BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:22.11.2019
CORAM
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.M.A.(MD).Nos.862 of 2019 and 947 of 2013
and
M.P.(MD).No.2 of 2013

C.M.A(MD).No.862 of 2019

K.Sankar ... Appellant/Petitioner

Vs.

1.Murugan
2.K.Kasipandi
3.The United India Insurance Company Ltd.,
Balaji Complex,
Gomathiyapuram New First Street,
Sankarankovil.

4.The Managing Director,
Tamil Nadu State Transport
Corporation (Madurai) Ltd.,
Bye Pass Road,
Madurai. ... Respondents/Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.05.2012 passed in M.C.O.P.No.02 of 2011 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Tirunelveli.

For Appellant	:	Mr.T.Selvakumaran
For R3	:	Mr.C.Jawahar Ravindran
For R1,2 & 4	:	No appearance

C.M.A(MD).No.947 of 2013
United India Insurance Company Ltd.,
Balaji Complex,
Gomathiyapuram New 1st Street,
Sankarankovil. ... Appellant/Respondent 3

Vs.

1.K.Sankar ... 1st Respondent/Petitioner
2.Murugan ... 2nd Respondent/1st Respondent
3.K.Kasipandi ... 3rd Respondent/2nd Respondent
4.The Managing Director,
Tamil Nadu State Transport Corporation,
(Madurai) Limited,
Bye Pass Road,
Madurai. ... 4th Respondent/4th Respondent

(Respondent Nos.2 to 4 given up)

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 30.05.2012 passed in M.C.O.P.No.02 of 2011 on the file of the Motor Accident Claims Tribunal, (Chief Judicial Magistrate), Tirunelveli.

For Appellant : Mr.C.Jawahar Ravindran
For R1 : Mr.T.Selvakumaran
For R2 to 4 : No appearance

COMMON JUDGMENT

C.M.A.(MD).No.862 of 2019 has been filed by the claimant challenging only the quantum of compensation awarded by the Tribunal. C.M.A(MD).No.947 of 2013 has been filed by the Insurance Company challenging only the liability fixed by the Tribunal, by order dated 30.05.2012.

2.The Tribunal has fixed the entire negligence on the driver of the lorry bearing Registration No.TN72H 0909. Since no one was examined as eye witness on the part of the appellant Insurance company and considering the FIR as well as the deposition of R.W.2, the Tribunal has fixed the entire liability against the owner of the lorry as well as the Insurance Company jointly.

3.The contention of the learned counsel for the appellant/Insurance Company is that R.W.2, who is the eye witness, none other than the driver of the bus, deposed that the injured kept his hand outside the window of the bus. Therefore, some portion of liability should be fastened to the injured claimant also. Further, the learned counsel referred to the MV report that there is no damage either to the bus or to the lorry. The Tribunal wrongly came to the conclusion that due to the entire negligence on the part of the driver of the lorry, this accident had occurred. Therefore, the judgment and decree of the Tribunal is liable to be set aside.

Liability:

4.On the other hand, the learned counsel for the claimant would contend that it may be true that the passenger, who travelled in the bus, kept his hand outside the bus, but actually it is the duty of the driver of the lorry to maintain a safe distance. But however, the driver of the lorry has not maintained the safe distance and that is the reason, the accident had occurred. If the driver of the lorry would have given due care in driving of the vehicle, the accident could have been averted. Therefore, the learned counsel contended that 100% negligence is on the part of the driver of the lorry, which is just and fair conclusion and there is no need to interfere in the award passed by the Tribunal. Further, he contended that in the FIR, the charge made against the driver of the lorry, clearly shows that the accident had occurred only due to the rash and negligent driving of the driver of the lorry.

5.The learned counsel for the claimant also referred to the rough sketch and submitted that when the lorry crossed the median and failed to maintain the safe distance, the accident had occurred. Therefore, there is no illegality in the award passed by the Tribunal in fixing the liability.

6.On a perusal of the rough sketch, it is seen that the bus was proceeding from Kovilpatti to Thoothukudi and the lorry was coming from Thoothukudi to Kovilpatti and the accident had occurred three feet away from the Median, which means, the lorry crossed the three feet away from Median, without maintaining the rules and regulations. First of all, the lorry driver should not have crossed the median and if the driver of the lorry driven the vehicle within the median with the safe distance, the accident could not have been occurred. Even after crossing the median, it appears that the driver of the lorry has failed to maintain the safe distance. Therefore, even though the passenger kept his elbow of the right hand outside the bus, it is the negligence only on the part of the lorry driver. In the present case, the lorry driver crossed the median more than two or three feet away and the bus was moving the opposite direction and thereby, the accident had occurred. Apart from the above, in the FIR as well as in the charge sheet, it has been clearly stated that the accident occurred only due to the rash and negligent driving of the driver of the lorry. Further more, it is the duty of the Insurance Company, to examine the witness in order to prove that the lorry driver who drove the vehicle with due care, but however, no one was examined.

