

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

C.M.A.No.2752 of 2017

and C.M.P.No.15517 of 2017

The Branch Manager,  
Royal Sundaram Alliance Insurance Co.Ltd.  
Bus Plaza 3<sup>rd</sup> Floor, No.5G, Lawsons Road  
Cantonment, Trichy. .... Appellant/3<sup>rd</sup> Respondent

Vs

1.Vadivel .....1<sup>st</sup> Respondent/Claimant  
2.Manoj  
3.Murugan .....2&3 Respondents/1&2 Respondents

Appeal under Section 173 of the Motor Vehicles Act against the judgment and decree dated 25.10.2016 made in MCOP No.223 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge), Erode.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.I.C.Vasudevan for R1

JUDGMENT

This appeal is preferred by the Insurance Company against the award of a sum of Rs.8,28,880/- towards compensation to the first respondent, due to the injuries sustained by him in a motor vehicle accident.

2.The case in brief, is as follows:

On 26.09.2013 at about 00.30 a.m. (midnight), the first respondent along with others, was travelling from Erode to Arur as passenger in the Maxicab Bus bearing Reg.No.TN-28-AC-4324, belonging to the third respondent and insured with the appellant Insurance Company. When the vehicle reached opposite to Primary Health Centre, Magudamchavadi, in the Sankari - Salem Main Road, due to the rash and negligent driving of the driver of the vehicle, ie., the second respondent, it got capsized. Due to the

said impact, the first respondent sustained fracture on his left hand wrist and the vein was cut. He also sustained grievous injuries all over the body. The first respondent filed a claim petition before the Tribunal, claiming a sum of Rs.8,00,000/- as total compensation. On consideration of the materials and evidence available on record, the Tribunal awarded a total compensation of Rs.8,28,880/- with interest at the rate of 7.5% per annum from the date of petition.

3.Challenging the same, the appellant Insurance Company has filed the present Civil Miscellaneous Appeal.

4.The learned counsel for the appellant has submitted that the Tribunal has erred in holding that the accident had occurred only due to the rash and negligent driving of the driver of the maxicab bus. He also submitted that the Tribunal has erred in accepting the disability certificate assessed at 48% and awarding an exorbitant sum of Rs.8,28,880/-.

5.The learned counsel for the first respondent - claimant has submitted that the Tribunal has correctly considered the materials and evidence on record and has correctly fixed the negligence on the driver of the maxicab bus. It is also submitted that the compensation awarded by the Tribunal is just, fair and reasonable and hence the same does not require any interference in the hands of this Court.

6.Heard the learned counsel for the appellant and the learned counsel for the first respondent and perused the materials available on record carefully and meticulously.

7.The first respondent was examined as P.W.1, before the Tribunal. He deposed before the Tribunal that the accident had occurred only due to the rash and negligent driving of the driver of the maxicab bus. Since there was no valid rebuttal evidence on the side of the appellant Insurance Company before the Tribunal with regard to negligence aspect and the evidence of P.W.1 remained unchallenged, the Tribunal held that the accident had occurred only due to the rash and negligent driving of the driver of the maxicab bus bearing Reg.No.TN-28-AC-4324. This Court is not inclined to interfere with the said finding.

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8.The details of the compensation awarded by the Tribunal are as follows:

| HEADS                            | AMOUNT<br>(Rs.) |
|----------------------------------|-----------------|
| Transport expenses               | 22,350/-        |
| Extra nourishment                | 4,000/-         |
| Damages for clothes and Articles | 500/-           |
| Medical expenses                 | 1,81,750/-      |
| Pain and suffering               | 75,000/-        |
| Disability                       | 96,000/-        |
| Loss of earning power            | 4,49,280/-      |
| TOTAL...                         | 8,28,880/-      |

In this regard, the learned counsel appearing for the appellant Insurance Company has mainly disputed the amount awarded by the Tribunal towards loss of earning power at Rs.4,49,280/-. He specifically submitted that the Tribunal has erred in awarding a sum of Rs.4,49,280/- towards loss of earning power to the claimant, who is aged about 47, by adopting 13 multiplier to fix a sum of Rs.6,000/- as monthly income towards disability and the same is on the higher side. After some arguments, the learned counsel for the appellant as well as the learned counsel for the first respondent / claimant have agreed that a sum of Rs.1,28,880/- may be deducted from the amount awarded towards loss of earning power. If that is done, the amount awarded by the Tribunal towards loss of earning power at Rs.4,49,280/- stands modified to Rs.3,20,400/-. The amounts awarded towards other heads are confirmed. The details of the modified compensation are as follows:

| HEADS                            | AMOUNT<br>(Rs.) |
|----------------------------------|-----------------|
| Transport expenses               | 22,350/-        |
| Extra nourishment                | 4,000/-         |
| Damages for clothes and Articles | 500/-           |
| Medical expenses                 | 1,81,750/-      |
| Pain and suffering               | 75,000/-        |
| Disability                       | 96,000/-        |
| Loss of earning power            | 3,20,400/-      |
| TOTAL...                         | 7,00,000/-      |

Thus, the compensation awarded by the Tribunal stands modified to Rs.7,00,000/- with interest at the rate of 7.5% per annum from the date of petition.

9.In the result, the Civil Miscellaneous Appeal is partly allowed. No costs. Consequently, the connected miscellaneous petition is closed.

10.The appellant Insurance Company is directed to deposit the modified compensation as ordered above, after deducting the amount if any already deposited, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Motor Accidents Claims Tribunal  
(Special Sub Judge), Erode.

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

+1 cc to Mr.I.C.Vasudevan,advocate,sr.82780.

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krd 24/6

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