

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2020

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.M.A.No.4514 of 2019
and C.M.P.No.25505 of 2019
and
Cross Objection No.23 of 2020

C.M.A.No.4514 of 2019

New India Assurance Co. Ltd.,
Motor Third Party Claims - HUB,
No.45, Moore Street,
Chennai - 600001. Appellant/2nd Respondent

Vs.

1.P.Kanchana
W/o.L.Poovai Anandan

2.N.Kumaravel

3.The Managing Director,
Tamil Nadu State Transport
Corporation Limited,
Salem. Respondents/Petitioners/Respondents 1 & 3

Prayer: Civil Miscellaneous Appeal filed u/s.173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 19.08.2019 passed in M.C.O.P.No.7839 of 2014 on the file of Motor Accident Claims Tribunal,Vth Small Causes Court, Chennai.

For Appellant : Mr.R.Sivakumar
For Respondents: Mr.K.Suryanarayanan
for Mr.M.Swamikkannu [R1]
Mr.D.Raghu [R3]

Cross Objection No.23 of 2020

P.Kanchana
W/o.L.Poovai Anandan

...Cross Obejctor/ Appellant

Vs.

1.New India Assurance Co. Ltd.,
Motor Third Party Claims - HUB,
No.45, Moore Street,
Chennai - 600001.

2.N.Kumaravel

3.The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Salem.

... Respondents/Appellant/Respondents 2 & 3

Prayer: Cross Objection filed under Order 41, Rule 22 of the Code of Civil Procedure, against the judgment and decree dated 19.08.2019 passed in M.C.O.P.No.7839 of 2014 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai.

For Appellant : Mr.K.Suryanarayanan
for Mr.M.Swamikkannu

For Respondents: Mr.R.Sivakumar[R1]
Mr.D.Raghu [R3]

COMMON JUDGMENT

[Judgment of the Court was delivered by R.SUBBIAH, J]

[Heard through Video Conference]

For the sake of convenience, parties are referred to as 'insurance company' and 'claimant'.

2. Challenging the judgment and decree dated 19.08.2019 passed in M.C.O.P.No.7839 of 2014 on the file of Motor Accident Claims Tribunal, V Court of Small Causes, Chennai, insurance company has filed the present appeal. Seeking enhancement of compensation, claimant has filed Cross Objection.

3. The brief facts of the case is as follows:

On 19.04.2014 at about 17.00 hours, the claimant had travelled in a bus bearing Registration No.TN-30-N-1338, belonging to third respondent Transport Corporation, from Salem to Mettur sitting on the right side middle portion of the bus. When the said bus was proceeding on the Mecheri to Omalur Main Road, a lorry bearing Registration No.TN-29-AW-7701, came in the opposite direction in a rash and negligent manner and dashed against the bus, owing to which some of the passengers including

the claimant sustained grievous injuries. Second respondent is the owner of the lorry, which is insured with the insurance company. In the said accident, the claimant suffered the following injuries: (i) Traumatic amputation above elbow with mangled distal part; (ii) Full thickness laceration forehead; (iii) Post Traumatic Vertigo and (iv) Post Traumatic (L) 6th nerve partial palsy. Claimant filed a claim petition before the Motor Accident Claims Tribunal seeking compensation in a sum of Rs.49,00,000/-. The said claim was resisted by insurance company stating that the accident had occurred only due to the rash and negligent driving of the bus belonging to third respondent transport corporation and not due to the rash and negligent driving of the lorry.

4. To prove the claim, claimant examined herself as PW-1 and Dr.Amarnath Sowlee as PW-2 and marked 15 exhibits. On the side of insurance company, the Manager of the Insurance Company was examined as RW-1 and 3 documents were marked. On appreciation of materials, the Tribunal found that the accident had occurred owing to the rash and negligent driving of the lorry and held that the insurance company, being the insurer of the lorry, is liable to pay compensation. The tribunal awarded a sum of Rs.25,57,104/- as compensation and the break-up is as follows:

Sl.No	Compensation awarded under the head	Amount (in Rs.)
1.	Loss of earning	21,42,000/-
2.	Medical Bills	1,11,804/-
3.	Loss of amenities	1,00,000/-
4.	Pain and suffering	1,00,000/-
5.	Transport and extra nourishment	1,00,000/-
6.	Attendant charges (300 x 11 days)	3,300/-
	Total	25,57,104/-
	Rounded off to	25,57,100/-

The said sum was directed to be paid together with interest at 7.5% p.a. from the date of petition till the date of deposit. Challenging the quantum of compensation, insurance company has filed the present appeal. Seeking enhancement of compensation, claimant has filed Cross Objection.

5. Learned counsel appearing for insurance company submits that the accident had occurred owing to the rash and negligent driving of the lorry, insured with the insurance company as well as the bus belonging to third respondent transport corporation. The drivers of both vehicles have not been examined. Under such circumstance, the tribunal ought to have held that there is contributory negligence on the part of both drivers and accordingly, ought to have fixed liability on both of them equally. Instead of doing so, the tribunal has fixed the entire negligence on the part of the driver of the lorry based on Ex.P1 - First Information Report and directed the insurance company to pay the entire compensation, as insurer of the said vehicle. It is well settled principle that the proceedings before the criminal court do not have any bearing on the proceedings before the Motor Accident Claims Tribunal. Therefore, the tribunal, without relying upon the criminal proceedings, ought to have come to an independent finding on the question of negligence. Learned counsel also submits that even if the finding of the tribunal that the lorry was the cause for the accident is confirmed, then also the insurance company is not liable to pay compensation since the driver of the lorry did not possess valid driving license at the time of accident and similarly, there was no fitness certificate and valid permit for the lorry, which are in violation of policy conditions. Therefore, by fixing contributory negligence, the tribunal ought to have directed the insurance company to pay 50% of the compensation. Without considering all these aspects, the tribunal mechanically had passed the award and directed the insurance company to pay the entire compensation.

