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C.M.A.No.4194 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:03.02.2023

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THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.M.A.No.4194 of 2019

and

CMP.No.23701 of 2019

M/s.Reliance General Insurance Co.Ltd.,
Rep by its Branch Manager,
No.408, 3rd Floor,
Perundurai Road,
Erode.

...Appellant

vs.

1. D.Prakash
2.The M.D., TNSTC Ltd.,
Tamil Nadu State Transport Corporation Ltd.,
R.K.Road, Salem.
3.Rajkumar

...Respondents

Prayer: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Judgment and Decree dated 23.02.2018 made in M.C.O.P.No.2448 of 2013 on the file of the Motor Accidents Claims Tribunal (The Special Sub-Judge, Krishnagiri).

For Appellant : Mr.S.Arun Kumar

For Respondents : Mr.M.Selvam for R1
No appearance – R2 & R3



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J U D G M E N T

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This appeal has been filed by the appellant to set aside the impugned award dated 23.02.2018 in M.C.O.P.No.2448 of 2013 passed by the Motor Accidents Claims Tribunal (The Special Subordinate Judge, Krishnagiri).

2. It is the case of the appellant that on 13.08.2012 at 13.30 hours, when the first respondent/driver was driving the TNSTC bus bearing Registration No.TN-30-N-0229 belonging to the second respondent, near the garden in Bhavani – Ammapettai road, a lorry bearing Regn.No.TN-52-A-6585 belonging to the third respondent and insured with the appellant coming from north to south, dashed against the front side of the bus. Due to the sudden impact, the first respondent and passengers in the bus have sustained grievous injuries. Since the driver of the lorry has caused the accident, the appellant herein / Insurance Company is vicariously liable to pay compensation, the first respondent/petitioner therein, has preferred the claim petition before the Tribunal. The Tribunal, after framing issues and recording evidence, has fastened the liability on the first



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respondent/Insurance Company and ultimately quantified the compensation

in the following manner:-

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	65% Permanent Disability	Rs.1,95,000/-
2.	Medical Expenses	Rs.1,91,000/-
3.	Transport Charges	Rs. 38,000/-
4.	Attender & Nutrition Charges	Rs. 25,000/-
5.	Pain & Sufferings	Rs. 50,000/-
6.	Loss of Amenities & Enjoyment of life	Rs. 50,000/-
7.	Damages to clothing and articles	Rs. 1,000/-
8.	Partial Loss of income	Rs.9,39,117/-
	Total	Rs.14,89,117/-

3. Heard the learned counsel for the appellant and learned counsel for the first respondent and perused the materials available on record. There is no representation for the respondents 2 and 3.

4. The learned counsel for the appellant has submitted that the driver of the third respondent was not holding any valid license to drive the vehicle at the relevant time of the accident which amounts to violation of policy. Hence this appellant is not liable to indemnify the third respondent.



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He further submitted that the appellant was aged about 36 years at the time of accident and he was a driver in the bus belonging to the second respondent and was earning Rs.12921/- p.m., at the time of accident. He further submitted that though the driver of the lorry drove the same carefully by observing all the rules of the road, but the driver of the bus drove the bus in a rash and negligent manner, lost control over the vehicle and dashed against the front side of the lorry and caused the accident. Hence the appellant is not liable to pay compensation to the first respondent. He further submitted that the petitioner/first respondent herein is bound to prove the age, occupation and monthly income with documentary evidence. The amount claimed by the first respondent is excessive and irrational. He further submitted that the Tribunal erred in awarding a sum of Rs.9,39,117/- relying on the testimony of PW1 & PW2, Ex.P13 in the absence of attendance register and leave records. Hence, he prays to set aside the award of the Tribunal by allowing this appeal.

5. Per contra, the learned counsel for the first respondent has submitted that the Tribunal has taken each and every aspect into



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consideration and has awarded the just compensation which does not require any interference by this Court; in fact, the Tribunal has taken note of the evidence and documents on record and ultimately arrived at the compensation, which is perfectly valid in the eye of law. Hence, he prays for dismissal of the appeal.

