



C.M.A.No.232 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2023

CORAM:

THE HON'BLE MRS. JUSTICE N.MALA

C.M.A.No.232 of 2021

and

C.M.P.No.1516 of 2021

The Bajaj Allianz General Insurance Co., Ltd.,
No.21A, Raagavis Centre,
Nethaji Nagar,
Nanjundapuram Main Road,
Coimbatore.

... Appellant

Vs

1.Murugesan

2.The Chairman, Sowdambika Matric
Higher Secondar School,
Thathaiyangarpet and Post,
Musiri Taluk,

... Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the judgment and decree dated 09.07.2020 made in M.C.O.P.No.87 of 2018 on the file of the Motor Accident Claims Tribunal, Namakkal (in the Court of Principal Subordinate Judge, Namakkal).



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For Appellant : Mr.T.K.Prem Kumar

For Respondents : No Appearance

J U D G M E N T

This appeal is filed by the Insurance Company challenging the judgment and decree of the Motor Accident Claims Tribunal in M.C.O.P.No.87 of 2018 dated 09.07.2020 on the file of the Principal Subordinate Judge, Namakkal.

2. The appeal is filed by the Insurance Company challenging the finding on negligence and the quantum of compensation awarded by the Tribunal.

3. The facts leading to the above appeal are narrated hereunder:

According to the claimant, while he was riding his TVS Sport Bike bearing Registration No.TN-88-A-1185 on the Thuriyur to Namakkal main road, a bus driven by its driver in a rash and negligent manner, suddenly stopped without any signal to enable the students to alight from



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the bus. As the bus stopped suddenly, the claimant, who was coming behind the bus, lost control of his vehicle and hit the bus. As a result of the collision, the claimant sustained multiple grievous injuries. The claimant therefore filed a claim petition seeking a sum of Rs.15,00,000/- as compensation for the injuries sustained by him.

4. The first respondent / owner of the bus remained exparte and the claim petition was contested by the insurer of the school bus.

5. The respondent / Insurance Company, in its counter contented that the accident occurred only due to the rash and negligent driving of the claimant, that the petitioner failed to wear the head gear which was violative of the Motor rules and also that the amounts claimed under various heads were exorbitant.

6. Before the claims tribunal, the claimant examined himself as P.W.1 and Doctors as P.W.2 and P.W.3 and marked Exs.P1 to P13 in support of his case. On the side of the respondent, three witnesses



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were examined as R.W.1 to R.W.3 and two documents were marked as Exs.R1 & R2.

7. The claims Tribunal, on assessment of entire evidence on record, awarded a sum of Rs.1,93,006/- as compensation along with 7.5% interest. Aggrieved by the judgment and decree of the claims Tribunal, on the finding of negligence against the driver of the school bus and the quantum of compensation awarded, the Insurance Company has filed the present appeal.

8. Learned counsel for the appellant submitted that the finding of the Tribunal on the issue of negligence was erroneous on the facts of the case. The learned counsel submitted that from the facts, it was clear that the claimant had contributed to the accident and therefore, the Tribunal ought to have apportioned the liability on the basis of the contributory negligence of the claimant. On the issue of quantum, the learned counsel submitted that the Tribunal erred in fixing the disability at 20%, over looking the fact that the claimant had sustained lacerated injuries only. Therefore, according to the appellant, the award of Rs.1,93,006/- as



compensation towards disability was exorbitant on the facts of the case.

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9. Though, the respondents 1 and 2 were served with notice, none appeared on their behalf.

10. Learned counsel for the appellant, in support of his argument, submitted that the Tribunal ought to have apportioned the liability on the basis of the contributory negligence of the claimant. The claimant examined himself as P.W.1 and it was clearly stated by him that the bus which was proceeding in front of his two wheeler was suddenly stopped by the driver without any signal and therefore, he was unable to control his vehicle and dashed the bus from behind. The driver of the bus gave evidence that he had stopped the bus in front of Varagur Devi rice mill to enable the students to get down from the bus. In the cross examination, R.W.2 denied the suggestion that because he had stopped the bus suddenly, the accident had occurred. In my view, the evidence of R.W.2 is interested and cannot be relied on for the purpose of deciding the issue of negligence. The evidence of R.W.1 in this regard is note worthy. R.W.1 deposed that as per the sketch / plan, Ex.R2 the accident took place in the centre of the road.



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The relevant portion of R.W.1's cross examination is as follows:-

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எ.மா.சா.ஆ 2ல் விபத்து ரோட்டின்

மையப்பகுதியில் நடைபெற்றதாக தான் உள்ளது என்றால்
ஆமாம்.

11. In the light of the evidence of R.W.1, it is clear that the driver of the first respondent was negligent in stopping the bus in the centre of the road for allowing the students to alight from the bus. The claimant should have maintained considerable distance from the first respondent bus, which was a School bus. Had the claimant driven the motorcycle carefully and with reasonable speed and at reasonable distance, he could have averted the accident. I am therefore of the view that the claimant contributed to the accident by his negligence. Accordingly, I fix the contributory negligence of the claimant at 20%. The finding of the Tribunal on negligence is therefore set aside and it is held that the claimant contributed to the accident and his negligence is fixed at 20%.

12. On the issue of quantum, I find that the Tribunal has fixed Rs.3,000/- per percentage of disability. In my opinion, as the accident occurred in 2015, a sum of Rs.5,000/- is fixed for per percentage of



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disability. Hence, Rs.1 lakh (Rs.5,000 X 20) is awarded towards permanent disability. In my view, the award towards pain and suffering is on the lower side. Therefore, the compensation towards pain and suffering is fixed at Rs.10,000/-. With regard to the other heads, the same are confirmed. The award of the Tribunal is hence modified as follows:-

Sl.No.	Particulars	Tribunal	Court
1	Loss of Earnings		
	(i) During the period of treatment	Rs.7,000/-	Rs.7,000/-
	(ii) Loss of future earning on account of Permanent Disability (20%)	Rs.60,000/-	Rs.1,00,000/- (5,000X20)
2	Medical Expenses		
	(i) Expenses relating to Hospitalization treatment and Medicines	Rs.1,16,006/-	Rs.1,16,006/-
3	Future Medical expenses	Rs.Nil	Rs.Nil
4	Pain and Sufferings	Rs.5,000/-	Rs.10,000/-
5	Extra Nourishment	Rs.5,000/-	Rs.5,000/-
6	Loss of amenities (and or loss of prospectus of Marriage)	Rs.Nil	Rs.Nil
7	Loss of expectation of life (Shortening of normal longevity)	Rs.Nil	Rs.Nil
	Total	Rs.1,93,006/-	Rs.2,38,006/-



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13. The claimant is entitled to compensation of Rs.2,38,006/-. But as I have found that the claimant has contributed to the accident and as his negligence is fixed at 20%, 20% is deducted from Rs.2,38,006/-. The claimant is entitled to Rs.1,90,404/-. It is submitted by the appellant that the appellant has deposited Rs.2,23,183/-. It is found that the claimant is entitled to Rs.1,90,404/- along with 7.5% interest and if so there is any excess amount, the Insurance Company is at liberty to withdraw the same. If there is a shortage, the Insurance Company shall deposit the same within two weeks from the date of receipt of copy of this order. The claimant shall thereafter, withdraw the said amount by filing proper petition.

14. This Civil Miscellaneous Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

29.03.2023

Index: Yes/No

Neutral Citation: Yes/No

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To

1. The Motor Accident Claims Tribunal, Namakkal
(in the Court of Principal Subordinate Judge, Namakkal).

2. The Section Officer,
VR Section,
High Court, Madras.



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N.MALA, J.

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