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C.M.A.(MD).No.140 of 2



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 27.02.2024

CORAM

**THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN
and
THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

C.M.A.(MD).No.140 of 2021

and

C.M.P.(MD).No.1178 of 2021

Royal Sundaram General Insurance Company Limited,
No.176 D & E,
Vannarpettai, Tirunelveli
represented by its Branch Manager.

... Appellant

Vs.

1.U.Santhanaselvam

2.J.Solomon

... Respondents

Prayer:- Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, against the fair and decretal order dated 09.07.2019 made in M.C.O.P.No.129 of 2017 on the file of the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate Court, Thoothukudi.

For Appellant

: Mr.M.Jerin Mathew

For R1

: Mr.G.Thalaimutharasu

For R2

: No appearance



JUDGMENT

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(Judgment of the Court was delivered by **K.K.RAMAKRISHNAN,J.**)

The Insurance Company has filed this Civil Miscellaneous Appeal challenging the negligence and the quantum of compensation awarded by the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate Court, Thoothukudi in M.C.O.P.No.129 of 2017, dated 09.07.2019.

2. Facts of the Case:

According to the claimant, on 27.09.2016 at about 9.15 hours, the first respondent was proceeding in a two wheeler bearing Registration No.*TN 69 BA 6408* on Muthiahpuram – Harbour Construction Road, Thangammalpuram Northern side. At that time, a lorry bearing Registration No.*TN 30 V 9883*, that belonged to the second respondent was going in front of the said two wheeler and when the first respondent was trying to overtake the lorry, the lorry driver drove it in a rash and negligent manner and dashed behind the first respondent's vehicle. Due to the said accident, the first respondent sustained injury and his leg was amputated. Therefore, F.I.R. was registered against the driver of the lorry in Crime No.305 of 2016 for the offences under Sections 279 and 337 of I.P.C. In the said circumstances, the first respondent filed the claim petition



before the Motor Vehicles Accident Claims Tribunal, Chief Judicial Magistrate

Court, Thoothukudi, seeking compensation of Rs.1,50,00,000/-.

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3.The appellant/Insurance Company resisted the claim petition contending that the driver of the lorry is no way responsible for the accident and the claimant himself invited the accident. Therefore, they are not liable to pay any compensation to the claimant.

4. Before the Tribunal, on the side of the petitioner/claimant, P.Ws.1 and 2 were examined and Exs.P1 to P14 were marked and on the side of the respondents, no one was examined and no document was marked.

5. Finding of the Tribunal:

The Tribunal, after considering the oral and documentary evidence, fixed 100% negligence on the side of the driver of the lorry and the injured claimant's monthly income as Rs.25,000/- and considering the age of the injured claimant as 22 and added 40% towards Future Prospect and applied multiplier 18 and 80% of permanent disability, and hence, the Loss of income of the injured claimant was calculated as follows:-

$$\begin{aligned} (\text{Rs.25,000} + 40\%) &= \text{Rs.35,000/-} \times 12 \times 18 \times 80/100 \\ &= \text{Rs.60,48,000/-} \end{aligned}$$

The Tribunal, awarded the Compensation a sum of Rs.66,55,750/- to the injured



claimant under the following heads:-

<i>Heads</i>	<i>Amount in Rupees</i>
Loss of income	Rs.60,48,000/-
Artificial Leg	Rs. 3,97,750/-
Loss of pain	Rs. 2,00,000/-
Transport Expenses	Rs. 5,000/-
Healthy Food	Rs. 5,000/-
Total	Rs.66,55,750/-

Assailing the said award, the insurance Company has filed the present appeal.

6. Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant/Insurance Company would submit that on seeing the evidence of P.W.1 and records, it is clear that without noticing the on coming vehicle, the first respondent overtook the lorry. Hence, he alone is responsible for the accident and therefore, he seeks to apply the theory of contributory negligence. He has not disputed the monthly income of the deceased and quantum fixed by the Court below. He seeks to confirm the same.

7. Submission of the learned counsel for the respondents:

The learned counsel appearing for the first respondent/claimant would submit that the Tribunal has correctly come to the conclusion that the accident



occurred due to the negligent driving of the driver of the lorry and fixed the negligence on the side of the driver of the lorry.