6. Insofar as the quantum of compensation is concerned, learned counsel appearing for insurance company submits that the tribunal has awarded an exorbitant sum as compensation under different heads. Submitting as above, learned counsel prays this Court to set aside the finding of the tribunal.

7. On the other hand, learned counsel appearing for claimant submits that the charge sheet in the case has been filed against the driver of the lorry only. The First Information Report has been marked as Ex.P1. The tribunal, on the basis of the aforesaid document, found that the accident had occurred only due to the rash and negligent driving of the lorry. Therefore, the finding of the tribunal cannot be found fault with. Learned counsel further submits that the claimant was a teacher and was earning a sum of Rs.20,000/- p.m. However, the tribunal has fixed only a sum of Rs.10,000/- as the monthly income of the claimant, which has resulted in awarding an inadequate compensation of Rs.21,42,000/- under the head 'loss of earnings'. Due to the injuries suffered by her viz., amputation

of right hand below shoulder, she is unable to carry on her avocation as she was doing before the accident. Hence, the amount awarded by the tribunal under the head 'loss of earnings' cannot be said to be an exorbitant one. Further, the amount awarded under the other heads is on the lower side. Submitting as above, learned counsel prays this Court to enhance the compensation.

8. This Court has considered the rival submissions. Perused the materials on record.

9. On a perusal of the judgment under challenge and the materials on record, this Court finds that it is the evidence of PW-1 that the lorry came from the opposite direction in a rash and negligent manner and dashed against the right portion of the bus. Only if it is established that there was head on collision, then only the question of fixing contributory negligence on the part of both drivers would arise. No doubt, that the proceedings before the criminal court do not have any bearing on the proceedings before the Motor Accident Claims Tribunal. At the same time, it should also be noted that in the present case, the insurance company has not marked any tangible evidence to establish that the accident had occurred owing to the rash and negligent driving of both the drivers. As held in several cases, mere pleading is not an evidence unless the same is recorded in the manner known to law. In the absence of tangible evidence, the finding of the tribunal, on the basis of Ex.P1 - FIR, that the accident had occurred owing to the rash and negligent driving of the lorry, cannot be found fault with. Therefore, the submission of learned counsel appearing for insurance company, in this regard, is rejected.

10. Insofar as the quantum of compensation is concerned, this Court finds that the Doctor, who has been examined as PW-2, has assessed the disability of claimant at 85%. However, the tribunal by rejecting the evidence of PW-2 has fixed the disability of claimant at 75% based on Ex.P10 - copy of identity card issued to claimant by Department of Rehabilitation of the disabled, State Commissioner for disabled, Chennai. While fixing the disability of claimant at 75%, the tribunal has also taken into consideration Ex.P11 - X-ray issued by PW-2 at the time of assessing the disability. Therefore, this Court does not find any infirmity in the finding of tribunal in fixing the disability at 75%. Though no document was marked to prove the income of the claimant, the tribunal, by considering the qualification of claimant viz., M.Com and B.Ed, has fixed a nominal sum of Rs.10,000/- as the monthly income. Considering the present day cost of living, this Court does not find any error in fixing the monthly income of the claimant at Rs.10,000/-. By fixing the monthly income of claimant at

Rs.10,000/-, the tribunal added 40% towards future prospects and applied multiplier '17' and awarded compensation under the head 'loss of earnings' in proportion to 75% disability i.e. Rs.21,42,000/- $[(10000+4000)*12*17*75\%]$. Further, this Court finds that reasonable sums have been awarded under the other heads. On the whole, considering the nature of injuries suffered and the long duration of treatment undergone by claimant, this Court absolutely does not find any infirmity in the award passed by the tribunal. Similarly, this Court is of the opinion that there is no scope for enhancement of compensation since the tribunal has awarded a just and proper compensation in the present case.

11. Though the compensation awarded by the tribunal does not warrant interference by this Court, as rightly submitted by learned counsel appearing for insurance company, the evidence of RW-1 would show that the driver of the offending lorry did not possess valid driving license and there was no fitness certificate and valid permit for the lorry as on the date of accident, which are in violation of policy terms. Therefore, this Court holds that the insurance company, after making payment, is entitled to recover the compensation from the second respondent/owner of the lorry.

12. In the result,
(i) the Civil Miscellaneous Appeal and the Cross Objection are dismissed.
(ii) The insurance company is directed to deposit the compensation of Rs.25,57,100/- (Rupees Twenty Five Lakhs Fifty Seven Thousand and One Hundred only) together with interest at 7.5% p.a. from the date of petition till the date of deposit within a period of six weeks from the date of receipt of this judgment. On such deposit, the claimant is entitled to withdraw the same on due application.
(iii) The insurance company, after making payment, is entitled to recover the entire compensation from the second respondent/owner of the lorry.

No costs. Connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

gm

To

1. The Motor Accident Claims Tribunal,
V Court of Small Causes,
Chennai.

Copy to
The Section Officer
VR Section
High Court, Madras 104.

- +1 CC to Mr.D.Raghu, Advocate sr 28202.
+1 CC to Mr.M.Swamikkannu, Advocate sr 28180.

C.M.A.No.4514 of 2019
and
Cross Objection No.23 of 2020

NMI (CO)
SP(21/04/2021)



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