

In the High Court of Judicature at Madras

DATED: 20.02.2020

C O R A M

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.No.2244 of 2013
and
M.P.No.1 of 2013

M/s. National Insurance Co. Ltd.
No.74, Kamarajar, Bodinaickanoor,
Theni, Tamil Nadu. ..Appellant/Respondent 2

Versus

- 1.Mr. Pugalendhi Ganesan
S/o. Sriramulu ..1st Respondent/Petitioner
- 2.Mr. Jayapal S/o.S.M. Saviri Raj ..2nd Respondent/1st Respondent
- 3.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.
Madurai Division, Dindugal ..3rd Respondent/3rd Respondent
(2nd respondent was set exparte before the Tribunal)

Prayer: Civil Miscellaneous Appeal filed against the order and decree dated 29.08.2012 made in M.C.O.P.No.816 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.S. Arun Kumar
For Respondent-1 : Mr.M. Selvan
For Respondent-2 : No appearance
For Respondent-3 : Mr. S.V. Vasantha Kumar

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J U D G M E N T

The Insurer of the TATA Mini lorry bearing registration No.TN 60 W 8227, has preferred the present appeal assailing the Judgment and order in M.C.O.P.No.816 of 2010 dated 29.08.2012 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

2. The respondent No.1/claimant filed a claim petition under Section 166 of Motor Vehicles Act, 1998 (for short "the Act") for Rs.7,00,000/- (Seven Lakhs Only) as compensation, for injuries sustained in the accident that occurred on 24.04.2010 due to rash and negligent riding of the TATA Mini lorry bearing registration TN 60 W 8227 belongs to the 2nd respondent herein while the 1st respondent/claimant, who was Engineering College Student, was travelling in a Government bus from Pollachi to Madurai. Having considered the materials on record, the Tribunal has awarded a sum of Rs.9,56,426/- (Rupees Nine Lakhs Fifty Six Thousand Four Hundred and twenty Six Only) to the 1st respondent as compensation.

3. Being aggrieved by the award, the Insurance Company has filed the present appeal contesting that the higher side award amount of compensation was awarded to the claimant/1st respondent herein.

4. The learned counsel for the appellant/Insurance company would submit that the compensation of Rs.9,56,426/- (Rupees Nine Lakhs Fifty Six Thousand Four Hundred and twenty Six Only) in a case of injury is highly excessive and unsustainable in law in this particular circumstances of the case.

5. Heard the learned counsel for the appellant and the learned counsel for the 1st respondent and 3rd respondent. There is no representation on behalf of the 2nd respondent herein and the 2nd respondent was set exparte before the Tribunal as well as before this Court.

7. Before the Tribunal, P.W.1 and P.W.2 were examined and Ex.P.1 to Ex.P12 were marked on the side of the 1st respondent. None was examined and no exhibits were marked on the side of the appellant/insurance company before the Tribunal.

8. The factum of the accident and the manner of the accident being rash and negligence on the part of the TATA Mini Lorry driver bearing registration no. TN 60 W 8227 and the Government Bus bearing registration No.TN 57 N 1722, and entitlement of the claimant/1st respondent herein for compensation under Section 163A are not in dispute. The quantum of the compensation awarded by the Tribunal is alone disputed.

9. After going through the oral and documentary evidence of P.W.3, Doctor, coupled with the Ex.P12, disability certificate, the Tribunal has fixed the permanent disability @ 45% adopting multiplier of 17. However, the income of the 1st respondent as he was an Engineering College Student at the time of the accident, it will be proper to fix to the tune of Rs.8,000/- instead of Rs.10,000/- as fixed by the Tribunal. Accordingly,

the 1st respondent/the claimant is entitled for the compensation as details given below:

"Rs.8000 X 12 X 45% X 17 = Rs.7,34,400/-"

This is to be noted that the amount awarded by the Tribunal comes to Rs.9,76,426/-, however, the Tribunal erred in total and awarded Rs.9,56,426/-. Further, taking into consideration of the fact that a surgery was performed for fracture of his right ulna with supra condylar fracture of right Humerus, and a major surgery was also performed, the injured would have suffered a lot, hence a sum of Rs.20,000/- is hereby awarded towards pain and sufferings instead of Rs.10,000/-. With regard to the medical expenses, the amount awarded by the Tribunal, viz, 38,426/- is hereby rounded off as Rs.38,500/-. That apart, the amount awarded under the head of Transport expenses is a meagre amount, hence a sum of Rs.10000/- is hereby awarded towards the Transport expenses instead of Rs.5,000/-. Moreover, the Tribunal has not awarded any amount towards attendant charges, considering the nature of injuries, definitely, a person would have assisted the injured to carry out his day today activities, hence a sum of Rs.5,000/- is hereby awarded for attendant charges. The amount of Rs.5,000/- awarded by the Tribunal for extra-nutrition is just and reasonable and the same is hereby confirmed.

SL. No.	Particulars	Amount awarded by the Tribunal	Amount awarded by this Court (in Rs.)
1	Permanent Disability @45%	9,18,000.00	7,34,400.00
2	Pain and sufferings	10,000.00	20,000.00
3	Medical Expenses	38,426.00	38,500.00
4	Transport Expenses	5,000.00	10,000.00
5	Extra-Nourishment	5,000.00	5,000.00
6	Attendant Charges	----	5,000.00
Total Amount		9,76,426.00	8,12,900.00

10. Thus, the compensation awarded by the Tribunal has been reduced by Rs.1,43,526/- from Rs.9,56,426/- to Rs.8,12,900/- with interest @ 7.5% per annum from the date of petition till the date of deposit of the amount. The Appellant/Insurance Company and the 3rd respondent/Transport Corporation are directed to deposit the modified award amount equally since both are liable to pay the compensation to the claimant/1st respondent herein as per the findings of the Tribunal within a

period of four weeks from the date of receipt of copy of this order less already deposited amount if any as per the directive of this Court's Order. If the Insurance company has deposited more than the award amount, it is entitled to withdraw the balance amount after adjusting the award amount from the Tribunal. The 1st respondent is permitted to withdraw the modified award amount without filing any formal petition from the Court below.

11. In the result, the appeal is partly allowed. Accordingly, the impugned award passed by the Tribunal is modified. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

lbm

Copy to:

1.Motor Accident Claims Tribunal,
Additional District Judge,
Dharmapuri.

2.The Section Officer,
V.R.Section,
High Court, Madras.

+1cc to Mr.M.Selvam, Advocate SR.No.15009

+1cc to Mr.J.Chandran, Advocate SR.No.15312

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GMY(12/05/2021)