

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2019

CORAM

THE HONOURABLE MRS. JUSTICE R. HEMALATHA

C.M.A.NO.3217 OF 2012

M/s.National Insurance Co. Ltd.
C-32, 2nd Avenue,
Thirumangalam, Chennai. ...Appellant/Respondent No. IV

Vs.

1. M.Mazhuvendhi ... Respondent/Petitioner
2. K.Selvam ... Respondent/Respondent No.1
- 3.Tamil Nadu State Transport Corporation Ltd.
Madurai Division - I
Bye pass Road, Madurai 625 010
... Respondent/Respondent No.2
- 4.M.P.Ramachandran ...Respondents/Respondent No.3

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act 1988, against the Judgment and decree passed in M.C.O.P. No.159 of 2006 on 31.07.2007 on the file of the learned Motor Accident Claims Tribunal (2nd Additional Subordinate Judge) Coimbatore.

For Appellant : Mr.J.Chandran

For Respondents : Mr.Kaithamalai Kumaran for R1
Mr.S.V.Vasantha Kumar for R3
R2 & R4 - No appearance.

JUDGMENT

The appellant National Insurance Company, Coimbatore is the fourth respondent in M.C.O.P. No.159 of 2006 on the file of the second Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore.

2. The first respondent/claimant filed the abovesaid claim petition under Section 166(1) of Motor Vehicles Act, seeking compensation of Rs.16,00,000/- for the injuries sustained by him

in a road accident that took place on 14.12.2003 when he as travelling as a passenger in a bus bearing registration No.TN 58 N 0375. According to the first respondent / claimant, at about 12.30 AM, when the bus was nearing Varappalayam on the Dharapuram-Tiruppur road, a speeding lorry bearing registration No.TN 23 T 3606 belonging to the second respondent and insured with the present appellant hit the bus, as a result of which, he sustained injuries all over his body. His further contention is that the rash and negligent driving of the driver of the lorry bearing registration No.TN 23 T 3606 was the cause of accident and that since the lorry was insured with the present appellant, both of them are jointly and severally liable to pay compensation of Rs.16,00,000/- to him.

3. The owner of the lorry and the driver of the Tamilnadu State Transport Corporation Limited remained absent before the tribunal and therefore, they were set exparte. The present appellant and the Tamilnadu State Transport Corporation Ltd., contested the claim petition.

4. The learned second Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore, while awarding a compensation of Rs.5,43,000/- together with interest at the rate of 7.5% to the first respondent/claimant, held that since both the drivers are at fault, the compensation should be apportioned into two halves by the second respondent (Tamilnadu State Transport Corporation Ltd) and the fourth respondent (National Insurance Company Ltd.).

5. Aggrieved over the orders passed by the tribunal, the National Insurance Company Limited, has filed the present appeal under Section 173 of the Motor Vehicles Act 1988, questioning their liability to pay compensation.

6.Mr. J.Chandran, learned counsel appearing for the appellant would contend that when the inspector of police, Dharapuram Police Station has registered the F.IR against the driver of the Tamilnadu State Transport Corporation and also filed a final report (Ex.P5) against the said driver, the tribunal was wrong in fixing negligence on the part of the driver of the lorry and the driver of the bus in the ratio 50:50. He also drew the attention of this Court to the rough sketch (Ex.P4) prepared by the police and contended that the position of the bus would clearly go to show that the driver of the bus was rash and negligent in driving the bus.

7. A perusal of the rough sketch shows that the bus was found on the wrong side of the road and the Sub Inspector of Police, Dharapuram Police Station, after thorough investigation, has laid the charge sheet against the driver of the bus. In the circumstances, the tribunal was wrong in fixing the negligence on the part of the driver of the lorry and the driver of the bus in the ratio 50:50.

8. As far as the quantum of compensation is concerned, the tribunal has awarded a sum of Rs.5,43,000/- together with interest at the rate of 7.5% per annum to the first respondent / claimant under various heads. The award passed by the Tribunal under various heads is extracted hereunder.

