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C.M.A.No.3334 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.No.3334 of 2021
and C.M.P.No.18972 of 2021

Future General India Insurance
Company Limited
1-3 Floors, Plot No.55
(Old No.27) Vijaya Raghav Road
T.Nagar, Chennai-600 017.

... Appellant

Vs.

1.Manivannan

2.Managing Director
Namakkal Transport Carriers Private Ltd.
Registered Office
NTC Towers No.97 (Old No.47)
Lingichetty Street
Chennai.

3.The Managing Director
TNSTC Ltd, Salem – 7
Dharmapuri Regional Office
Bharathipuram
Dharmapuri – 636 705.

... Respondents



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Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 23.01.2020 made in M.C.O.P.No.222 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

For Appellant : Mr.M.B.Raghavan
for M/s.M.B.Gopalan Associates
For R1 : Mr.K.Suryanarayanan
for Mr.V.Sakkarapani
For R2 and R3 : No appearance

J U D G M E N T

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

This Civil Miscellaneous Appeal has been filed by the appellant/Insurance Company against the judgment and decree dated 23.01.2020 made in M.C.O.P.No.222 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri.

2.The appellant/Insurance Company is the 2nd respondent in M.C.O.P.No.222 of 2018 on the file of Motor Accident Claims Tribunal,



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Chief Judicial Magistrate's Court, Dharmapuri. The 1st respondent filed the said claim petition claiming a sum of Rs.60,00,000/- as compensation for the injuries sustained by him in the accident that took place on 27.05.2017.

3. According to the 1st respondent, on the date of accident i.e., on 27.05.2017 at about 5.00 A.M., while he was on duty as Conductor in 3rd respondent bus bearing Registration No.TN 29 N 2619 and when the bus was proceeding at PMP Mill near Palayampudur Junction on Dharmapuri to Salem Main Road, the driver of the lorry belonging to the 2nd respondent bearing Registration No.HR-55-N-5810, who was proceeding in front of the bus, drove the same in a rash and negligent manner, while trying to overtake a container lorry, suddenly turned right hand side and stopped the lorry, due to which, the bus in which the 1st respondent was working as a conductor, dashed against the lorry and caused the accident. In the accident, the driver of the bus viz., Murugesan died and 1st respondent, who was seated on the left side of the bus driver, sustained grievous injuries all over the body. Therefore, the 1st respondent has filed the above claim petition claiming compensation against the 2nd respondent, owner of the lorry and appellant/Insurance Company, insurer of the said lorry.



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4.The respondents 2 and 3, owner of the lorry and Tamil Nadu State Transport Corporation bus respectively, remained exparte before the Tribunal.

5.The appellant/Insurance Company filed counter statement denying the averments made in the claim petition and stated that the driver of the lorry belonging to the 2nd respondent did not possess valid driving license to drive the vehicle at the time of accident. The 2nd respondent has not furnished the particulars of driving license, policy, date, time and place of accident to the appellant. The accident has occurred only due to negligence of the driver of the bus belonging to the 3rd respondent. Therefore, the appellant/Insurance Company is not liable to pay any compensation to the 1st respondent. In any event, the amount claimed by him is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the 1st respondent examined himself as P.W.1, one Bharathiraja, Senior Assistant in Ganga Medical Centre and Hospital, Coimbatore, was examined as P.W.2 and one Vetrivel, Junior Assistant, TNSTC, Dharmapuri Division Office, was examined as P.W.3 and 30



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documents were marked as Exs.P1 to P30. The appellant/Insurance Company examined one Sykath Ali as R.W.1 and marked rough sketch as Ex.R1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the lorry belonging to the 2nd respondent and directed the appellant/Insurance Company being the insurer of the said lorry to pay a sum of Rs.49,60,000/- as compensation to the 1st respondent.

8.Against the said award dated 23.01.2020 made in M.C.O.P.No.222 of 2018, the appellant/Insurance Company has come out with the present appeal.

9.Though the appellant/Insurance Company raised various grounds with regard to negligence, at the time of arguments, the learned counsel appearing for the appellant/Insurance Company restricted his argument only with regard to quantum of compensation awarded by the Tribunal and contended that the Tribunal erred in fixing 100% disability as against 55% disability assessed by the Medical Board and adopted multiplier method. The



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1st respondent had two years of service left on the date of accident and he did not lose his employment after the accident. P.W.2, an Official of Ganga Medical Centre and Hospital, Coimbatore, in his evidence, deposed that a sum of Rs.3,60,000/- was reimbursed under Group Medical Insurance, but the Tribunal failed to deduct that amount from total medical bills. The amounts awarded by the Tribunal under different heads are excessive and prayed for setting aside the award of the Tribunal.

10.The learned counsel appearing for the 1st respondent contended that the 1st respondent was working as a Conductor in the 3rd respondent/Transport Corporation bus. Due to disability suffered by him, he is unable to do his work and lost his entire earning capacity. The Tribunal following the judgment of this Court reported in **2019 (1) TNMAC 33 (DB) in Neethpathi vs. Managing Director, TNSSTC, Villupuram**, rightly adopted multiplier method, for arriving compensation towards disability. The amount reimbursed by the 1st respondent under Group Medical Insurance cannot be deducted from the compensation awarded towards medical expenses and prayed for dismissal of the appeal.



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11. Though notice has been served on the respondents 2 and 3 and their names are printed in the cause list, there is no representation for them either in person or through counsel.

12. 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.

