

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MRS.JUSTICE S. RAMATHILAGAM

C.M.A.No.2422 of 2019

Chidambaram

... Appellant/Petitioner

Vs.

1. Mani (Ex-parte)
2. The National Insurance Company Limited
Divisional Office-II, No.11/289, Ramakrishna Road,
Salem-636 007. ... Respondents/Respondents

Prayer : Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 31.08.2018 and made in M.C.O.P.No.1101/2016 on the file of the Motor Accident Claims Tribunal, Special Sub-ordinate Judge Court No.1, Salem.

For Appellant : Mr.T.S.Arthanareeswaran

For Respondents : Mr.J.Chandran for R2.

R1 : Exparte

J U D G M E N T

This Civil Miscellaneous Appeal has been filed against the award and decree made in M.C.O.P.No.1101 of 2016, dated 31.08.2018, on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge Court No.1, Salem.

2. The appellant herein, who is the claimant, has filed M.C.O.P.No.1101 of 2016, on the file of the Motor Accidents Claims Tribunal/Special Subordinate Judge Court No.1, Salem claiming a sum of Rs.25,00,000/- as compensation for the injuries sustained by him in a road accident which took place on 25.10.2015 at about 09.30 a.m., when the appellant was riding his two wheeler bearing Registration No.TN-29-H5613(TVS Super XL) from Pallakodu to Madavala Road. At that time, the bus bearing Registration No.TN-29 AQ-9199 (Ashok Leyland-SRS Bus), the driver driving the bus in a rash and negligent manner and hit the appellant, due to which the appellant sustained grievous injuries. The respondent/The National Insurance Company stated in the counter statement that there is no rash and negligent driving on the part of the first respondent/Driver belonging to the second respondent/Insurance Company.

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 belonging to the second respondent/Insurance Company and directed the second respondent/Insurance Company to pay the compensation of a sum of Rs.2,58,535/- to the claimant.

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

(a)Ex.P1	:	Copy of FIR
(b)Ex.P2	:	Wound Certificate
(c)Ex.P3	:	Accident Register
(d)Ex.P4	:	Discharge Summary
(e)Ex.P5	:	Medical Bills
(f)Ex.P6	:	Rough Sketch
(g)Ex.P7	:	Inspection Report
(h)Ex.P8	:	Insurance Policy
(i)Ex.P9	:	Aadhaar Card
(j)Ex.P10	:	Bank Pass Book
(k)Ex.P11	:	Disability
(l)Ex.P12	:	X-ray
(m)Ex.P13	:	X-ray bills
(n)Ex.P14	:	Shop Register Certificate
(o)Ex.P15	:	Receipt
(p)Ex.P16	:	Identity card for Permanent Disability
(q)Ex.P17	:	Income Tax Returns for the year 2013-14
(r)Ex.P18	:	Income Tax Returns for the year 2014-15, 2015-16
(s)Ex.P19	:	Income Tax Returns for the year 2014-15, 2015-16

On the side of the respondent/The National Insurance Company, none were examined and no exhibits were marked.

5. Aggrieved by the award, the claimant has filed the present appeal.

6. The learned counsel for the appellant submitted that on 25.10.2015 at about 09.30 a.m., when the appellant was riding his two wheeler bearing Registration No.TN-29-H5613(TVS Super XL) from Pallakodu to Madavala Road, at that time, the bus bearing Registration No.TN-29 AQ-9199 (Ashok Leyland-SRS Bus), the driver driving the bus in a rash and negligent manner and hit the appellant, due to which the appellant sustained grievous injuries and he was unconscious for nearly 15 days in the hospital. Hence the injured person claimed a sum of Rs.25,00,000/- as compensation. The learned counsel further contended that the appellant sustained grievous injuries and head injuries. The CT Scan Report clearly shows

that in his temporal area sub Dural Bleed of maximal width 3mm in right front temporal convexity. Small hemorrhagic contusion in bilateral temporal lobes. SAH along the sulci of bilateral lobes to the hospital. The appellant was admitted in the Neuro Foundation Hospital, Salem and he had taken treatment from 25.10.2015 to 06.11.2015 (15 days) as an inpatient. But these aspects were not considered by the Tribunal. After this accident, the appellant could not do his work and he lost his entire earning power. But the Tribunal awarded very meager amount under the head of loss of income, transport expenses, extra nourishment, attender charges and loss of amenities. The Tribunal did not considered compensation under the heads of the future medical expenses. The tribunal ultimately awarded a sum of Rs.2,58,535/- under various heads, which is very low.

