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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.06.2021

PRONOUNCED ON : 29.07.2021

CORAM

THE HONOURABLE MRS.JUSTICE S.KANNAMMAL

C.M.A.NO.2621 OF 2014

AND

MP.NO.1 OF 2014

M/s.The National Insurance Co. Ltd.,
No.78, Thiruvengkatasamy Chetty Street,
Erode 638 001.

.. Appellant/
Respondent-II

Versus

1. Gopi ... Respondent I/Petitioner
2. M/s.Pallava Textile Limited,
No.27-C, Sankagiri Main Road,
Erode 6. ... Respondent II/Respondent I
3. S.Amutha ... Respondent III/Respondent III
4. M/s.The Oriental Insurance Co. Ltd.,
Branch Office,
No.90-A, Thuraiyur Road,
Namakkal Town and Taluk. .. Respondent IV/
Respondent IV

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988 against the judgment and decree passed in MCOP.No.732 of 2012 on 17.12.2013 on the file of the learned Motor Accident Claims Tribunal/Additional District Judge, Namakkal.

For appellant : Mr.J.Chandran

For respondents
for R1 : Ma.Pa.Thangavel

for R4 : Mr.D.Baskaran



was registered against the driver of the second respondent's Lorry and he accepted the offence and paid fine for the same. Hence, this petition may be dismissed as against them.

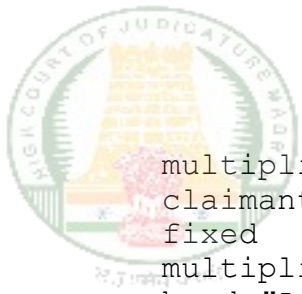
7. In order to prove the claim on the side of the claimant, the claimant examined himself as PW1 besides examining one Dr.Sivakumar as PW2 and marked Exs.P1 to P11. On the side of the Insurance Companies, neither oral nor documentary evidence was adduced.

8. The Tribunal, after analysing the entire evidence, came to the conclusion that the accident had occurred due to the rash and negligent driving of the driver of the second respondent's Tipper Lorry bearing Registration No.TN 52-B-5047. By coming to such conclusion, the Tribunal has passed an award for a sum of Rs.6,69,600/- and directed the appellant/Insurance Company to pay the said compensation, indemnifying the owner of the vehicle. The break-up details of the amounts awarded by the Tribunal under various heads are as follows:

S. No.	Heads under which amounts were awarded	Amount in Rs.
1.	Loss of Income	4,89,600
2.	Medical Expenses	1,45,000
3.	Transport Expenses	10,000
4.	Pain and Sufferings	25,000
	Total	6,69,600

9. Now, it is the submission of the learned counsel for the appellant/National Insurance Company that while the claimant was proceeding in the two wheeler, a Tipper Lorry bearing Registration No.TN 52-B-5047 came from behind and dashed against him, at the same time, another Lorry bearing Registration No.TN-28-AF-8091 ran over the two wheeler and caused following injuries; i) Degloving injury of left leg from knee joint to ankle joint ii) contusion of left thigh and iii) contusion of chest wall. Hence, the Tribunal ought to have fixed contributory negligence against the Lorry bearing Registration No.TN-28-AF-8091, instead of fixing the entire liability on the Tipper Lorry bearing Registration No.TN 52-B-5047.

10. With regard to the quantum of compensation, it is the submission of the learned counsel for the appellant/National Insurance Company that the claimant suffered only simple injuries and hence, the Tribunal ought not to have adopted the



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multiplier method in arriving at the compensation payable to the claimant. However, the Tribunal, based on Medical Certificate, fixed 48% permanent disability and erroneously applied multiplier method and awarded an exorbitant amount under the head "Loss of Income". Hence, by applying percentage method, the amount under the head "Loss of Income" may be re-calculated.

11. The learned counsel for the fourth respondent/Oriental Insurance Company submitted that it is only the driver of the Tipper Lorry bearing Registration No.TN 52-B-5047 had hit the claimant's bike and caused injury. PW1 in his evidence and even in the claim petition, has categorically stated that the Tipper Lorry bearing Registration No.TN 52-B-5047 only hit the claimant's bike and caused the injury and the Lorry bearing Registration No.TN-28-AF-8091 only ran over the claimant's two wheeler. The said fact was not disproved either by the appellant/National Insurance Company nor by the claimant by marking or adducing evidence. Thus, the Lorry bearing Registration No.TN-28-AF-8091 was no way involved in the said accident. The claimant has also claimed compensation only for the injuries sustained by him in the accident. Hence, there is no contributory negligence and liability cannot be fixed on the part of the fourth respondent/Oriental Insurance Company.

