



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 22.04.2021

Coram :

THE HONOURABLE MRS. JUSTICE S.KANNAMMAL

Civil Miscellaneous Appeal No. 2031 of 2013

National Insurance Company Limited

Main Road, Gobi Branch, Gobi Town. .. Appellant/ 3rd Respondent

Versus

1. M.Praveen Kumar .. 1st Respondent/ Claimant
2. K.Madhes .. 2nd Respondent/ 1st Respondent
3. K.Ruthiramoorthy .. 3rd Respondent/ 2nd Respondent
4. K.Moorthy .. 4th Respondent/ 4th Respondent
5. Tamil Nadu State Transport Corporation Ltd.,
Coimbatore Division-II, Erode Region
Chennimalai Road, Erode
by its Managing Director. .. 5th Respondent/ 5th Respondent

Civil Miscellaneous Appeal filed under Section 173 of The Motor Vehicles Act, 1988 against the Order and Decreetal order dated 18.09.2012 made in MACTOP No.161 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Bhavani.

For Appellant : Mrs.N.B.Surekha

For Respondent-1 : M/s.E.P.Senniyangiri

For Respondents 2-4 : No appearance

For Respondent-5 : M/s.A.Sundaravadhanam

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Tribunal in and by the award dated 18.09.2012 made in MACTOP No.161 of 2010 on the file of Motor Accident Claims Tribunal (Subordinate Court), Bhavani, the third respondent in the claim petition/National Insurance Company has preferred this appeal challenging the liability and quantum of compensation.

2. On 20.08.2009 at about 7.45pm, while the claimant was travelling as a passenger and sitting at right side back portion of a bus bearing registration No.TN-33-N-1994 belonging to the fifth respondent-Transport Corporation, which was driven by its driver/fourth respondent herein on Bhavani-Anthiyur main road from south to north towards Anthiyur at the left side of the main road, the tipper lorry bearing registration No.TN-36-K-6594, belonging to third respondent and insured with appellant herein, came in the same direction, in a rash and negligent



manner and hit the right side back portion of the bus, due to which, the claimant/first respondent herein sustained multiple grievous injuries and hence, the claimant/first respondent herein claimed a sum of Rs.20,00,000/- as compensation.

3. The claim petition filed by the claimant was resisted by the Insurance Company/appellant disputing the involvement of the vehicle, the manner of the accident and the injuries sustained by the claimant and also disputed the quantum of compensation sought by the claimant.

4. In order to prove the claim, on the side of claimant, PW.1 to PW.4 were examined and Exs.P1 to P16 were marked. On the side of respondents, before the Tribunal, no oral or documentary evidence was adduced.

5. The Tribunal, after analysing the entire evidence available on record, came to the conclusion that the accident was due to the rash and negligent driving of the driver of the lorry and passed an award for a sum of Rs.5,73,900/- and directed the Insurance Company/insurer of the offending vehicle to pay the same with interest at 7.5% p.a. On careful perusal though the Tribunal fixed the liability on the offending vehicle lorry and directed the third respondent to pay the compensation mistakenly noted the registration number of the bus instead of the registration number of lorry.

Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal(in Rs.)
1	Loss of future earnings	Rs.3,02,400/-
2	Pain and Suffering	Rs. 20,000/-
3	Medical expenses	Rs.2,30,000/-
4	Extra nourishment	Rs. 5,000/-
5	Transportation	Rs. 2,000/-
6	Damages to clothes	Rs. 1,000/-
8	Attendant charges	Rs. 13,500/-
	Total	Rs.5,73,900/-

6. Though the appellant/Insurance Company preferred the appeal questioning the liability and quantum, the learned counsel for the appellant/Insurance Company would mainly contend that the compensation awarded by the Tribunal under the head 'loss of future earning' is on the higher side. It is contended that the Tribunal misdirected itself in fixing the income of the injured at Rs.4,500/- per month. It is further contended that



the Tribunal ought not to have adopted multiplier method, when there is no evidence to conclude that the injured cannot do any avocation and earn income in future. Therefore, the learned counsel submitted that the interference of this Court is required to reduce the compensation.

7. Per contra, the learned counsel for the first respondent/claimant would submit that the Tribunal, after considering the nature of injuries, disability and treatment taken by the claimant and also considering the age of the claimant, awarded a correct compensation and the same requires no interference by this Court.

