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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.M.A.NO.1871 OF 2018

AND

C.M.P.NO.14440 OF 2018

The Reliance General Insurance
Company Limited,
Rep.by its BM,
570, Rectified House,
Naigum Cross Road,
Wadala (W) Mumbai - 600 031.

... Appellant/3rd Respondent

.Vs.

1. B.Selvaraj ... 1st Respondent/Petitioner
Mohanraj (died) ... 2nd Respondent/1st Respondent
2. Ganeshamoorthy ... 3rd Respondent/2nd Respondent
3. The Managing Director,
Tamil Nadu State Transport Corporation,
37, Mettupalayam Road,
Coimbatore. ... 4th Respondent/4th Respondent

PRAYER:-

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the award and decree dated 14.02.2013 passed in MACTOP No.1543 of 2008 on the file of the Motor Accident Claims Tribunal/the Chief Judicial Magistrate Court, Tiruppur.

For Appellant	:	Mr.K.Moorthy
For R1	:	Mr.Ma.P.Thangavel
For R2	:	No appearance
For R3	:	Mr.K.J.Sivakumar



JUDGMENT

The 3rd respondent in MACTOP No.1543 of 2008 on the file of the Chief Judicial Magistrate, Tiruppur/Motor Accident Claims Tribunal, is the appellant herein. They have questioned the judgment dated 14.02.2013 in the aforementioned MACTOP No.1543 of 2008 on the ground that they should not have been held liable to pay the compensation amount determined and on the other hand, it was the 4th respondent before Tribunal/Managing Director, Tamil Nadu State Transport Corporation/3rd respondent herein who should have been mulcted with payment of any compensation, if at all determined on the claim petition filed by B.Selvaraj for the injuries suffered in a motor accident.

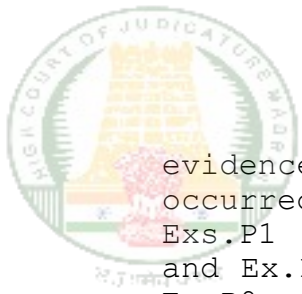
2. The facts are that on 02.10.2008 at around 14:50 hours, B.Selvaraj, was a pillion rider of a two wheeler/TVS Apache bearing Regn.No.TN 40 W 4927. The motorcycle was driven from Tiruppur to Dharapuram and when it reached Pollikalipalayam, the driver of the motorcycle, had apparently tried to overtake, a State Transport Corporation bus bearing Regn.No.TN-38-N-6701, apparently in a rash and negligent manner and at that time, he hit the bus and the claimant suffered injuries. The nature of the injuries suffered had been stated in the Claim Petition and they are as follows:

"Right humarous fracture, right elbow fracture, right leg fracture, right leg angle joint, right foot, left hand and injuries all over the body."

3. Claiming compensation for the injuries suffered, the Claim Petition had been filed not only against the driver of the vehicle, but also against the owner of the two wheeler and also against the Insurance Company of the two wheeler. It is seen that subsequently, the State Transport Corporation had also been impleaded as the 4th respondent in the Claim Petition.

4. A counter affidavit had been filed denying liability and also the manner in which it was claimed that the accident had occurred. It was stated by the present appellant that the main cause for the accident was the bus driver and therefore, placing liability on the Insurance Company of the two wheeler was unjustified and it was therefore stated that the appeal should be allowed and the order passed granting compensation be interfered with.

5. During the course of trial, the claimant had examined himself as PW1 and had also examined PW-2 to prove the income and as PW-3, the Doctor who determined the disability. N.Nataraj the driver of the Corporation bus was examined as RW-2. It is thus seen that the transport corporation had given direct



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evidence with respect to the nature of the accident which had occurred. Claimant marked Exs.P1 to P10. Among those documents Exs.P1 to P5 were discharge summaries. Ex.P6 were Medical Bills and Ex.P8 was the Teacher Education Certificate of the claimant. Ex.P9 was the Disability Certificate. The respondent marked Exs.R1 to R3. The Driving License was marked as Ex.R1.

6. The Tribunal then proceeded to examine the nature of the accident and whether it occurred owing to the negligence of the driver of the bus bearing Regn. No.TN-38-N-0701.

7. In the discussion, with respect to the 1st issue, the Tribunal found that on 02.10.2008 at around 2.50 p.m, the claimant was travelling as pillion rider in a TVS Apache motorcycle bearing Regn.No.TN-40-W-4927 from Thiruppur to Dharapuram. When it came to MGR Nagar bus stop, the driver of the two wheeler had hit against the bus from behind while trying to overtake the bus. Naturally, a presumption can be drawn, in an accident of such nature, that if a vehicle collides with the vehicle in the front, then the vehicle coming from the back was the cause for the accident.