Sl.No.	Head	Amount (Rs.)
1.	Loss of income (Rs.4,000/- X 10)	40,000/-
2.	Pain and sufferings	40,000/-
3.	Transport Expenses	6,000/-
4.	Extra Nutrition	5,000/-
5.	Future Medical expenses	20,000/-
6.	Injuries	50,000/-
7.	Loss of earning power	50,000/-
8.	Medical expenses	3,32,000/-
	Total	5,43,000/-

9. The first respondent/claimant is a driver by profession and he was actually employed in Sakthi Sugars Limited as a driver. Dr.Ram Wilson Amstrong(P.W.3) has assessed the partial permanent disability as 18%. However, the tribunal has awarded a sum of Rs.50,000/- towards the injuries sustained by the first respondent/claimant and a sum of Rs.50,000/- towards loss of earning capacity. A Full Bench of this Court in Cholan Roadway Corporation Ltd., Vs. Ahmed Tambi reported in 2006(4) MLJ 362, has held that

"In order to avoid any future confusion and to bring more clarity and transparency in the award of damages, it is necessary that the tribunal, while awarding damages, should itemise the award under each of the head namely, pecuniary losses and non pecuniary losses. In the non-pecuniary losses the tribunal shall consider a) pain and suffering, b)loss of amenity, c) loss of expectation of life, hardship, mental stress, etc., d) loss of prospect of marriage and under the head pecuniary losses, the tribunal shall consider loss of earning capacity and loss of future earnings as one component apart from medical and other expenses and loss of earning, if any from the date of accident till the date of trial. When the loss of earning capacity is compensated as also

the non pecuniary losses under (a) to (d), permanent disability need not be separately itemised".

Since Dr.Ram Wilson Amstrong(P.W.3) has assessed partial permanent disability as 18%, awarding a sum of Rs.36,000/- (Rs.2000/- per percentage) would meet the ends of justice. The tribunal has not awarded any amount towards attender's charges and therefore, a sum of Rs.2,000/- is awarded towards attender's charges. Thus, the compensation amount is reduced as detailed below:

Sl.No.	Head	Amount (Rs.)
1.	Loss of income (Rs.4,000/- X 10)	40,000/-
2.	Pain and sufferings	40,000/-
3.	Transport Expenses	6,000/-
4.	Extra Nutrition	5,000/-
5.	Future Medical expenses	20,000/-
6.	Loss of earning capacity	36,000/-
7.	Attender's Charges	2,000/-
6.	Medical expenses	3,32,000/-
	Total	4,81,000/-

10. In the result,

(i) The appeal filed by the National Insurance company is allowed. No costs.

(ii) The award passed by the Tribunal in in M.C.O.P. No.159 of 2006 on 31.07.2007 on the file of the learned II Additional Subordinate Judge, Motor Accident Claims Tribunal, Coimbatore, apportioning the compensation into two equal halves is set aside and the quantum of compensation awarded by the tribunal is reduced to Rs.4,81,000/- from Rs.5,43,000/-.

(iii) The appellant Insurance Company is exonerated from paying compensation to the first respondent / claimant and they are at liberty to withdraw the amount already deposited by them before the concerned tribunal.

(iv) The Tamilnadu State Transport Corporation Limited is directed pay the entire compensation amount of Rs.4,81,000/- to the first respondent / claimant together with interest at the rate of 7.5% per annum from the date of claim petition till the

date of deposit, less the amount already deposited by them, within a period of four weeks from the date of receipt of a copy of this order.

(v) On such deposit being made by the appellant, the first respondent/claimant is entitled to withdraw the same, after following due process of law.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To,

1. The second Additional Subordinate Judge,
Motor Accident Claims Tribunal, Coimbatore.
2. Tamil Nadu State Transport Corporation Ltd.
Madurai Division - I
Bye pass Road, Madurai 625 010
3. The Section Officer,
V.R. Section, High Court,
Madras.(2 copies)

+lcc to Mr.S.Kaithamalai Kumaran, Advocate, S.R.No. 7464
+lcc to Mr.J.Chandran, Advocate, S.R.No. 7481
+lcc to Mr.S.V.Vasantha Kumar, Advocate, S.R.No. 7637

C.M.A.NO.3217 OF 2012

RSV (CO)
GN(25/04/2019)

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