6. On the side of the petitioner/first respondent herein, two witnesses were examined as PW1 & PW2 and fifteen exhibits were marked as Ex.P1 to Ex.P15. On the side of the respondents/appellant herein, two witnesses were examined as RW1 & RW2 and four exhibits were marked as Ex.R1 to Ex.R3 & Ex.C1.

7. A perusal of the award of the Tribunal would go to show that the Tribunal has analysed the evidence and documents such as Ex.P1 to Ex.P3, and Ex.P12 and arrived at a conclusion that the driver of the bus has caused the accident. Since the first respondent has insured with the appellant/Insurance Company, the same is liable to pay the compensation to the first respondent. Ex.P4, Ex.P5 to Ex.P7, Ex.P10, Ex.P11, Ex.P14 and



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Ex.P15 would go to show that the first respondent has taken treatment in various hospitals and he is suffering 65% of permanent disability. The Tribunal has rightly awarded Rs.1,95,000/- under the head, 'permanent disability'

8. Due to the said accident, the first respondent has taken leave. It is stated that as per Ex.P13, he had taken leave on loss of pay for 926.5 days and absent for 719 days and his loss of pay for 1645.5 days works out to Rs.9,39,117/- It is also stated that he had taken 41.5 days as ML and further 29 days as EL. On perusal of documentary evidences it is seen that PW1 deposed that he was a driver of TNSTC Bus and was earning a salary of Rs.12,921/- p.m., Also Ex.P13 and various discharge summaries shows that the first respondent could not attend work for several months after the accident. When that be so, the amount awarded towards 'Partial loss of income' needs revisit. In view of the above, this court is inclined to modify the amount to Rs.7,19,820/- under the head of partial loss of income after deducting the 41.5 days as Medical Leave taken by the first respondent. The break up details are worked out as follows:



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$$926 + 719 = 1645 + 29 = 1674$$

WEB COM The salary of the first respondent = Rs.12,921/- p.m., Thus,

12921

----- = Rs.430/- per day

30

Resultantly, 1674 days x Rs.430/- = **Rs.7,19,820/-**

9. Thus the amount awarded by the Tribunal of Rs.9,39,117/- under the head of Partial loss of income is modified to Rs.7,19,820/-. The other heads of compensation awarded by the Tribunal are reasonably quantified and hence, they are confirmed as such.

10.The details of the modified compensation are as follows:

<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
1.	65% Permanent Disability	Rs.1,95,000/-
2.	Medical Expenses	Rs.1,91,000/-
3.	Transport Charges	Rs. 38,000/-
4.	Attender & Nutrition Charges	Rs. 25,000/-
5.	Pain & Sufferings	Rs. 50,000/-
6.	Loss of Amenities & Enjoyment	Rs. 50,000/-



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<i>Sl.No.</i>	<i>Head</i>	<i>Amount in Rs.</i>
	of life	
7.	Damages to clothing and articles	Rs. 1,000/-
8.	Partial Loss of income	Rs.7,19,820/-
	Total	Rs.12,69,820/-

11. In the result, the Civil Miscellaneous Appeal is partly allowed. Consequently, the connected miscellaneous petition is closed. No costs. The appellant is directed to pay 75% of the total compensation of Rs.12,69,820/- amounting to **Rs.9,52,365/-** to the first respondent and then recover the same from the third respondent.

12. Thus the first respondent is entitled to the modified compensation of Rs.9,52,365/- with interest at the rate of 9% per annum from the date of claim petition till the date of deposit. The first respondent shall forfeit the remaining 25% of the compensation due to his own contributory negligence. It is made clear that the claimant has to pay the appropriate Court fee in order to receive the awarded amount. The appellant/ Insurance Company is directed to deposit the balance of the modified award



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amount, as ordered above, if any, within a period of six weeks from the date of receipt of a copy of this judgment. On such deposit being made, the first respondent / claimant is permitted to withdraw the same, on making proper application before the Tribunal.

03.02.2023

Index : yes/no
Internet : yes/no
gv

To

1. The Motor Accident Claims Tribunal
(The Special Sub-Judge, Krishnagiri).
2. The Section Officer,
V.R.Section, High Court, Madras.



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