

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.02.2020

CORAM:

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.M.A.NO.3374 OF 2013

AND

MP.NO.1 OF 2013

The New India Assurance Co. Ltd.,
Rep. by its Branch Manager,
No.38-C, Bypass Road,
Dharmapuri. Appellant/2nd Respondent

vs.

1.Nagaraj 1st Respondent/Petitioner
2.D.C.Elangovan 2nd Respondent/1st Respondent

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Decree and Judgment dated 13.08.2013 passed in MCOP.No.553 of 2010 on the file of the Motor Accident Claims Tribunal, Additional District Judge, Dharmapuri.

For Appellant : Mr.C.Ramesh Babu

For Respondents : Mr.P.Mani for R1
R2 - served,
name printed - No appearance

J U D G M E N T

The New India Assurance Company, the second respondent in MCOP.No.553 of 2010 on the file of the Additional District Court, Dharmapuri has filed the present appeal questioning the quantum of compensation awarded by the Tribunal.

2. The first respondent / claimant filed the claim petition under Section 166 of the Motor Vehicles Act, 1988 praying to award compensation of Rs.5,00,000/- for the injuries sustained by him in a road accident that took place on 28.02.2010.

3. The case of the first respondent / claimant is that on

28.02.2010, he boarded a private bus bearing Registration No.TN 29 AC 6565 at Vellichandai and since the bus was crowded, he was standing in the front foot board of the bus. At that time, a Tamil Nadu State Transport Corporation bus was halting at the bus stop for the passengers to get down from the bus and in order to overtake the Tamil Nadu State Transport Corporation bus, the private bus proceeded on the right side and since there was no sufficient space, the driver suddenly applied brake, due to which, the first respondent / claimant fell down from the bus and sustained injuries. Therefore, he filed the claim petition seeking compensation for the injuries sustained by him.

4. The learned Additional District Judge, Dharmapuri after analysing the documents and evidences on record, awarded compensation of Rs.2,82,080/- together with interest at the rate of 7.5% per annum to the first respondent/claimant. Challenging the said award dated 13.08.2013 passed in M.C.O.P.No.553 of 2010, the appellant/Insurance Company has filed the present appeal.

5. The learned counsel appearing for the appellant/Insurance Company contended that the Tribunal wrongly adopted multiplier method and awarded Rs.2,62,080/- under the head loss of income, when the first respondent/claimant had suffered only a non-scheduled injury. He further contended that fixing the disability at 40% is on the higher side. He also prayed for reducing the compensation under other heads.

6. The learned counsel appearing for the first respondent / claimant submitted that the Tribunal after analysing the documentary and oral evidences on record, awarded a reasonable compensation. He therefore prayed for dismissing the appeal.

7. Heard the learned counsel appearing for the appellant/Insurance Company and the learned counsel appearing for the first respondent/claimant and perused the materials available on record.

8. From the materials available on record, it is seen that the first respondent/claimant was aged 45 years, doing Coconut Business, earning a sum of Rs.6,500/- per month. A perusal of copies of the Accident Register (Ex.R1) and Wound Certificate (Ex.A5) shows that the first respondent / claimant sustained fracture of forearm and right shoulder. The Doctor has assessed the disability at 55% and the Tribunal reduced the same to 40% and adopted multiplier method and awarded a sum of Rs.2,62,080/-

towards loss of income. However, considering the nature of injuries and his job, this Court is of the view that multiplier method is not warranted in the instant case. The disability is taken up at 55% as assessed by the Doctor and Rs.3,000/- per percentage of disability is awarded since the accident is of the year 2010. Therefore, a sum of Rs.1,65,000/- is awarded towards partial permanent disability. In the absence of evidence, the notional income is fixed at Rs.4,000/- and due to accident he would not have attended his regular work atleast for 6 months and hence Rs.24,000/- is awarded towards 'loss of income'. Considering the nature of injuries, a sum of Rs.10,000/- awarded towards 'pain and sufferings' is hereby enhanced to Rs.20,000/-. No amounts were awarded under the heads loss of amenities and attender's charges and hence Rs.5,000/- and Rs.10,000/- are awarded towards the same respectively. All the other heads awarded by the Tribunal are just and reasonable and they are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs.)	Amount awarded by this Court (Rs.)
1	Loss of income	2,62,080	24,000
2	Partial permanent disability	Nil	1,65,000
3	Transport expenses	5,000	5,000
4	Pain and sufferings	10,000	20,000
5	Food and Nutritions	5,000	5,000
6	Loss of amenities	Nil	5,000
7	Attender's charges	Nil	10,000
	Total	Rs.2,82,080/-	Rs.2,34,000/-

9. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.2,82,080/- is hereby reduced to Rs.2,34,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The appellant / Insurance Company is directed to deposit the modified award amount now determined by this Court along with interest and costs, less the amount already deposited if any, to the credit of MCOP.No.553 of 2010 on the file of the Motor Accident Claims Tribunal / Additional District Court, Dharmapuri 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 modified award amount along with interest and costs, less the amount if any, already withdrawn. The appellant / Insurance

Company is permitted to withdraw the excess amount, lying in the deposit to the credit of MCOP.No.553 of 2010, if the award amount has already been deposited by them. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

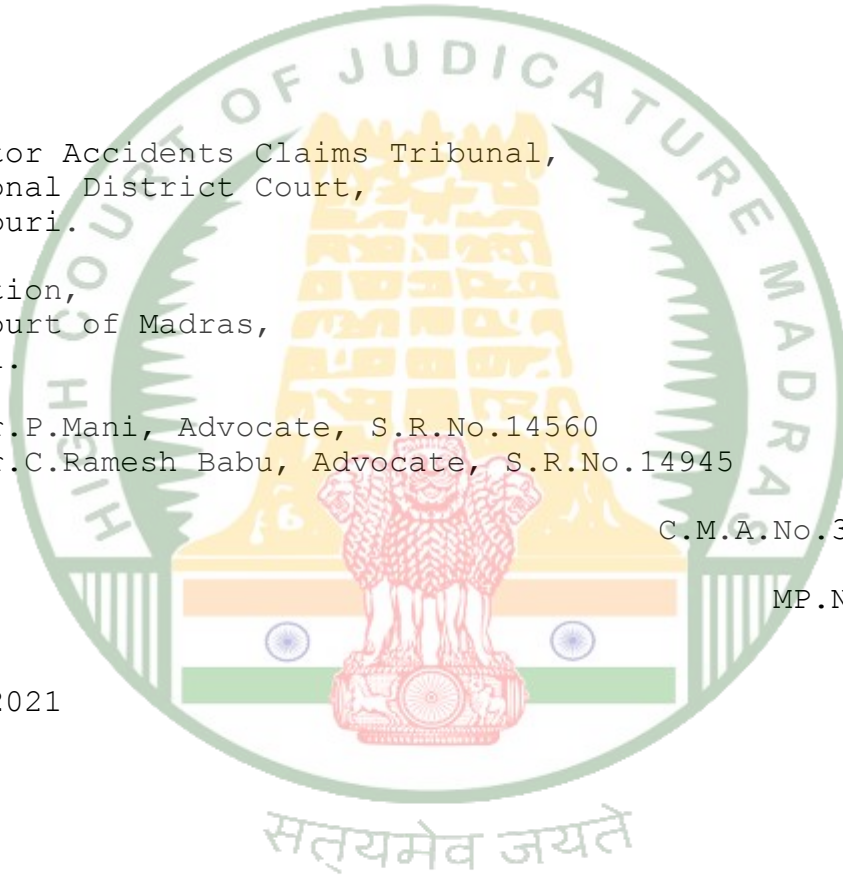
1. The Motor Accidents Claims Tribunal,
Additional District Court,
Dharmapuri.
2. VR Section,
High Court of Madras,
Chennai.

+1cc to Mr.P.Mani, Advocate, S.R.No.14560

+1cc to Mr.C.Ramesh Babu, Advocate, S.R.No.14945

C.M.A.No.3374 of 2013
and
MP.No.1 of 2013

PVS (CO)
CS/04/01/2021



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