12. In reply, the learned counsel for the first respondent/claimant submitted that in the accident, the claimant sustained grievous injuries and he was admitted in M.M.Hospital, Namakkal and skin grafting was done on his left leg. PW2, the Doctor, who gave treatment to the claimant, in his statement had stated that, in the claimant's left leg from the knee joint to ankle fractured skin was removed and skin transplantation was done. Because of the above treatment, the claimant could not move freely and also find it hard to do his day-to-day activities. Further, it is not possible for him to do any hard work. Hence, the Tribunal by rightly applying multiplier method, arrived at the compensation, which needs no modification.

13. Heard both sides and perused the materials available on record.

14. On perusal of Ex.P1-FIR and Ex.P7 Charge Sheet, it is seen that the case was registered against both the driver viz., the second respondent's Tipper Lorry bearing Registration No.TN 52-B-5047 as well as the third respondent's Lorry bearing Registration No.TN-28-AF-8091. However, it is the specific case of the 1st respondent / claimant in the claim petition as well as



in his evidence that the Tipper Lorry bearing Registration No.TN 52 B 5047 belonging to 2nd respondent and insured with the appellant, hit behind the motorcycle driven by the claimant and caused the accident and the lorry bearing Registration No.TN 28 AF 8091 belonging to 3rd respondent and insured with 4th respondent ran over the motorcycle. To disprove the said contention, the appellant has not examined the driver of the Tipper Lorry belonging to 2nd respondent, not filed any complaint against the 1st respondent and also not filed any objection to the F.I.R., registered against the driver of the Tipper Lorry belonging to 2nd respondent. The Tribunal considering the evidence of P.W.1, contents of Ex.P1/F.I.R. & Ex.P7/Charge Sheet and failure on the part of the appellant for not examining the driver of the Tipper Lorry, not lodging any complaint against the claimant and also not filing any objection to the F.I.R., held that accident has occurred due to the rash and negligent driving by the driver of the Tipper Lorry belonging to 2nd respondent. There is no error in the said finding of the Tribunal and hence, this Court comes to the conclusion that the accident had occurred only due to the rash and negligent driving of the second respondent's Tipper Lorry bearing Registration No.TN 52-B-5047 as deposed by PW1 and its insurer the appellant/National Insurance Company is liable to pay the compensation to the claimant for the injuries sustained by him in the accident.

15. With regard to compensation, this Court finds that the claimant sustained some grievous injuries viz., i) degloving injury on left leg from knee joint to ankle joint, ii) contusion of left thigh and iii) contusion of chest wall. PW2, the Doctor, who gave treatment to claimant, also stated that the claimant cannot do his day-to-day activities as he was doing before the accident. The claimant also cannot continue his Lorry Body Builder Capon Work, and the injuries sustained by him would have a bearing on the earning capacity of the claimant throughout his life. This Court, therefore, cannot find fault with the finding of the Tribunal in accepting the permanent disability of the claimant at 48% and adopting the multiplier method. Further, the amounts awarded by the Tribunal under all the other heads are also fair and reasonable. Consequently, the Tribunal awarded a sum of Rs.6,69,000/- as compensation to the claimant. This Court does not find any ground to interfere with the same.

16. In the result, the Civil Miscellaneous Appeal stands dismissed and the award under challenge is confirmed. The appellant/National Insurance Company is directed to deposit the award amount of Rs.6,69,600/-, less the amount already deposited, along with 7.5% interest, from the date of claim



petition till the date of payment, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the entire amount in accordance with law before the Tribunal. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pvs

To

1. The Additional District Judge,
The Motor Accident Claims Tribunal,
Namakkal.

+1cc to M/s.J.Chandran, Advocate, S.R.No.36999

+1cc to M/s.Ma.Pa.Thangavel, Advocate, S.R.No.37128

C.M.A.No.2621 of 2014
AND
MP.NO.1 OF 2014

PMK(CO)
CS/23/09/2021