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8. This Court has considered the rival submissions made on either side and perused the materials available on record.

9. The following points arise for consideration of this appeal:

9.1. Whether the negligence is correctly fixed on the driver of the vehicle insured with the appellant?

9.2. Whether the compensation granted is in accordance with law?

10. Discussion on the negligence:

PW.1 deposed that on 27.09.2016 at about 9.15 hours, when the first respondent was proceeding in a two wheeler bearing Registration No. *TN 69 BA 6408* on Muthiahpuram – Harbour Construction Road, Thangammalpuram Northern side and trying to overtake appellant insured the lorry bearing Registration No. *TN 30 V 9883* moving ahead of him, the lorry driver had driven the lorry in a rash and negligent manner and dashed behind the first respondent's vehicle. On perusal of the records, it is seen that P.W.1 was trying to overtake the lorry without noticing the on coming vehicle. In the said circumstances, he sustained injury. It is also foremost duty of the lorry driver



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to give way to the over taking vehicle. Further, the driver of the lorry, being heavy vehicle ought to have noticed the overtaking and either slowed down or given way by stopping his the vehicle and avoided the accident and the same was not done by the driver of the lorry. In order to avoid the accident against the on coming vehicle, it is the duty of the first respondent, before overtaking, he should have been cautious and avoided the accident. Hence, he is also responsible for accident. Therefore this court applies theory of contributory negligence and fixes 25% contributory negligence on the part of the injured claimant and 75% contributory negligence on the side of the driver of the lorry. In the result, the entire negligence fixed on lorry driver by the Tribunal is liable to be set aside and modified into 75% and 25%. therefore The appellant insurance company is liable to pay to the extent of 75% compensation only.

11. Discussion on quantum:

So far as the quantum of compensation is concerned, the injured claimant's age was 22 years at the time of accident as per Ex.P.12 fixed the monthly income as Rs.25,000/- as per Ex.P.14. Further, as per the law laid down down by the Hon'ble Supreme Court and also applying the multiplier method, considering the amputation of the leg, grant a sum of Rs.60,48,000/- towards loss of income.



$$(Rs.25,000 + 40\%) = Rs.35,000/- \times 12 \times 18 \times 80/100$$
$$= Rs.60,48,000/-$$

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11.1. The other aspect is concerned, the Tribunal has correctly awarded the compensation under the following heads:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Loss of Income	Rs.60,48,000/-
Artificial Leg	Rs. 3,97,750/-
Loss of pain	Rs. 2,00,000/-
Transport Expenses	Rs. 5,000/-
Healthy Food	Rs. 5,000/-
Total	Rs.66,55,750/-

12. Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimants is re-determined as follows:

<i>Heads</i>	<i>Amount awarded by the Tribunal</i>
Loss of Income	Rs.60,48,000/-
Artificial Leg	Rs. 3,97,750/-
Loss of pain	Rs. 2,00,000/-
Transport Expenses	Rs. 5,000/-
Healthy Food	Rs. 5,000/-
<i>Total Compensation awarded by the Tribunal</i>	Rs.66,55,750/-
Less: 25% negligence on the part of the injured claimant	Rs.16,63,937/-
TOTAL	Rs.49,91,813/-



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13.In the result, the Civil Miscellaneous Appeal is partly allowed in respect of 25% negligence on the part of the injured claimant. The Compensation awarded in M.C.O.P.No.129 of 2017 on the file of the Motor Vehicle Accidents Claims Tribunal/Chief Judicial Magistrate Court, Thoothukudi, dated 09.07.2019 is hereby reduced from **Rs.66,55,750/-** to **Rs.49,91,813/-**. The appellant/Insurance Company is directed to deposit the entire award amount within a period of six weeks from the date of receipt of a copy of this judgment and the claimant is permitted to withdraw the same. If the Insurance Company had deposited the entire award amount, the Insurance Company is permitted to withdraw the remaining amount of 25% of negligence fixed on the side of the injured claimant. No costs. Consequently, the connected Miscellaneous Petition is closed.

[V.B.S.,J.] & [K.K.R.K.,J.]
27.02.2024

akv/sbn

To

1. The Motor Vehicles Accident Claims Tribunal,
Chief Judicial Magistrate Court,
Thoothukudi.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.



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