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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :09.03.2022

CORAM

THE HON'BLE MR JUSTICE K.KALYANASUNDARAM
and
THE HON'BLE MR JUSTICE V.SIVAGNANAM

C.M.A.No.650 of 2021
and C.M.P.No. 3964 of 2021

The Divisional Manager
M/s National Insurance Co. Ltd.,
Divisional Office
2nd Floor, 81-D, North Car Street,
Thiruchengode - 637 211

... Appellant/4th Respondent

Vs.

1.Anand Babu
S/o Ulaganathan

..1st Respondent/Petitioner

2.Sureshkumar
S/o Ramakrishnan

3.HDFC Ergo General Insurance Co. Ltd.,
Anna Salai, Teynampet, Chennai - 18.

4.Kailasam
S/o Kandasamy

... Respondents 2 to 4/ Respondents 1 to 3

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and decree dated 06.01.2020 made in M.C.O.P.No.607 of 2014 on the file of the Motor Accident Claims Tribunal, (In the Court of the Principal District Judge), Perambalur.

For Appellant : Mr.S.Vadivel

For Respondents : Mr.T.Gobinath for R1
Mr.M.Somasundar for R3
R2 to R4 -NA

JUDGMENT

(Judgment of the Court was delivered by K.KALYANASUNDARAM, J.,)

This Civil Miscellaneous Appeal is directed against the Judgment and decree passed by the Motor Accident Claims Tribunal (In the Court of Principal District Judge), Perambalur,



in M.C.O.P.No.607 of 2014 dated 06.01.2020.

2. Facts of the case are that the 1st respondent herein - Anand Babu travelled in a bus bearing Registration No.KL 45 H 1678 from Chennai to Cochin and when the bus was near Sankagiri Patcham Palayam, a lorry bearing Registration No.TN 34 J 4236, was driven by its driver in a rash and negligent manner and suddenly entered in the National Highways, hit against the bus, in which the claimant was travelling as a passenger. In the accident, he suffered multiple grievous injuries all over the body. In this regard, a case was registered against the driver of the lorry by the Sankagiri Police in Crime No.281 of 2014 under Section 279 and 337 IPC. It is further stated that the claimant was working as an Assistant Executive in H& R Johnson (India) and his income was Rs.23000/- per month. Hence, he is entitled for compensation of Rs.One Crore.

3. The claim petition was filed against the owners of the bus and lorry as well as their insurers. Though the owners remained exparte, the petition was contested by the Insurance Companies, disputing the age, income, nature of the injuries, period of treatment, disability and medical expenses.

4. Before the Tribunal, on the side of the claimant, 3 witnesses (P.W's.1 to 3) were examined and 33 exhibits (Exs.P.1 to 33) were marked. On behalf of the Insurance Companies, 3 witnesses (R.W's.1 to 3) were examined and 6 exhibits (Exs.X.1 to 6) were marked.

5. After analysing the evidence adduced by the parties, the Tribunal came to the conclusion that the driver of the lorry was responsible for the accident and awarded a sum of Rs.57,41,840/- as compensation.

6. Challenging the same, the present appeal has been filed.

7. Mr.S.Vadivel, learned counsel for the appellant submitted that this is a case of contributory negligence, but the Tribunal has erred in fixing the entire liability on the driver of the lorry. It is further submitted that though the accident had taken place in the month of May 2014, the injured claimant is said to have resigned from the job in the 2016. Pay Slips of the claimant from December 2015 to November 2016 were produced under Ex.X2 and hence there is no loss of earning capacity after the alleged accident. Hence the multiplier adopted by the Tribunal cannot be sustained.

8. Per contra, the learned counsel for the claimant referring the evidence of P.W.3, who was the employer and HR



Manager of the employer would argue that though the claimant has resigned from his job in the month of June 2015, the employer had paid his salary till 2016 on sympathy ground. It is further added that as on date, he is unemployed, due to the injuries sustained by him in the accident.

9. Mr.M.Somasundar, learned counsel for the 3rd respondent/Insurance Company would argue that the bus was proceeding from Chennai to Cochin, on the National Highways, the lorry which was coming from the Petrol Bunk situated abetting the main road, suddenly entered the National Highway and hence the Tribunal on proper appreciation of evidence has rightly held that the driver of the lorry was solely responsible for the accident and prayed for dismissal of the appeal.

10. In the instant case with regard to negligence, though the claimant and the driver of the lorry, who was examined as R.W.3 have narrated the manner of accident, perusal of Exs.X.5 and 6 would reveal that when the lorry entered the National Highway, driver of the bus without noticing the same hit on the rear side of the lorry. Hence, the entire negligence cannot be fixed on the driver of the lorry. Therefore, we are of the opinion that it would appropriate to fix the negligence at the ratio of 80:20. Thus, 80% negligence is on the driver of the lorry and remaining 20% is fixed on the driver of the bus.

11. In so far as quantum is concerned, as rightly argued by the learned counsel for the claimant that the claimant was suffered grievous injuries and his right leg below was amputated. According to the claimant, he got his monthly salary at Rs.35,000/- per month and in support of the same, Ex.P.13-Pay Slip was also produced. He was aged 29 years at the time of accident. Therefore, the Tribunal by considering the age and Ex.P.13 and Ex.X2, fixed the monthly income of the claimant as Rs.32,000/-. The Doctor, who gave evidence as P.W.2 - Dr.Saravanan has deposed that the claimant has suffered 78 % disability and he has also issued Ex.P.25-Disability Certificate. X-Ray was marked as Ex.P.26.Thus, the Tribunal by applying proper multiplier of '17' has awarded the amount under the head 'Loss of earning capacity' as Rs.50,91,840/- (Rs.32,000/- x 12 x 17 x 78%). Amounts awarded under the conventional heads are also just and proper.

12.Therefore, in our considered opinion, the award is reasonable, which does not require interference of this Court. The Tribunal has awarded a sum of Rs.57,41,840/- as compensation. Since the liability is fixed at 80% on the part of the driver of the lorry, the appellant/Insurance Company is liable to pay a sum of Rs.45,93,472/- (80% of Rs.57,41,840/-) to the claimant and the 3rd respondent/Insurance Company is liable



to pay a sum of Rs.11,48,368/- (20% of 57,41,840/-)

13. In view of the above modifications, this Civil Miscellaneous Appeal is partly allowed. Both the appellant/Insurance Company and the 3rd respondent/Insurance Company are directed to deposit the above modified award amount with interest at the rate of 7.5% per annum from the date of claim petition till the date of realization and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant is permitted to withdraw the award amount. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Motor Accident Claims Tribunal,
(In the Court of the Principal District Judge),
Perambalur.

Copy To

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

+1cc to M/s.S.Vadivel, Advocate, S.R.No.15934
+1cc to Mr.T.Gobinath, Advocate, S.R.No.16372
+1cc to Mr.N.Somasundar, Advocate, S.R.No.16061

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AJS (CO)
SB(26/05/2022)