13. From the materials on record, it is seen that the claim of the 1st respondent is that he was working as Conductor in 3rd respondent/Transport Corporation bus at the time of accident and in the accident, he sustained multiple injuries, fracture and he could not continue his work as he was doing earlier. The 1st respondent has not produced any materials or evidence to show that he could not do the work after the accident and he was terminated from service. Further, the 1st respondent also did not produce any document to show that he was on loss of pay during treatment period. There is no material to show that 1st respondent suffered functional disability and lost his job. The Tribunal without considering the nature of injuries and disability suffered by



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the 1st respondent and without giving any reason, adopted multiplier method and the same is not correct. In the absence of any documents with regard to loss of income, the 1st respondent is not entitled to compensation for disability by adopting multiplier method. In view of the same, multiplier method adopted by the Tribunal is liable to be set aside and is hereby set aside. The 1st respondent is entitled to compensation only by adopting percentage method. In the accident, the 1st respondent suffered fracture on right thigh with knee commuted fracture, right knee fracture tibial condyle, left thigh bone fracture and left leg ankle joint fractures. The Medical Board examined the 1st respondent, assessed the disability at 55% and issued the disability certificate, which was marked as Ex.P16. The Tribunal fixed the disability of the 1st respondent at 55% and the same is not interfered with. This Court by judgment dated **09.01.2020 made in C.M.A.No.4870 of 2020 in the case of M/s.IFFCO TOKIO General Insurance Company Limited vs. Venkatesh and another**), fixed a sum of Rs.4,000/- per percentage of disability for the accident occurred in the year 2014 & 2015 and a sum of Rs.5,000/- per percentage of disability for the accident occurred from the year 2016 onwards, due to raise in cost of living. In the present case, the accident



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is of the year 2017. In view of the same, a sum of Rs.7,000/- is awarded per percentage of disability, due to raise in cost of living. Thus, the compensation awarded by the Tribunal towards disability is reduced to Rs.3,85,000/- (Rs.7,000/- X 55%).

13(i). The 1st respondent has taken treatment as in-patient in Ganga Medical Centre and Hospital, Coimbatore, from 27.05.2017 to 27.06.2017, 11.07.2017 to 20.07.2017, 04.08.2017 to 17.08.2017 and 11.08.2018 to 20.08.2018 and underwent surgeries. The 1st respondent has marked five discharge summaries as Exs.P18 to P22. The Tribunal awarded Rs.25,000/- each towards extra nourishment and pain and suffering. The Tribunal has not awarded any amounts towards attendant charges and loss of amenities. Considering the period of treatment, nature of injuries and fractures suffered by the 1st respondent, we are inclined to enhance the compensation granted by the Tribunal towards extra nourishment and pain and suffering and to award compensation towards attendant charges and loss of amenities. Hence, Rs.1,00,000/- each is awarded towards extra nourishment, pain and suffering, attendant charges and loss of amenities. The Tribunal has not awarded any



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amount towards damage to clothes. Hence, a sum of Rs.5,000/- is awarded towards damage to clothes. Though the 1st respondent has not let in any evidence to prove that he requires future medical treatment and he has to spend some amount towards future medical expenses, considering the nature of injuries and treatment taken by the 1st respondent, we are inclined to award a sum of Rs.1,00,000/- towards future medical expenses.

13(ii). The 1st respondent has marked medical bills as Exs.P14, P29 and P30 to prove that he has spent a sum of Rs.10,60,163/- towards medical expenses. The 1st respondent has already claimed a sum of Rs.3,60,000/- under Group Accident Insurance Policy. The Tribunal considering the judgment of the Karnataka High Court reported in **2017 ACJ 87 (Rajeshwari G.Bhuyar and others vs. Sindhu Travels and another)**, held that the amount claimed by the 1st respondent under Group Accident Insurance Policy cannot be deducted from the compensation granted towards medical expenses and awarded a sum of Rs.10,60,000/- towards medical expenses, which is not interfered with. The amounts awarded by the Tribunal under all other heads are just and reasonable and hence, the same are hereby confirmed. Thus the compensation awarded by the Tribunal is modified as follows:



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S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted or reduced
1.	Disability	36,90,000	3,85,000	Reduced
2.	Medical bills	10,60,000	10,60,000	Confirmed
3.	Transportation	99,000	99,000	Confirmed
4.	Extra nourishment	25,000	1,00,000	Enhanced
5.	Pain and suffering	25,000	1,00,000	Enhanced
6.	Future prospects	61,000	61,000	Confirmed
7.	Attendant charges	-	1,00,000	Granted
8.	Loss of amenities	-	1,00,000	Granted
9.	Future medical expenses	-	1,00,000	Granted
10.	Damage to clothes	-	5,000	Granted
	Total	49,60,000	21,10,000	Reduced by Rs.28,50,000/-

14. With the above modification, the Civil Miscellaneous Appeal is partly allowed. The compensation of Rs.49,60,000/- awarded by the Tribunal is hereby reduced to Rs.21,10,000/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till



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the date of deposit. The appellant/Insurance Company is directed to deposit the award amount now determined by this Court 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. On such deposit, the 1st respondent is permitted to withdraw the award amount now determined by this Court, along with interest and costs, after adjusting the amount if any, already withdrawn. The appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.222 of 2018 on the file of Motor Accident Claims Tribunal, Chief Judicial Magistrate's Court, Dharmapuri, if the entire award amount has already been deposited by them. Consequently, connected Miscellaneous Petition is closed. No costs.

(V.M.V., J) (S.S., J)
15.06.2022

Index : Yes / No
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**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

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To

1.The Chief Judicial Magistrate
Motor Accident Claims Tribunal
Dharmapuri.

2.The Section Officer
VR Section
High Court
Madras.

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and C.M.P.No.18972 of 2021

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