8. Though much force was not put forth with regard to the liability, no oral or documentary evidence was let in by the appellant/Insurance Company to prove the liability on the part of the driver of the bus. The Tribunal has also rightly fixed the liability on the driver of the tipper lorry and the same is hereby confirmed.

9. Coming to the point of compensation awarded by the Tribunal it is seen from Ex.P10-Discharge summary that the claimant sustained major crush injury in the right elbow with compound lateral condyle humerus fracture, radial head subluxation and loss of lateral joint ligament of elbow, composite tissue loss from postero lateral aspect of right elbow and upper $\frac{1}{4}$ of posterior forearm. The claimant underwent treatment as inpatient for 35 days in a private hospital. Doctor opined that the claimant suffered 35% functional disability. Considering the nature of injuries sustained by the claimant, this Court is of the opinion that Rs.3,000/- per disability would be just and fair and the award under the head 'loss of future earning' has to be modified as Rs.1,05,000/- (35 x 3000). The Tribunal has awarded Rs.20,000/- for pain and suffering and that has to be enhanced to Rs.50,000/- considering the nature of injuries sustained by the claimant. The Tribunal has awarded only Rs.5,000/- for extra-nourishment, which in the considered view of this Court, is meagre and the same is enhanced to Rs.10,000/-. This Court is of the view that the compensation awarded under the head 'transportation', 'damages to clothes' and 'attender charges' are on the lesser side and the same have to be enhanced and accordingly, this Court award a sum of Rs.10,000/- towards 'transportation' and Rs.5,000/- towards 'damages to clothes' and Rs.15,000/- towards 'attender charges'. For 'loss of amenities', the Tribunal has not awarded any amount. This Court is of the view that Rs.30,000/- is a reasonable amount towards 'loss of amenities' and the same is awarded by this Court. Since the compensation awarded by the Tribunal under the head 'medical bills' is based on medical bills submitted by the claimant and the same is hereby confirmed. Accordingly, the compensation awarded by the Tribunal is modified as follows:-



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Sl. No	Head under which the amount is awarded	Amount awarded by the Tribunal (in Rs.)	Amount now awarded by this Court (in Rs.)
1	Loss of future earnings	Rs.3,02,400/-	Rs.1,05,000/-
2	Pain and Suffering	Rs. 20,000/-	Rs. 50,000/-
3	Medical expenses	Rs.2,30,000/-	Rs.2,30,000/-
4	Extra nourishment	Rs. 5,000/-	Rs. 10,000/-
5	Transportation	Rs. 2,000/-	Rs. 10,000/-
6	Damages to clothes	Rs. 1,000/-	Rs. 5,000/-
7	Attendant charges	Rs. 13,500/-	Rs. 15,000/-
8	Loss of Amenities	---	Rs. 30,000/-
	Total	Rs.5,73,900/-	Rs.4,55,000/-

10. In the result, this Civil Miscellaneous Appeal is partly allowed, reducing the amount of compensation awarded by the Tribunal from Rs.5,73,900/- to Rs.4,55,000/- (Rupees Four Lakhs and Fifty Five Thousand only), which carries interest at 7.5% per annum from the date of claim petition till the date of deposit, except for the default period, if any. No costs in this CMA. Consequently, connected miscellaneous petition is closed.

11. It is represented that as per the order of this Court made in M.P.No.1 of 2013 dated 23.07.2013, the appellant had deposited a sum of Rs.4,00,000/- and the claimant was permitted to withdraw a sum of Rs.2,00,000/-. The appellant/Insurance Company is directed to deposit the award amount, as assessed by this Court, together with interest at 7.5% p.a., less the amount already deposited, to the credit of MACTOP No.161 of 2010 on the file of the Motor Accident Claims Tribunal (Subordinate Court), Bhavani, within a period of four weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount directly to the bank account of the claimant/first respondent herein, through RTGS, within a period of two weeks thereafter.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar



Mra

To

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The Motor Accident Claims Tribunal
Subordinate Judge
Bhavani.

Copy To:

The Section Officer
Vernacular Records Section
High Court, Madras.

+1CC to M/s.N.B.Surekha, Advocate, Sr.No.24829

CMA. No. 2031 of 2013

LN(CO)
SB(16/11/2021)