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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.No.692 of 2014
and M.P.No.1 of 2014

Divisional Office - 5
The Oriental Insurance Company Limited
Spencer Towers, 4th floor
770-A, Anna salai
P.B.No.2447, Chennai-2.

.. Appellant/R2 in Tribunal below

Vs.

1.K.Basha
2.A.M.Loganathan

3.The Managing Director
Tamil Nadu State Transport Corporation Ltd.
Bharathipuram
Dharmapuri District.

.. Respondents/Petitioner and R1
and 3 in Tribunal below

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 25.07.2013 made in M.C.O.P.No.894 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.

For Appellant	: Mr.M.Krishnamoorthy
For R1	: Mr.M.Selvam
R2	: Exparte in Tribunal
R3	: Given up

JUDGMENT

(The matter is heard through Video-conferencing/Hybrid mode)

Civil Miscellaneous Appeal is filed against the judgment and decree dated 25.07.2013 made in M.C.O.P.No.894 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri.



2.The appellant/Insurance Company is 2nd respondent in M.C.O.P.No.894 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. The 1st respondent filed the said claim petition claiming a sum of Rs.3,00,000/- as compensation for the injuries sustained by him in the accident that took place on 26.09.2008.

3.According to the 1st respondent, on the date of accident, i.e., on 26.09.2008, at about 2.50 p.m., while he was travelling as a passenger in the bus bearing Registration No.TN-29-N-2003 belonging to the 3rd respondent, from Hosur to Krishnagiri, near Kamandoddy Bridge, which was driven by its driver slowly on the left side of the road, the driver of the lorry bearing Registration No.TN-21-P-4698 belonging to the 2nd respondent insured with the appellant/Insurance Company, drove the same in a rash and negligent manner and dashed against the bus. Due to the said impact, the 1st respondent sustained lacerated injuries, fractures of right 2nd meta tarsal bone and right mandible mobility, pain on left lower joint and lower jaw teeth. The 1st respondent took treatment as in-patient in Government Hospital, Hosur, from 26.09.2008 to 29.09.2008 for four days and thereafter, took treatment as out-patient continuously in Government Medical College Hospital, Salem and private hospital at Krishnagiri. At the time of accident, the 1st respondent was working as a lorry driver and was earning a sum of Rs.5,000/- per month. Due to the injuries, the 1st respondent could not do the day-to-day work and could not continue his profession as a driver and therefore, filed claim petition claiming compensation against the appellant/Insurance Company, 2nd respondent/owner of the lorry and 3rd respondent/Transport Corporation.

4.The 2nd respondent, owner of the lorry, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement and stated that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the 3rd respondent/Transport Corporation and the driver of the lorry belonging to the 2nd respondent is not responsible for the accident. The appellant/Insurance Company has also denied the nature of injuries mentioned in the claim petition and stated that the 1st respondent has filed the claim petition exaggerating the injuries and disability suffered by him for claiming compensation. The sum of Rs.3,00,000/- claimed by the 1st



respondent as compensation is excessive and prayed for dismissal of the claim petition.

6.The 3rd respondent/Transport Corporation filed counter statement stating that the 3rd respondent is added only as a formal party. The accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent. The driver of the bus belonging to the 3rd respondent is not responsible for the accident. Therefore, the 3rd respondent is not liable to pay any compensation to the 1st respondent and prayed for dismissal of the claim petition in respect of the 3rd respondent.

7.Before the Tribunal, the 1st respondent examined himself as P.W.1 and examined Dr.D.V.Gandhi, as P.W.2 and marked 9 documents as Exs.P1 to P9. The appellant/Insurance Company did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence let in by the 1st respondent, held that the accident has occurred only due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent, fixed 25% disability considering the evidence of P.W.2/Doctor and the documents filed by the 1st respondent, adopted multiplier method, awarded a sum of Rs.2,42,500/- as compensation to the 1st respondent, directed the 2nd respondent as well as the appellant/Insurance Company, being insurer of the lorry, to pay the said compensation to the 1st respondent and dismissed the claim petition against the 3rd respondent/Transport Corporation.

9.Challenging the quantum of compensation awarded by the Tribunal, the appellant/Insurance Company has come out with the present appeal.

10.The learned counsel appearing for the appellant contended that the injuries sustained by the 1st respondent are simple in nature. The percentage of disability assessed by P.W.2/Doctor is excessive. The Tribunal erred in granting compensation towards disability by adopting multiplier method for the fractures of right 2nd meta tarsal bone and right mandible mobility. The 1st respondent has not suffered any functional disability and lost his earning capacity. The total compensation awarded by the Tribunal is excessive and prayed for setting aside the award of the Tribunal.



