



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CMA No.591 of 2011

and

MP.No.1 of 2011

The Branch Manager,
National Insurance Company Limited,
Branch Office, 1631/1-B, Bhavan Main Road,
Sankagiri. ..Appellant / 2nd Respondent

Versus

1.Lakshmi ..1st Respondent / Petitioner

2.G.Ramaswamy Gounder ..2nd Respondent / 1st Respondent

Prayer: Civil Miscellaneous Appeal filed under section 173 of Motor Vehicle Act, 1988 against the Judgment and Decree dated 14.10.2010 made in MACTOP.No.432 of 2007 on the file of the Motor Vehicle Accidents Claims Tribunal, Fast Track Court and Additional District Court, Dharmapuri.

For Appellant : Mrs.N.B.Surekha

For Respondents : No appearance (for R1)

: Not ready in notice (for R2)

JUDGMENT

This Civil Miscellaneous Appeal has been filed by the insurance company, challenging the findings rendered by the Motor Accidents Claims Tribunal, Fast Track Court and Additional District Court, Dharmapuri in and by award dated 14.10.2010 passed in MACTOP.No.432 of 2007, fixing the liability on the Insurance Company.

2.The owner of the vehicle/ first respondent was set exparte before the Tribunal.

3.It is the case of the claimant/first respondent that on 29.12.2005 at about 17.45 hours, when she was travelling in a Bus viz., Sri Murugan Bus bearing Regn.No.TN-29-E-1719 to go to



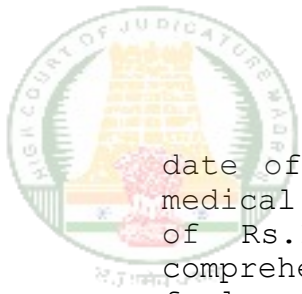
her house, at Ekkandahalli Bus stop, the bus stopped for alighting of the passengers. The claimant was also one of the passengers, who got down from the bus. At that time, the driver of the bus without noticing her suddenly moved the bus in a rash and negligent manner. Due to the impact, the claimant fell down and sustained grievous injuries of her forehead, forearm, spinal cord bottom and right elbow and other multiple injuries all over the body. Immediately, she was taken to a private hospital at Palacode and then she was shifted to another private doctor at Dharmapuri. In spite of further treatment, there was no improvement on the claimant's health condition, then she was admitted to Government Hospital, Salem. Therefore, totally, the claimant had took one year treatment for the injuries sustained in the said accident. Hence, the claimant filed the claim petition in MACTOP.No.432 of 2007, claiming a sum of Rs.4,84,200/- as compensation, which was restricted to Rs.2,00,000/-.

4.Before the Tribunal, in order to substantiate the claim petition, the claimant examined herself as PW.1 besides examining one Dr.Krishnakumar and nine documents were marked as Ex.P1 to P9. On the side of the respondents, one Rajamanikkam/ Assistant Manager of the insurance company was examined as RW.1 and no documentary evidence was adduced.

5.Heard both sides and perused the materials available on records.

6.Taking into consideration of the fact evidence of PW.1 coupled with Ex.P1/FIR , Ex.P2/wound certificate, Ex.P4/ Driving licence of the Bus driver, Ex.P5/Motor Inspector Report, the Tribunal held that the claimant has suffered injuries on her left hand elbow and wrist and fracture in spinal cord L4 & L5 bone. Further by taking note of the nature of the injuries sustained by her, the Tribunal has come to the conclusion that due to rash and negligent driving of the driver of the first respondent's bus, which was insured with the second respondent's insurance company, the accident had occurred and awarded a sum of Rs.91,000/- as compensation. Aggrieved against the same, the appellant/Insurance company has come up with the present appeal before this Court.

7.On the point of quantum of compensation, it appears that the PW.2/Dr.Krishnakumar, who examined the injured claimant had issued the Ex.P8/Xray & Ex.P9/disability certificate and fixed has disability at rate of 20%. Per contra, it appears from Ex.P2/wound certificate of claimant sustained only simple injuries in the said accident. Hence, this Court finds that the disability at 20% fixed by the Tribunal is found to be excessive and the same is reduced to 10%. Taking into consideration the



date of the accident, a sum of Rs.30,000/- was awarded towards medical expenses and further, for future medical expenses, a sum of Rs.15,000/- awarded, and the same is specifically not comprehensively required to be awarded, Accordingly, this, Court feels that Rs.30,000/- shall be awarded towards medical expenses.

8. Furthermore, the Tribunal has awarded a sum of Rs.10,000/- towards pain and suffering and a sum of Rs.5,000/- towards mental agony and the same are set aside. This Court feels to that a sum of Rs.10,000/- can be awarded towards pain and suffering. Accordingly, this Court re-assesses the award passed by the Tribunal under the heads of disability from 20% at Rs.40,000/- has to be reduced at 10% and the same is arrived at Rs.15,000/- (10% x Rs.1,500) by fixing of Rs.1,500/- per percentage. Considering the period of hospitalization, Transportation charges, Extra-nourishment and loss of facilities are awarded at Rs.6,000/- and the same are awarded at Rs.5,000/- each towards Transportation charges and Extra-nourishment and the loss of facilities stands set aside. The Tribunal awarded a sum of Rs.30,000/- towards medical expenses is hereby confirmed and for future medical expenses of Rs.15,000/- is hereby stands set aside. Consequently, the sum of Rs.91,000/- awarded by the Tribunal is hereby modified and reduced as follows with the break-up details of the compensation award amount :-

Description	Amount awarded by the Tribunal	Amount awarded by this Court
Disability	Rs.40,000/-	Rs.15,000/-
Injuries	Rs.15,000/-	-
Medical expenses	Rs.30,000/-	Rs.30,000/-
Pain and suffering	Rs.10,000/-	Rs.10,000/-
Mental Agony	Rs.5,000/-	-
Extra-nourishment, Transportation and loss of facilities	Rs.6,000/-	Rs.10,000/-
Total	Rs.91,000/-	Rs.65,000/-

9 .In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation amount of Rs.91,000/- awarded by the Tribunal is hereby reduced to Rs.65,000/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. It is represented by the learned counsel for the appellant/Insurance Company that 50% amount as awarded by the Tribunal has already been deposited before the Tribunal. Therefore, the Insurance Company is directed to deposit the balance amount to the credit of MACTOP.No.432 of 2007 on the



file of the Motor Vehicle Accidents Claims Tribunal, Fast Track Court and Additional District Court, Dharmapuri, within a period of eight weeks from the date of receipt of a copy of this Judgement thereafter. On such deposit being made, the claimant/first respondent is entitled to withdraw the same with accrued interest, less the amount if any, already withdrawn. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-V)

//True Copy//

Sub Assistant Registrar

klt

To

1. The Motor Vehicle Accidents Claims Tribunal,
Fast Track Court and Additional District Court, Dharmapuri.

Copy to: The Section Officer,
V.R. Section, High Court, Madras - 104.

+1 cc to M/s.N.B.Surekha, Advocate, S.R.No.19858

CMA No.591 of 2011

BS (CO)
SSM(26/08/2019)