

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2019

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.956 of 2019

and

C.M.P.No.2603 of 2019

The New India Assurance Co. Ltd.,
C.D.Complex, II Floor, 9/1, Bhavani Road,
Karumandichellipalayam, Perundurai Taluk,
Erode District. ..Appellant/3rd Respondent

Vs.

- 1.T.Prabhakaran ...1st respondent/Petitioner
- 2.Velliangiri
- 3.Periasamy ...2nd and 3rd Respondent/ 1st and 2nd respondent
- 4.V.Subramanian
- 5.The Correspondent, Kongu Engineering College
Perundurai.
- 6.The New India Assurance Co. Ltd.,
81A, Ingur Road, Raja Indane Gas Complex,
1st Floor, Mugasi Pidariyur, Chennimalai,
Perundurai Taluk, Erode District.
.. Respondents 4 to 6/ respondent 4 to 6

(Respondents 2 to 4 were set-exparte in the lower court. Respondents 5 and 6 are not necessary parties. Hence, notice to them are dispensed with)

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 04.10.2018 made in M.C.O.P.No.352 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

For Appellant : Mr.R.Sivakumar
For R1 : Mr.N.Manokaran

J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the award dated 04.10.2018 made in M.C.O.P.No.352 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode.

2.The appellant/Insurance Company is 3rd respondent in M.C.O.P.No.352 of 2017 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Erode. The 1st respondent filed the said claim petition, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 15.10.2016. The Tribunal, considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the 2nd respondent/driver of the bus belonging to the 3rd respondent and directed the appellant/Insurance Company to pay a sum of Rs.4,45,600/- as compensation to the 1st respondent. Against the said award dated 04.10.2018 made in M.C.O.P.No.352 of 2017, granting compensation to the 1st respondent, the appellant-Insurance Company has come out with the present appeal.

3.The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal erred in fixing negligence on the part of the driver of the bus belonging to the 3rd respondent, while the 1st respondent was responsible for the accident. The Tribunal erred in fixing monthly income of the 1st respondent at Rs.12,800/-, when he has not substantiated the said claim. The Tribunal erred in awarding 40% enhancement for future prospects. The Medical Board certified 25% of temporary disability and the Tribunal erred in adopting multiplier method fixing 10% disability for whole body without any basis. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

4.Per contra, the learned counsel appearing for the 1st respondent contended that the 1st respondent-injured eye witness, who examined himself as P.W.1, spoke about the manner of accident and proved that the accident occurred only due to negligence of the 2nd respondent-driver of the bus belonging to the 3rd respondent. F.I.R. was also lodged

against the driver of the bus-2nd respondent. The appellant has not let in any evidence to disprove the said contention. The 1st respondent examined his employer and proved that he was earning a sum of Rs.20,000/- as A.C. Mechanic. The Tribunal on erroneous consideration, has rejected the evidence of P.W.2 and fixed meagre sum of Rs.12,800/- per month as notional income of the 1st respondent and granted only 40% future prospects. The amounts awarded by the Tribunal under different heads are not excessive and prayed for dismissal of the appeal.

5. Heard the learned counsel appearing for the appellant as well as 1st respondent and perused the materials available on record.

6. From the materials available on record, it is seen that P.W.1-1st respondent, an injured eye witness, in his evidence has deposed the manner in which the accident has occurred. The appellant has not let in any evidence to disprove the contention of the 1st respondent. The Tribunal considering the evidence of P.W.1, F.I.R., rough sketch and Motor Vehicle Inspector's Report, has held that the accident occurred only due to rash and negligent driving by the 2nd respondent-driver of the bus belonging to the 3rd respondent. There is no error in the said finding of the Tribunal warranting interference by this Court.

7. As far as quantum of compensation is concerned, 1st respondent claimed that he was working as an A.C. Mechanic in City Auto Electricals, Veerappampalayam, Erode and was earning a sum of Rs.20,000/- per month. The 1st respondent examined P.W.2-employer of the said company and marked Ex.P20/salary certificate with regard to his income. P.W.2 in his cross-examination admitted that the 1st respondent was employed by him only on contract basis and he was not a regular employee. Based on such admission, the Tribunal has rejected the evidence of P.W.2, Ex.P20, fixed a sum of Rs.12,800/- per month as salary and granted 40% enhancement towards future prospects. The 1st respondent has not filed any document to prove the qualification that he is A.C. Mechanic. In the absence of any evidence, notional income fixed and 40% enhancement granted by the Tribunal are excessive. Therefore, the notional income of the 1st respondent fixed by the Tribunal is hereby reduced to Rs.12,000/- per month and 40% enhancement towards future prospects is hereby set aside. The reason given by the Tribunal for fixing 10% disability for which adopting multiplier method is not erroneous and the same is hereby confirmed. The compensation awarded by the Tribunal towards disability and loss of earning power is modified as follows:

$$\text{Rs.12,000/-} \times 12 \times 16 \times 10/100 = \text{Rs.2,30,400/-}$$

The amounts awarded by the Tribunal under all the other heads are not excessive and the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	25,600	25,600	Confirmed
2.	Transportation	3,000	3,000	Confirmed
3.	Extra nourishment	6,000	6,000	Confirmed
4.	Damages for clothes and articles	500	500	Confirmed
5.	Medical expenses	26,500	26,500	Confirmed
6.	Pain and sufferings	40,000	40,000	Confirmed
7.	Disability and loss of earning power	3,44,000	2,30,400	Reduced
	Total	4,45,600	3,32,000	Reduced by Rs.1,13,600 /-

8. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.4,45,600/- is hereby reduced to Rs.3,32,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant/Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the 1st respondent/claimant is permitted to withdraw the modified award amount along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount, if any lying in the deposit to the credit of

M.C.O.P.No.352 of 2017 on the file of the Motor Accidents Claims Tribunal, Special Sub Court, Erode, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal),
Erode.

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

+1cc to Mr.R.Sivakumar , Advocate SR.No. 11132

C.M.A.No.956 of 2019
and

C.M.P.No.2603 of 2019

A.SK(11/07/2019)



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