik Kumar

2.Selvaraj

3.Tvl.Santhamani Motor Service,
2D, Thennampalayam, Tirupur-641 601.

4.Maignanamoorthy

5.Royal Sundaram Alliance Insurance Company Ltd.,
4A, 4th Floor, Thirumalai Towers,
723, Avinashi Road, Coimbatore.

(RR2 to 5 given up) ... Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 26.06.2014 made in M.A.C.T.O.P.No.755 of 2012 on the file of the learned Additional Sub Judge (Motor Accident Claims Tribunal), Tirupur.

For Appellant : Mr.M.Krishnamoorthy
For Respondents : No appearance for R1
RR2 to 5 given up

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award made in M.A.C.T.O.P.No.755 of 2012 , dated 26.06.2014, on the file of the learned Additional Sub Judge(Motor Accidents Claims Tribunal), Tirupur.

2. The first respondent herein is the claimant in M.A.C.T.O.P.No.755 of 2012, on the file of the learned Additional Sub Judge (Motor Accidents Claims Tribunal), Tirupur. He filed the above said MCOP claiming compensation of

Rs.8,00,000/- for the injuries sustained by him in a road accident that took place on 30.04.2012, at about 09.00 hrs, when the petitioner was riding the two wheeler bearing registration No. TN.42 B 0465 at the left extremity of the road. At the time the bus bearing registration No.TN.39 AQ 9266 came from behind in a rash and negligent manner, dashed the petitioner and he dashed on the backside of the car TN.39 AJ 5105 and he sustained grievous injuries. The driver of the bus was solely responsible for the accident.

3. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to the rash and negligent driving by the driver of the bus during the course of his employment under the second respondent. The bus is insured with the third respondent. The car was driven by the fourth respondent, who is the owner cum driver of the car insured with the fifth respondent. Based on the appellant's age, occupation, income, disability and the related documents, the tribunal awarded a sum of Rs.5,29,180/- as compensation under the following heads:

S.No	Description	Amount awarded by Tribunal
1.	Loss of Income	Rs.4,27,680/-
2.	Medical Bills	Rs.21,500/-
3.	for transportation	Rs.10,000/-
4.	Extra Noruishment	Rs.10,000/-
5.	pain and suffering	Rs.30,000/-
6.	Mental Agony	Rs.30,000/-
	Total	Rs.5,29,180/-

4. Aggrieved by the award passed by the Tribunal, the respondent has filed the present appeal under Section 173 of the Motor Vehicles Act.

5.Heard the learned counsel for the appellant. No representation for the respondent and peruse the documents available on record.

6. Before the Tribunal, on the side of the claimant, witnesses P.W.1, P.W.2 and P.W.3 were examined and following exhibits were marked:

- (a)Ex.P1 : Copy of FIR
- (b)Ex.P2 : Discharg summary
- (c)Ex.P3 : Medical bills
- (d)Ex.P4 : disability certificate

(e)Ex.P5 : Copy of X-ray

7. Before the Tribunal, on the side of the respondents, witnesses R.W.1 and R.W.2 were examined and one exhibits was marked:

(a)Ex.R.1 : Copy of the Insurance

8. The learned counsel for the Appellant / Insurance Company submitted that the accident occurred only due to the rash and negligent driving of the victim. Further grievance is that there is no proof for occupation of income of the injured and in the absence of any details, the Tribunal erroneously fixed the monthly income at Rs.6,000/- without any basis and on the whole the sum awarded by the Tribunal under other heads is also excessive and arbitrary. He further submitted that there is no proper evidence to prove that the victim had taken treatment in the private hospital. He further submitted that the tribunal ought to reduce the compensation by taking age and occupation and by considering the degree of injury.

9. It is seen from the records that due to the accident the first respondent has sustained multiple fractures in the left leg and multiple abrasions all over the body and P.W.3 Doctor who examined and issued disability certificate at 35.6%, but the tribunal has taken at 33%.

10. Further on perusal of records it is clear that the accident had occurred only due to the rash and negligent driving on the part of the driver of the bus. The particulars have been furnished by the claimant regarding the age, income and occupation of the injured and the same are taken into consideration by the Tribunal, while assessing the compensation. It is seen that the injured was aged about 23 years at the time of accident and he was working as supervisor in the Balaji Garments, Tirupur, and also earning Rs.10,000/- per month. The tribunal has fixed as monthly income of the injured a sum of Rs.6,000/- per month and calculated the loss of income of Rs.4,27,680/-. In view of the injuries and disability suffered by the claimant, the sum awarded for loss of income is proper and does not require any modification. The Tribunal has awarded a sum of Rs.30,000/- towards pain and suffering, which is excessive and the same is reduced to Rs.25,000/-. Similarly the sum of Rs.30,000/- towards Mental agony also reduced to Rs.10,000/-. The amounts awarded by the Tribunal under other heads are confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Loss of Income	Rs.4,27,680/-	Rs.4,27,680/-

	Medical Bills	Rs.21,500/-	Rs.21,500/-
3.	for transportation	Rs.10,000/-	Rs.10,000/-
4.	Extra Noruishment	Rs.10,000/-	Rs.10,000/-
5.	pain and suffering	Rs.30,000/-	Rs.25,000/-
6.	Mental Agony	Rs.30,000/-	Rs.10,000/-
	Total	Rs.5,29,180/-	Rs.4,94,180/-

11. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.5,29,180/- is reduced to Rs.4,94,180/-. No costs. The rate of interest for the modified amount will be at 7.5% per annum.

12. The appellant/Insurance Company is directed to deposit the reduced award amount now determined by this Court 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 amount to the claimant's bank account through NEFT or RTGS within a period of one week thereon. The first respondent/claimant is directed to pay the requisite court fee, if any within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar(CO)

// True Copy//

Sub Assistant Registrar

tta

To

The Additional Sub Judge (Motor Accident Claims Tribunal),
Tirupur.

Copy to: The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.M.Krishnamoorthy, Advocate, SR.No.53967.

C.M.A.No.1552 of 2015

GJ(CO)
CSR: 20.03.2020
GMY(14/08/2020)