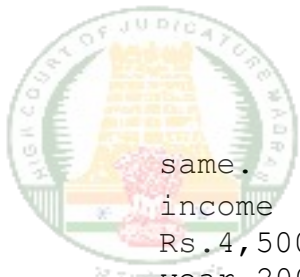
11. The learned counsel appearing for the 1st respondent made his submissions in support of the award passed by the Tribunal and prayed for dismissal of the appeal.

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12. The 2nd respondent, owner of the lorry, was set ex parte before the Tribunal and hence, notice to the 2nd respondent is dispensed with. The appellant has given up the claim as against the 3rd respondent/Transport Corporation.

13. Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent and perused the entire materials on record.

14. It is the case of the 1st respondent that in the accident, he sustained grievous injuries and suffered permanent disability. After the accident, the 1st respondent took treatment as in-patient in Government Hospital, Hosur, from 26.09.2008 to 29.09.2008 for four days and thereafter, he took treatment as out-patient in Government Medical College Hospital, Salem and private hospital at Krishnagiri. He spent more than Rs.50,000/- towards medical expenses and further, he requires about Rs.50,000/- towards future medical treatment. Due to the injuries, the 1st respondent suffered head ache, giddiness and unable to grind, munch food materials as he was doing before and his face was disfigured. Due to the disability, he could not sit, stand, walk and unable to do his day-to-day work as he was doing earlier. At the time of accident, the 1st respondent was working as a lorry driver and was earning a sum of Rs.5,000/- per month. Due to the injuries, he could not continue his work as a driver. To prove his case, the 1st respondent filed Ex.P2/wound certificate, Ex.P5/Driving license, Ex.P6/discharge summary, Ex.P7/Salem Hospital treatment book, Ex.P8/X-ray and Ex.P9/disability certificate and examined the Doctor as P.W.2. P.W.2/Doctor examined the 1st respondent and certified that 1st respondent suffered 40% disability. The appellant/Insurance Company has not let in any contra evidence to disprove the evidence of P.W.2/Doctor and the documents filed by the 1st respondent. The Tribunal considering the nature of injuries and the documents filed by the 1st respondent, fixed the disability of the 1st respondent at 25%. The Tribunal considering the nature of avocation of the 1st respondent as he was a driver at the time of accident, adopted multiplier method and granted compensation towards loss of earning capacity. The 1st respondent claimed that he was earning a sum of Rs.5,000/- per month at the time of accident. But he has not filed any material evidence to prove the



same. In the absence of any evidence with regard to monthly income of the 1st respondent, the Tribunal fixed a sum of Rs.4,500/- per month as notional income. The accident is of the year 2008 and the monthly income fixed by the Tribunal is meagre. The 1st respondent was aged 37 years at the time of accident. The Tribunal, following the judgment of the Hon'ble Apex Court reported in 2009 (2) TNMAC 1 SC Supreme Court (Sarla Verma vs. Delhi Transport Corporation), rightly applied multiplier '15' and granted compensation towards loss of earning capacity. Considering the above materials, this Court is of the view that the multiplier method adopted by the Tribunal is valid. Further, the Tribunal has not granted any compensation towards medical expenses, transportation and loss of amenities. Hence, the total compensation granted by the Tribunal under different heads are not excessive warranting interference by this Court.

15. In the result, this Civil Miscellaneous Appeal is dismissed and the sum of Rs.2,42,500/- awarded by the Tribunal as compensation to the 1st respondent along with interest and costs is confirmed. The appellant/Insurance Company is directed to deposit the entire amount awarded by the Tribunal along with interest and costs, less the amount already deposited, if any, within a period of six weeks from the date of receipt of a copy of this judgment. It is represented by the learned counsel appearing for the appellant/Insurance Company that they have already deposited entire award amount to the credit of M.C.O.P.No.894 of 2013 on the file of the Motor Accident Claims Tribunal, Special Sub Court, Krishnagiri. Therefore, the 1st respondent is permitted to withdraw the amount awarded by the Tribunal along with interest and costs, less the amount if any, already withdrawn. This appeal is dismissed against the 3rd respondent/Transport Corporation. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CO)

// True Copy //

Sub Assistant Registrar

kj

To

1. The Special Subordinate Judge
The Motor Accident Claims Tribunal
Krishnagiri.



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

+1cc to Mr.M.Selvam, Advocate SR.No.58271

C.M.A.No.692 of 2014
and M.P.No.1 of 2014

JPL (CO)
CB (06/01/2022)