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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.02.2021

CORAM:

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

CMA.NO.1901 OF 2012

AND

M.P.NO.1 OF 2012

The Branch Manager,
National Insurance Co. Ltd.,
Gobi Town and Taluk

... Appellant/
3rd Respondent

..VS..

1.Kannappan
2.C.Shanmugam
3.C.N.Raja

... 1st Respondent/Petitioner

... 2 & 3 Respondents/
1, 2 Respondents

Prayer:- Criminal Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 28.06.2011 made in M.C.O.P.No.248 of 2008, on the file of the Motor Accidents Claims Tribunal (Sub-Court), Gobichettipalayam.

For Appellant : Mr.S.Vadivel

For Respondents : No appearance

J U D G M E N T

Dissatisfied with the judgment and decree dated 28.06.2011, passed by the Tribunal awarding compensation of Rs.3,05,000/- along with interest at the rate of 7.5% per annum, the appellant/Insurance Company is before this Court for modification of compensation.

2. It is the case of the appellant/Insurance Company herein that the first respondent met with an accident on 29.02.2008 at about 8.00 p.m., when the first respondent was getting into the bus in the front side steps, the driver of the bus bearing registration No.TN-36 K 7239, without watching the same, the driver started the bus. The first respondent fell down and the backside left wheel ran on the right leg of the petitioner. He



was admitted in the hospital and his right foot was removed. On complaint, case in Cr.No.47 of 2008 for the offence under Sections 279, 337 and 338 of I.P.C., has been registered by the Bangalapur Police. The first respondent filed a claim petition before the Tribunal, claiming compensation of Rs.11,00,000/- for the injuries sustained by him with 12% interest p.a., and cost.

3. The Tribunal, based on the oral and documentary evidences has marked Exs.A1 to A8 and examined three witness viz., PW1 to PW3 on the side of the first respondent / petitioner and marked Exs.B1 to Ex.B5 and examined one witness viz., RW1 on the side of the respondents. It has fixed the contributory negligence of 50% on the part of driver of the bus bearing registration No.TN-36 K 7239 and 50% on the part of the 1st respondent/petitioner and awarded total compensation of Rs.3,00,000/- under various heads. Out of Rs.3,05,000/-, the first respondent is entitled for a sum of Rs.1,52,500/- since contributory negligence of 50% is fixed on the part of the first respondent/petitioner.

4. Heard the learned counsel appearing for the appellant / Insurance Company and perused the materials available on record. There is no representation for the respondents.

5. The learned counsel for the appellant has submitted that the Tribunal ought to have dismissed the claim petition because the petitioner attempted to board the running bus in a drunken state was proved through Exs.A5, B4 & B5 and the evidence of RW1. He further submitted that the petitioner had not got into the bus and hence he could not be termed as a passenger. He further submitted that the accident occurred due to the negligence and the drunkenness of the first respondent/petitioner. The Tribunal had not given any finding regarding the pendency of the parallel claim petition in O.P.No.384 of 2008 before the Motor Accident Claims Tribunal, Sankari, for the same accident. He further submitted that the Tribunal having found that the petitioner himself invited the accident due to his drunken state, ought not to have apportioned the negligence equally on the driver of the bus in the ratio of 50:50 basis. Therefore, the award passed by the Tribunal is liable to be modified.

6. The third respondent in his counter statement has contended that the income of the petitioner, nature of injuries sustained by the petitioner, period of treatment, disability of work caused to the petitioner, amount of compensation and rate of interest claimed in the petition are all not correct and are highly excessive. He further submitted that the allegations must be strictly proved with proper documentary evidence. He further submitted that the petitioner sustained injuries on his own



negligence, as per the police investigation, in the criminal case, refer charge sheet was filed and this respondent is not liable to pay any compensation to the first respondent/petitioner and hence, he prays to dismiss this appeal.

