

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2019

CORAM:

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

CMA.No.3162 of 2012

and

MP.No.1 of 2012

The New India Assurance Co. Ltd.,
Branch Office, Amman Complex, 1st Floor,
1360, EVN road, Erode - 11.Appellant/3rd Respondent

vs.

1.D.Marimuthu1st Respondent/Petitioner

2.K.Arulkumar

3.P.Jayavel .. Respondents 2 & 3/Respondents 1 & 2

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the decree and Judgment dated 28.03.2012 passed in MCOP.No.60 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Erode.

For Appellant : Mr.M.Krishnamoorthy

For Respondents : Mr.N.Manokaran for R1
No appearance for R2 and R3

J U D G M E N T

The appellant / New India Assurance Company, the third respondent in MCOP.No.60 of 2011 on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Erode has filed the present appeal. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 seeking compensation of Rs.7,00,000/- for the injuries sustained by him in a road accident on 12.12.2010.

2. The case of the claimant is that on 12.12.2010, he was riding his two wheeler bearing Registration No.TN 33 B 0829 towards Madheswaran Nagar from Mullamparappu and at about 19.30 hours, a speeding bus bearing Registration No.TN 56 Y 1551 hit his two wheeler, as a result of which, he fell down and sustained injuries and was immediately rushed to the Hospital.

3. According to the claimant, the rash and negligent driving of the driver of the bus belonging to the third respondent was the cause of the accident and that since the said vehicle was insured with the present appellant, the driver, the owner and the insurer are jointly and severally liable to pay compensation.

4. The driver and the owner of the bus (second and third respondents) remained absent before the Tribunal and therefore they were set exparte. The New India Assurance Company contested the claim petition on all the grounds available to the insured. The learned Chief Judicial Magistrate / Motor Accident Claims Tribunal, Erode while awarding compensation of Rs.5,31,000/- together with interest at the rate of 9% per annum, directed the New India Assurance Company to pay the compensation to the claimant. Aggrieved over the orders passed by the Tribunal, the New India Assurance Company has filed the present appeal under Section 173 of the Motor Vehicles Act, 1988.

5. Mr.M.Krishnamoorthy, learned counsel appearing for the appellant contended that though there is no functional disability, the Tribunal has wrongly adopted multiplier method and awarded an exorbitant amount of Rs.5,31,000/- to the claimant, especially, when the injuries sustained by him do not have any direct impact on his earning capacity. He therefore, prayed for scaling down the award passed by the Tribunal.

6. Per Contra, Mr.N.Manoharan, learned counsel appearing for the first respondent / claimant contended that the Tribunal after considering all the aspects of the case, awarded a just compensation of Rs.5,31,000/- and the same need not be disturbed at this stage. He also relied on the decision in B.Kothandapani vs. Tamil Nadu State Transport Corporation Limited reported in (2011) 6 Supreme Court Cases 420 and contended that the permanent disability affects the earning capacity of the person concerned and that one has to forego personal comforts and even for normal avocation they have to depend on others. He would therefore contend that the award passed by the Tribunal is just and reasonable and prayed for dismissal of the appeal.

7. No appearance on behalf of the second and third respondents.

8. In the instant case, Dr.R.Raju, Associate Professor of Neuro Surgery, Government M.K.Medical College Hospital, Salem (PW2) has certified that the claimant has suffered a head injury and due to the sequelae of the head injury, he has "loss of sense of smell and memory loss with gait disturbance". In the facts and circumstances, the

compensation of Rs.5,31,000/- awarded by the Tribunal cannot be said to be on the higher side.

9. In the result,

(i) The Civil Miscellaneous Appeal is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed.

(ii) The order passed by the Tribunal is upheld.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

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To

1.The Motor Accidents Claims Tribunal,
The Chief Judicial Magistrate,
Erode.

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

+1cc to Mr.M.Krishnamoorthy, Advocate SR.No.95250

+1cc to Mr.N.Manokaran, Advocate SR.No.95289

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RSV(CO)
GMY(16/06/2020)

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