7.On the other hand, the learned counsel for the appellant/Insurance Company referred to the averments made in the counter statement wherein they have stated that the lorry driver drove the vehicle, after providing due care and without negligence. It is only a statement on record, but the said statement in the counter affidavit should have been proved by way of examining a witness and by producing relevant documents and the same has not been done. The said statement has not been proved by the evidence, hence, the mere statement cannot be accepted. Therefore, this Court is of the view that there is no illegality in fixing the liability on the appellant/Insurance Company holding that the accident was occurred only due to the rash and negligent driving of the driver of the lorry as accordingly this hold concern with the finding of the Tribunal in this regard.

Quantum:

8.With regard to the quantum of compensation, the claimant was aged about 23 years old at the time of accident and his entire right hand was amputated, naturally after amputation, he lost his life including the marriage life substantially. The disability was assessed by the Doctor who examined the injured at 89%. The disability certificate also marked as Ex.P11. For the age group of 23, the multiplier applicable is 18, whereas, the Tribunal has applied the multiplier wrongly at '17' instead of '18'.

9.The Tribunal has fixed the notional income of the deceased at Rs.4,000/- per month. But in the present case, the injured has not produced any proof for income. In the absence of any income proof certificate, the Tribunal has fixed the notional income of the injured as Rs.4,000/- per month, which is too low. In the present case, the accident was occurred in the year 2009 and the age of the injured was 23 years old. The Hon'ble Supreme Court in the case of ***Syed Sadiq vs. Divisional Manager, United India Insurance Co. Ltd.,*** reported in ***2014(1)TNMAC 459(SC)***, fixed a sum of Rs.6,500/- as notional income of the injured, who was a vegetable vendor. Without considering all these aspects including the decision of the Hon'ble Apex Court, the Tribunal has fixed the notional income of the deceased as Rs.4,000/-. Hence, this court is inclined to refix the notional income as Rs.6,500/-.

10.In the present case, the permanent disability was determined as 89% by the Doctor and due to amputation of the entire right hand, he lost not only his job but also his entire life. When that being the case, the functional disability should be considered as 100% and loss of income at Rs.6,500/- by adding 40% income of the injured towards future prospects, as held by the Hon'ble Apex Court in ***NATIONAL INSURANCE CO.LTD., VS. PRANAY***

SETHI AND OTHERS reported in ***2017(16) SCC 680.*** Therefore, the loss of income determined by this Court at Rs.19,65,600 (6,500 + 2600 x 12 x 18). Therefore, the loss of income fixed by the Tribunal at Rs.7,26,240/- stands revised to Rs.19,65,600/-.

11.The Tribunal has awarded a sum of Rs.5,000/- towards Transportation, which is on the lower side and this Court is inclined to revise the said amount at Rs.10,000/-. The Tribunal has awarded a sum of Rs.4,000/- towards extra nourishment and a sum of Rs.10,000/- towards attendant charges and a sum of Rs.30,000/- towards loss of amenities and a sum of Rs.20,000/- towards pain and sufferings, which are on the lower side and hence, this Court revised the same in the manner stated below:

S.No.	**Description**	**Amount awarded by**		**Award confirmed / enhanced / granted**
		Tribunal	**this Court**	
1.	Transportation	5,000/-	10,000/-	Enhanced
2.	Etc., Nourishment	4,000/-	10,000/-	Enhanced
3.	Attendance Charges	10,000/-	15,000/-	Enhanced
4.	Loss of Amenities	30,000/-	40,000	Enhanced
5.	Pain and Sufferings	20,000/-	50,000/-	Enhanced
6.	Loss of income	7,26,240/-	19,65,600/-	Enhanced
Total compensation		7,95,240/-	**20,90,600/-**	Rs.12,95,360/-

12.In view of the above, the judgment and decree of the trial Court in M.C.O.P.No.2 of 2011 is modified and the compensation is enhanced from Rs.7,95,240/- to Rs.20,90,600/- and the appeal preferred by the claimant in C.M.A(MD).No.862 of 2019 is allowed in part and the appeal preferred by the Insurance Company in C.M.A (MD).No.947 of 2013 is dismissed. The Insurance Company is directed to deposit the entire award amount, if already not deposited, within a period of eight weeks from the date of receipt of a copy of this judgment, along with interest at the rate of 7.5% p.a., after deducting the interest for the delay period of 2559 days, and amount of award if any already deposited. The Tribunal is directed to transfer the entire amount to the claimants by way of RTGS/NEFT system, after getting their Account details, within a period of three weeks from the date of deposit made by the Insurance Company. No costs. Consequently, connected miscellaneous petitions are closed. The claimant is directed to pay Court Fee, if any.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

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To

1.The Motor Accidents Claims Tribunal,
(Chief Judicial Magistrate),
Tirunelveli.

2.The Record Keeper, V.R.Section,
Madurai Bench of Madras High Court,
Madurai.(2 copies)

+1CC TO MR.T.SELVAKUMARAN, Advocate Sr. No. 100863
+1CC TO MR.C.JAWAHAR RAVINDRAN, Advocate Sr. No. 100852

C.M.A.(MD).Nos.862 of 2019 and 947 of 2013
and
M.P.(MD).No.2 of 2013
22.11.2019

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