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7. Insofar as quantum of compensation is concerned, though the petitioner's involvement in the accident is proved, considering the contributory negligence, this Court is of the view that it would be fair to modify the compensation to some extent by taking note of the injuries sustained by the first respondent and the consequential expenses incurred by him. As per Ex.A5-Wound Certificate, it is seen that the injury sustained by the petitioner is grievous in nature and the patient book issued by the CMCH shows that his right foot was amputated on 27.03.2008; PW3/doctor who gave disability certificate also deposed the same. The petitioner consumed alcohol at the time of getting into the bus. Therefore the Tribunal fixed the liability of 50% of the contributory negligence on the petitioner and deducted the sum accordingly. Challenging the aforesaid award of the Tribunal, the appellant has preferred the present appeal before this court.

8. Further, based on the oral and documentary evidence adduced in MCOP claim petition and as per Ex.A7 - Disability Certificate, the petitioner had sustained 65% permanent disability. Considering the nature of fracture and injuries sustained by the appellant, this Court confirms the disability at 65% assessed by PW3 - Doctor and by fixing Rs.2000/- per disability, compensation is fixed at Rs.1,30,000/- for permanent disability. The Tribunal after considering Ex.A1 - FIR; Ex.A2 - Rough sketch; Ex.A.3 - observation mahazar and Ex.A4 - Motor Vehicle Inspector Report and Ex.A5 - wound certificate, has awarded Rs.1,30,000/- towards disability. This court is also of the view that the Tribunal has rightly held that the petitioner's negligence also is the cause for the aforesaid accident and the amount awarded under the head of permanent disability is reasonable. Hence, interference of this court is not required in the said finding of the Tribunal under this head. The Tribunal has granted for Pain and suffering Rs.25,000/-; for Medical Bills Rs.10,000/-; for Extra Nourishment Rs.5000/-; For Transport Rs.5000/-; Loss of Earning Capacity Rs.1,25,000/-. In total, the compensation amount comes to Rs.3,00,000/-, but the Tribunal has awarded Rs.3,05,000/- by totalled wrongly.

9. In so far as other heads are concerned, no award has been passed under the head of loss of amenities and attendant charges. Therefore, in the light of the decision of the settled preposition of law, this court, is inclined to modify the award under various heads.



10. This court is of the view that the Tribunal is incorrect to award compensation under the head of loss of earning, but it ought to have grant under the head of loss of earning during treatment period.

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11. Accordingly, this Court modifies the compensation under various heads as follows:

S.No	Description	Compensation awarded by Tribunal (Rs)	Compensation modified by this Court (Rs)
1.	Disability (65x2000)	1,30,000	1,30,000
2.	Pain and Sufferings	25,000	25,000
3.	Medical Bills	10,000	10,000
4.	Extra Nourishment	5,000	15,000
5.	Transport	5,000	10,000
6.	Loss of Earning Capacity during treatment period		40,000
7.	Loss of Amenities	-	10,000
8.	Loss of earning capacity	Rs.1,25,000	-
9.	Attendant Charges for 5 months (5xRs.5000)	-	25000
	Total Wrongly arrived by Tribunal	Rs.3,00,000/- Rs.3,05,000/-	Rs.2,65,000/-

12. After perusing the materials available on record, the contributory negligence imposed on the petitioner is fixed at 50%.

$$\begin{aligned} \text{Rs.265000} - 50\% &= \text{Rs.1,32,500/-} \\ \text{Rs.265000} - 132500 &= \text{Rs.1,32,500/-} \end{aligned}$$

13. In the result, this Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. No costs. The compensation awarded by the Tribunal at Rs.3,05,000/- is hereby reduced to Rs.2,65,000/- (Rupees Two Lakhs Sixty Five Thousand Only) together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit.



14. The appellant/Insurance Company has deposited the entire amount awarded by the Tribunal. The Insurance Company is permitted to withdraw the balance amount after adjusting the amount awarded by this court of Rs.1,32,500/- with 7.5% interest from the date of petition till the date of deposit, payable to the first respondent/claimant on filing appropriate application before the Tribunal.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gv

To

1. The Motor Accidents Claims Tribunal
(Sub-Court), Gobichettipalayam.

Copy To

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

+1cc to Mr.S.Vadivel, Advocate, S.R.No.8141

CMA.No.1901 of 2012
and
M.P.No.1 of 2012

JP-II (CO)
CS/30/09/2021