8. In the instant case, the two wheeler had tried to overtake the bus when the accident occurred.

9. The Tribunal also examined the First Information Report marked as Ex.P1 and also the complaint given by the driver of the bus, who had stated that when he was about to park the vehicle, the driver of the two wheeler had caused the accident by hitting it from behind. This evidence was also corroborated by both PW-1 and by RW-2. It was therefore held that the driver of the two wheeler was responsible for the accident.

10. This finding is questioned in the present appeal, wherein reliance is placed by the appellant on the findings in Claim Petition in MCOP No.1290 of 2008 filed by the driver of the two wheeler, wherein, it was held that the driver of the bus was responsible for the accident. But that reliance placed a responsibility on the present appellant to produce necessary documents with respect to that Claim Petition. In the absence of any such document it would be impossible on the part of this Court to accept such a finding.

11. Further, the Tribunal in its order had very clearly stated that on the basis of the evidence produced before the Tribunal, it had come to the conclusion that the driver of the two wheeler alone was responsible for the accident. I would therefore affirm that particular finding. The appeal had been filed questioning that particular finding and the appeal is dismissed with respect to that particular finding.



12. The Tribunal then proceeded to determine compensation. The Tribunal had taken into consideration the discharge summaries, which had been issued by the hospitals, where the claimant had undergone operations on 02.10.2008, 20.10.2008, 31.08.2009, 23.10.2009 and 23.03.2010. The Doctor who issued the disability certificate was also examined as PW-3. His evidence had been extracted in the order of the Tribunal. The Tribunal had discussed about that particular evidence, which determined the disability of the claimant. The doctor had determined 18% disability for the right leg mobility reduction, 35% for stability reduction and 46% as per formula and 18% disability for mobility and strength reduction and another 18% for reduction integrated activity and had fixed the total disability at 62.1% / 62%. The disability certificate had been produced as Ex.P9 and the X-Ray as Ex.P10. As a fact, the claimant underwent surgery atleast 5 times. The injuries had been extracted above. He had suffered extensive injuries. His age was 28 years. Therefore, the Tribunal had adopted the multiplier method, since there was continuous treatment and consecutive operations conducted on the claimant. I would not find fault with that principle adopted by the Tribunal.

13. The Tribunal had determined the monthly income at Rs.3,000/- and therefore, had determined the compensation for partial permanent disability and loss of earning at $Rs.3,000 \times 12 \times 62 / 100 \times 18 = Rs.4,01,760/-$. I would retain that particular amount. The Tribunal also granted compensation under the conventional heads and also granted a sum of Rs.72,000/- towards loss of income. I would not disturb with those findings.

14. The Tribunal had granted compensation under various heads as follows:-

Heads	Amount
1. Partial Permanent disability	Rs.4,01,760/-
2.Pain and suffering and mental agony	Rs.1,00,000/-
3.Loss of amenities	Rs.25,000/-
4.Medical expenses	Rs.1,88,281/-
5.Loss of income (during the period of treatment)	Rs.72,000/-
6.Nutrition	Rs.20,000/-
7.Transportation	Rs.10,000/-
Total	Rs.8,17,041/-



15. The learned counsel for the appellant questioned the compensation granted by the Tribunal. According to him the income had been fixed at Rs.3,000/-, when there was no proof for income.

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16. But I would state that income determined at Rs.3,000/- is a minimum wage that could be determined and as a matter of fact, the claimant had also produced Ex.P8 which was a Teacher Education Certificate and therefore, it cannot be stated that the claimant could not have had any employment at all.

17. The compensation granted is reasonable and I will not interfere with the same. Therefore the Appeal is dismissed with costs. Consequently, connected Civil Miscellaneous Petition is closed.

18. The award of the Tribunal dated 14.02.2013 in MCOP No.1543 of 2008 is upheld. The appellant shall deposit the compensation amount i.e., Rs.8,17,041/- with interest of 7.5% from the date of filing of the petition till the date of deposit within a period of eight weeks from the date of receipt of a copy of this order. On such deposit, the claimant/1st respondent is permitted to withdraw the same by filing necessary application.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

smv

To

The Motor Accident Claims Tribunal/
Chief Judicial Magistrate Court,
Tiruppur.

+1cc to Mr.Ma.P.Thangavel, Advocate, S.R.No.23940
+1cc to Mr.K.Moorthy, Advocate, S.R.No.23430

C.M.A.No.1871 of 2018

VBM(CO)
CT/16/05/2022