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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.12.2019

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

C.M.A.No.1557 of 2019

Gopal

...

Appellant

Vs

1. M.Shanmugam

2. United India Insurance Co. Ltd.,
Divisional Office, Ranipet,
Tiruvannamalai District.

3. A.S.Ranjith

4. The New India Assurance Co. Ltd.,
Divisional Office,
Vellore,
Tiruvannamalai District.

... Respondent

PRAYER: Civil Miscellaneous Appeal filed against the Judgment and decree dated 21.01.2011 in MCOP No.418 of 2004 passed by the Motor Accidents Claims Tribunal/Sub Court, Cheyyar, Thiruvannamalai District.

For appellant : Mr.M.Selvam

For respondent : Mr.S.Arunkumar R2

Mr.K.Thirunavukkarasu R4

R3- No appearance

R1 Not ready notice

J U D G M E N T

<https://www.mhc.tn.gov.in/judis> This appeal has been filed by the appellant/claimant seeking



enhancement of the compensation and questioning the liability of Compensation awarded by the Motor Accidents Claims Tribunal/Sub Court, Cheyyar, Thiruvannamalai in MCOP No.418 of 2004 dated 21.01.2011.

2. It is the case of the appellant that on 22.08.2004 at about 14.45 hours, when the appellant was travelling in a bus bearing Reg. No.TN 25 W 0220 owned by the 3rd respondent and insured with the 4th respondent, at that time, the Mini Lorry bearing Reg. No. TN 25 W 5313, driven by its driver, owned by the first respondent which was insured with the second respondent, in Perungattur to Dhandappanthangal Junction Road, in a rash and negligent manner and dashed against the bus, due to which, the appellant, who was a passenger in the bus, sustained grievous injuries and admitted in Hospital. Thereafter, the appellant has filed a claim petition before the Tribunal claiming a sum of Rs.10,00,000/- as compensation.

3. In order to prove his claim, the appellant has examined two witnesses viz., P.W.1 and P.W.2 and marked 15 documents viz., Ex.P1 to Ex.P15. On the side of the respondent, three witnesses were examined and four documents were adduced. After analyzing the evidences, the Tribunal has awarded a sum of Rs1,20,515/- as compensation payable by the



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4. Not being satisfied with the quantum of compensation and fixation of the negligence on the appellant, he has come forward with this appeal before this Court.

5. The learned counsel for the appellant submitted that the appellant is an innocent passenger in a bus and the Tribunal has fixed negligence on the part of the appellant as he is not responsible for the accident. Both the bus and the lorry were involved in the accident and they were responsible for the accident and without considering the same, the Tribunal has fixed 50% negligence on the appellant herein, which is erroneous. The Tribunal has not fixed any of the liability on the part of the owner of the bus and 4th respondent insurance company.

6. The learned counsel further submitted that the Tribunal erred in awarding a meager compensation in respect of transportation, extra nutrition, loss of amenities and loss of earning power as he suffered amputation in right hand and not awarded any compensation in respect of attendar charges and loss of income which warrants requires consideration of this Court.



7. Per contra, the learned counsel appearing for the second respondent submitted that admittedly, two vehicles were involved in the accident.

Except the appellant, no one sustained injuries in the accident. It shows that the due to carelessness of the appellant, he sustained injuries and therefore, the negligence fixed on him is perfectly in order, which does not warrant any interference. The Tribunal has awarded the compensation amount on higher side and it needs to be reduced.

8. The learned counsel for the 4th respondent submitted that though the appellant was travelling as a passenger in the 3rd respondent bus, which was insured with the 4th respondent, however, FIR was registered as against the driver of the Mini Lorry and the same was marked as Ex.P1. Based on the evidence adduced by the appellant, the Tribunal has fixed 50% liability as against the owner of the lorry and there is no fault found with the respondents 3 & 4 and therefore, they are not liable to pay any compensation to the appellant.

9. Heard the learned counsel for the appellant as well as the respondents and also perused the materials available on record before this Court.



10. The factum of the case is not in dispute. The manner of the accident is also not in dispute. Admittedly, the appellant was travelling as a passenger in the 3rd respondent bus, which was insured with the 4th respondent. It is equally undisputed fact that due to the injuries sustained in the accident, the right hand of the appellant was amputated and the FIR has also been registered as against the driver of the mini lorry. Based on the FIR, the Tribunal has mechanically fixed entire liability as against the first respondent, who is the owner of the mini lorry and fixed 50% negligence on the part of the appellant. Though negligence as above has been fixed, but for the above materials, no reasoning as to the basis on which the aforesaid findings have been arrived at has been spelt out.

11. On perusal of the materials, it seen that before the Tribunal, M.V. Report of both the vehicles were not marked. Without verifying the same, the Tribunal has fixed the negligence on the part of the appellant. Merely because the appellant alone has sustained injuries in the accident, it cannot be held that the appellant had been negligent and had been the cause of the accident. The accident had happened due to the collision of two vehicles and the appellant, being a passenger in one of the vehicle, it is incumbent on the part of the Tribunal to spell out the basis on which negligence is



of the passengers have suffered any injuries would only go to show that the appellant was negligent, is a wholly perverse and arbitrary finding, which cannot be sustained by this Court. The severity of the injuries resulting in the amputation of the right hand of the appellant has to be looked at in the manner in which the collision had happened to fasten the liability and it cannot be, on mere *ipsi dixit*, be fastened on the appellant. Therefore, the said finding recorded by the Tribunal cannot be sustained as it reveals total non application of mind on the part of the Tribunal.

12. Insofar as the compensation awarded by the Tribunal is concerned, though it is claimed that it is meagre by the appellant and excessive by the other party, however, the fact remains that the compensation awarded under the heads are just and reasonable and cannot be said to be erroneous and the same are liable to be confirmed.

13. For the above said reasons, while the compensation awarded by the Tribunal is confirmed, this Court is inclined to modify only that portion of the negligence of 50% fastened on the appellant. Instead, this Court fixes the liability at 50% each on first respondent and third respondent. The respondents 2 and 4 are directed to deposit the compensation as awarded by the Tribunal with respect of their share with interest at the rate of 7.5% per



annum from the date of petition till the date of realization, within a period of four weeks from the date of receipt of a copy of this order. On such deposit being made, the Tribunal is directed to transfer the amount directly to the bank account of the claimant through RTGS within a period of two weeks thereafter. No costs.

09.11.2023

Index : Yes/no

Internet : Yes/no

To

The Motor Accidents Claims Tribunal/Sub Court,
Cheyyar, Thiruvannamalai District.



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M.DHANDAPANI.,J.

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