7. The learned counsel appearing for the second respondent/The National Insurance Company contended that the accident occurred only due to the rash and negligent driving of the injured person. Further, his grievance is that the appellant sustained only simple injuries and there is no permanent disability. The learned counsel stated that there is no fault on the part of the driver of the bus and the appellant has negligently driven the vehicle. Hence, the respondent totally denied the mode of accident and claimed it as an excessive one.

8. On perusal of records it is seen that the claimant has furnished particulars with regard to the age, income and occupation and the same have been taken into consideration by the Tribunal and this Court also concur with the findings of the Tribunal. The injured person/claimant was aged about 62 years and he was running his own vessels shop and he was earning Rs.30,000/- per month. He was admitted in the Neuro Foundation Hospital, Salem and he had taken treatment from 25.10.2015 to 06.11.2015 (15 days) as an inpatient. It is also the finding of the tribunal that since the appellant being the owner of the shop, he cannot directly deal with the business, even the family members of the appellant can run the said shop and there cannot be any loss of income. However, the Tribunal has also awarded a sum of Rs.29,820/- for one month.

9. This Court, by considering the period of treatment, assessed the loss of income has to be taken atleast for two months, by taking the monthly income at Rs.29,820/-, which is modified as {Rs.29,820/- X 2 months = Rs.59,640/-}. The Tribunal has awarded a sum of Rs.15,000/- towards pain and suffering. Since the said sum is very low for Pain and suffering, the same is enhanced to Rs.25,000/-. Likewise, the sum awarded under the heads extra nourishment, Transport charges, Attender Charges and loss of amenities are enhanced as mentioned below. The sum awarded by the Tribunal under the heads medical expenses and permanent disability, future prospects are found proper and the same are confirmed.

10. Hence the total compensation payable to the claimant is as modified as hereunder:

S.No	Description	Amount awarded by Tribunal	Amount awarded by this Court
1.	Pain and Suffering	Rs.15,000/-	Rs.25,000/-
2.	Loss of Income	Rs.29,820/-	Rs.59,640/-
3.	Medical Bills	Rs.1,47,965/-	Rs.1,47,965/-
4.	Transport Expenses	Rs.5,000/-	Rs.10,000/-
5.	Extra Nourishment	Rs.5,000/-	Rs.15,000/-
6.	Attender Charges	Rs.5,000/-	Rs.15,000/-
7.	Loss of cloth damages	Rs.1,750/-	Rs.1,750/-
8.	Loss of amenities	Rs.1,000/-	Rs.10,000/-
9.	Permanent Disability at 16% at the rate of Rs.3,000/- per percentage	Rs.48,000/-	Rs.48,000/-
	Total	Rs.2,58,535/-	Rs.3,32,355/-

10. In the result the Civil Miscellaneous Appeal is partly allowed and the award passed by the Tribunal to the tune of Rs.2,58,535/- is enhanced to Rs.3,32,355/-. No costs.

11. The second respondent/National Insurance Company Limited is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of four weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The interest awarded by the Tribunal at the rate of 7.5% per annum is unaltered. 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 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.

Sd/-
Assistant Registrar(CCC)

//True copy//

ssb

To

1. The Special Sub-ordinate Judge Court No.1,
The Motor Accident Claims Tribunal
Salem.

+1cc to Mr.J.Chandran, Advocate SR.No.50555

+2cc to Mr.C.Parandeedharan, Advocate SR.No.51845

C.M.A.No.2422 of 2019

VG II(CO)
GMY(13/12/2019)



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