



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.2566 of 2019

The Manager,
Royal Sundaram Aliance Insurance Co. Ltd.,
No.45 & 46 Whites Road,
Chennai-14.

.. Appellant

Vs.

1. V.Thangamani
2. H.Hanumathappa
3. The Managing Director,
Tamil Nadu State Transport
Corporation Limited, Salem.

.. Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 10.01.2018 made in MACT. OP.No.16 of 2014 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, Hosur.

For Appellant : Mr.G.Vasudevan

For Respondents : Mr.D.Nitin R3
R2 – No ready notice
R1 – No appearance

J U D G M E N T

This appellant has come forward with this appeal seeking quantum of



compensation in the judgment and decree dated 10.01.2018 made in MACT.

WEB COPY OP.No.16 of 2014 on the file of the Additional District Judge, Motor Accidents Claims Tribunal, Hosur.

2. Brief facts which are necessary for disposal of this appeal are as follows:-

On 24.11.2010, when the claimant was travelling from Hosur to Salem in TNSTC bus bearing Reg. No. TN 30 N 0761, at that time, a lorry bearing Reg. No. KA 16 A 8153, driven by its driver, on the same direction and without honking and indication, suddenly stopped the lorry before the bus, due to which, the bus hit the lorry. Thereby, the claimant and other passengers have sustained injuries and admitted in a hospital. The claimant has filed a claim Petition before the Motor Accidents Claims Tribunal under Section 166 of the Motor Vehicle Act, claiming compensation of Rs.15/- lakhs.

3. Before the Tribunal, during trial, in order to prove the case, on the side of the appellant, two witnesses were examined viz., PW1 to PW2 and marked 14 documents viz., Exs.P1 to P14, On the side of the



respondent/Insurance company, one witness was examined and 5 documents were marked. The Tribunal, considering the pleadings, oral and documentary evidence, awarded a sum of Rs.8,72,643/- and out of which, the appellant is liable to pay 70% and the Transport Corporation is liable to pay 30%. Aggrieved by the same, the appellant/insurance company, has filed this appeal before this Court.

4. The learned counsel for the appellant submitted that admittedly the insured vehicle damaged on the rear side and the third respondent bus was damaged in front side. The motor vehicle report shows that the negligence is on the part of the driver of the transport corporation bus. However, fastening the liability as against the appellant insurance company is not sustainable. Further the Doctor who was not treated the claimant, has assessed the disability at 70% and it is only a partial permanent disability. Without considering the same, the Tribunal awarded huge compensation to the claimant and awarded a sum of Rs.4,20,000/- towards loss of earning, which is on the higher side. Other heads awarded by the Tribunal is also very excessive, which warrants interference of this Court.



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5. Per contra, the learned counsel for the third respondent Transport Corporation submitted that admittedly, an FIR has been registered as against the driver of the insured vehicle. To disprove the said fact, the appellant has not examined any oral evidence before the Tribunal. The first respondent/claimant stated that the entire negligence is on the appellant insured vehicle. Therefore, the Tribunal has fastened the liability as against the appellant insurance company, which cannot be interfered with.

6. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

7. The facts of the case are not in dispute. Admittedly, an FIR has been registered against the driver of the lorry. Further the first respondent has examined as PW1 and narrated the manner of the accident before the Tribunal. In order to prove the fact, the insurance company has not examined any eyewitness. They examined only officials of the insurance company. The officials of the insurance company is not competent to talk



about the accident on the particular day. Hence, the Tribunal elaborately assessed the issue, fastened the liability as against the insurance company, this court cannot interfere with the said award.

8. In respect of quantum of compensation, this Court perused the award. On perusal of the same, it is seen that the Tribunal has fixed the disability at 70% and awarded a sum of Rs.4,20,000/- towards loss of earning power, which warrants interference. The disability fixed by the Doctor would vary from doctor to doctor. In view of the same, this Court is inclined to fix the disability at 65% as partial permanent disability. The accident had happened in the year 2010, a sum of Rs.3,000/- per percentage is fixed to compute towards disability. Further, the Tribunal has awarded a sum of Rs.1,00,000/- towards pain and suffering. Considering the nature of injuries sustained by the appellant, a sum of Rs.50,000/- is awarded. The Tribunal has awarded a sum of Rs.50,000/- towards discomfort, frustration and loss of social enjoyment and the same is rejected by this Court and this court is inclined to fix a sum of Rs.20,000/- towards partial loss of income. The compensation awarded by the Tribunal is modified as follows:



Sl.No	Description	Amount awarded by Tribunal(Rs.)	Amount awarded by this Court(Rs.)
1	Loss of earning	4,20,000	1,95,000 (65% $\times$ 3000)
2	Medical expenses	2,27,843	2,27,843
3	Future medical exp.	25,000	25,000
4	Transportation	10,000	10,000
5	Nutrition	10,000	10,000
6	Attender charges	10,000	10,000
7	Pain and sufferings	1,00,000	50,000
8	Discomfort, frustration and loss of social enjoyment	50,000	
9.	Partial loss of income	19,800	20,000
	Total	8,72,643	5,47,843/-

9. In the result, this Civil Miscellaneous Appeal is allowed and the compensation awarded by the Tribunal at Rs.6,24,000/- is hereby modified to Rs.5,47,843/- with interest at the rate of 7.5% per annum from the date of petition till the date of realization. Out of the award amount, the appellant Insurance Company is directed to deposit 70% of the award amount with interest and the Transport corporation is directed to deposit 30% of the award amount with interest, before the Tribunal, less the amount if already deposited, if any, within a period of four weeks from the date of receipt of a copy of this judgment. On such deposit, the Tribunal is directed to deposit



the same to the account of the claimant through RTGS. No costs.

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27.11.2023

Index : Yes
Speaking Order : Yes
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To

The the Additional District Judge, Motor Accidents Claims Tribunal, Hosur.



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M.DHANDAPANI,J.

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