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C.M.A.No.1223 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1223 of 2014

And

M.P.No.1 of 2014

The New India Assurance Company Ltd.,
Shafee Complex, Opp. to YMCA,
Kannur Road,
Calicut, Kerala 673 001.

... Appellant

Vs.

1.Loganathan
2.P.V.Shainu
3.Sadik Alli
4.R.Chinnusamy
5.Palanisamy

6.United India Assurance Co. Ltd.,
No.137, Cherry Road,
Salem 636 001.

7.United India Assurance Co. Ltd.,
S.R.S. Towers
Mettur Main Road,
Bhavani.

... Respondents

Prayer:

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 26.09.2012 made in M.C.O.P.No.67 of 2011 on the file of the Motor Accidents Claims Tribunal, Bhavani.



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For Appellant : Mr.R.Neethe Perumal

For Respondents : Mr.C.Kulanthaivel for R1
R2 and R4 – NRN (Not Ready Notice)
R3, R5 to R7 – No Appearance

J U D G M E N T

The third respondent Insurance Company before the Motor Accidents Claims Tribunal is the appellant herein. This appeal has been filed seeking to set aside the judgment and decree dated 26.09.2012 passed by the Motor Accidents Claims Tribunal, Bhavani, in M.C.O.P.No.67 of 2011.

2.The brief facts of the case is that on 14.12.2010, at about 2.20p.m., the first respondent was travelling in a private bus bearing Registration No.TN-30-AL-7799 as a Conductor from Pallipalayam PS Saragam Veppadai Four Road towards North to South extreme left side of the road. At that time, a lorry bearing Registration No.KL-11-AB-5130 owned by the third respondent and insured with the appellant was driven by the second respondent in a rash and negligent manner towards West to East and hit against the bus, due to which, the first respondent sustained injuries.



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3. Thereafter, the injured claimant / first respondent filed claim petition before the Motor Accidents Claims Tribunal, Bhavani, claiming compensation of Rs.20 Lakhs. After adjudication, the Motor Accidents Claims Tribunal awarded a sum of Rs.7,86,400/- with interest at the rate of 7.5% p.a. from the date of petition till the date of deposit and costs and directed the appellant Insurance Company to pay the compensation. Aggrieved by the same, the appellant Insurance Company has filed this appeal.

4. The learned counsel appearing for the appellant submitted that a passenger of the private bus made complaint before the law enforcing agency as if the driver of the vehicle insured with the appellant drove the vehicle in a rash and negligent manner and dashed against the bus, however, the fact remains that the driver of the bus drove the vehicle in a rash and negligent manner and without giving any horn or sound crossed the said junction, thereby the accident happened. Hence, the Tribunal ought to have fixed some liability on the part of the private bus and the quantum of compensation awarded is also excessive.



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5.The learned counsel appearing for the first respondent claimant submitted that the first respondent was employed as Conductor in the private bus. Due to the rash and negligent driving of the driver of the vehicle insured with the appellant, the accident happened. The learned counsel further submitted that the Doctor/ P.W.2 assessed the disability at 174% and restricted it to 100% and he issued disability certificate Ex.P.17. The wound certificate Ex.P.6 reveal that the claimant has severed amputation of 2nd to 5th toes in the right feet and amputation of lateral four fingers of the left hand and he is not able to continue his avocation. The Tribunal after considering all the factual aspects awarded compensation which is just and reasonable and warrants no interference.

6.Heard the learned counsel appearing for the appellant Insurance Company as well as the learned counsel appearing for the first respondent claimant and perused the materials available on record.

7.Admittedly, on 14.12.2010, at about 2.20 p.m., the first respondent was travelling in a private bus as a Conductor from



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Pallipalayam PS Saragam Veppadai Four Road towards North to South extreme left side of the road. At that time, the lorry owned by the third respondent and insured with the appellant was driven by the second respondent in a rash and negligent manner towards West to East and hit against the bus, due to which, the first respondent sustained injuries. A passenger of the private bus made complaint before the law enforcing agency.

8.The contention of the learned counsel appearing for the appellant is that the driver of the bus drove the vehicle in a rash and negligent manner and without giving any horn or sound crossed the said junction, thereby the accident happened. This Court perused the Observation Mahazer Ex.P.2 and it reveal that the private bus was going in North to South direction and at that time, the lorry insured with the appellant came from West to East and dashed against the backside of the bus. Admittedly, bus crossed the junction and thereafter the lorry hit the bus. The said issue was elaborately considered by the Tribunal.

9.The wound certificate Ex.P.6 is not disputed by the appellant. The claimant being a Conductor is not able to perform his job after the



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accident. Therefore, the Tribunal adopted the multiplier method and awarded a sum of Rs.5,18,400/- for loss of future earnings which warrants no interference. The amount awarded under the other heads namely, medical bills – Rs.2,30,000/-, pain and sufferings – Rs.20,000/-, extra nourishment – Rs.3,000/-, transportation – Rs.2,000/-, damages to clothes – Rs.1,000/-, loss of earnings – Rs.12,000/- are also just and reasonable. Hence, the impugned award warrants no interference.

10.The civil miscellaneous appeal stands dismissed. The judgment and decree dated 26.09.2012 passed by the Motor Accidents Claims Tribunal, Bhavani, in M.C.O.P.No.67 of 2011, is confirmed.

11.The appellant/ Insurance Company is directed to deposit the entire award amount before the Tribunal within a period of six weeks from the date of receipt of a copy of this judgment, less the amount if any, already deposited. On such deposit being made, the claimant/ first respondent is permitted to withdraw the award amount, along with accrued interest and costs, on making proper and necessary application before the Tribunal.



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12.The civil miscellaneous appeal is dismissed. No costs.
Consequently, the connected miscellaneous petition is closed.

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

To

1.The Motor Accidents Claims Tribunal,
Bhavani.



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