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C.M.A(MD)No.450 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **23.02.2024**

CORAM:

THE HON'BLE **MRS.JUSTICE V.BHAVANI SUBBAROYAN**

and

THE HON'BLE **MR JUSTICE K.K. RAMAKRISHNAN**

C.M.A(MD)No.450 of 2020

and

C.M.P.(MD)No.5186 of 2020

The Branch Manager,
Oriental Insurance Company Limited,
No.3607/21, 2nd Floor,
Sathyamoorthi Road,
Pudukkottai.

...Appellant

Vs.

1.Minor Viswa,
Rep. Through his Guardian and Mother,
Smt.Radha.

2.K.Viswanathan

...Respondents

PRAYER: Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act, 1988 to set aside the judgment and decree dated 04.12.2019 passed in M.C.O.P.No.206/2015 on the file of the Motor Accident Claims Tribunal / Additional District Judge, E.C. Court, Pudukkottai.

For Appellant : Mr.C.Karthik

For R1 : Mr.M.Karthikeya Venkitachalapathy

For R2 : No appearance



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JUDGMENT

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[Judgment was made by **MRS.V.BHAVANI SUBBAROYAN.J.**]

Being aggrieved over the award passed by the Motor Accident Claims Tribunal / Additional District Judge, E.C. Court, Pudukkottai in M.C.O.P.No.206 of 2015, dated 04.12.2019, the Insurance Company has filed the present appeal.

2.The appellant Insurance Company is the second respondent in M.C.O.P.No.206 of 2015 on the file of the Motor Accident Claims Tribunal / Additional District Judge, E.C. Court, Pudukkottai. The first respondent herein is the claimant. The first respondent filed the claim petition in M.C.O.P.No.206 of 2015, claiming a sum of Rs.50,00,000/- (Rupees Fifty Lakhs only) as compensation for the injuries. By the award, dated 04.12.2019, the Tribunal awarded a sum of Rs.21,29,715/- as compensation along with 7.5% interest to be paid by the appellant insurance company and the second respondent herein.



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WEB COPY 3.Facts of the Case:-

According to the first respondent, on 30.11.2014 at 9.30 am., while the first respondent was going to buy groceries by his cycle near ECR Road State Bank East, a private bus namely Saratha Bus bearing Reg.No.TN 55 AD 9398 coming from the opposite direction was driven at high speed without following the traffic rules by its driver and dashed against him, due to which, he was thrown away and sustained injuries in both thighs, head, his private part and all over the body. He was admitted in the Manamelkudi private Hospital and thereafter, Trichy Kavery Hospital and took treatment for more than 20 days and the operation was conducted in head and thighs and also to drain urine, a tube was inserted and due to that he is unable to continue his studies and is living as vegetable. He had taken treatment and he is now under regular treatment. He was aged about 11 years at the time of accident and studying 6th standard in Aranthangi “Laras” Higher Secondary School. FIR was also registered against the driver of the bus. The accident was happened only due to the rash and negligent driving by the driver of the bus belonging to the second respondent. Therefore, the first respondent filed



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the claim petition, claiming a sum of Rs.50,00,000/- (*Rupees Fifty Lakhs only*) as compensation.

4.The appellant insurance company filed the counter statement and denied all the averments made in the claim petition and contended that the bus was not at all insured with them at the time of the accident. The accident occurred only due to the carelessness of the injured. He also contended that the claimant himself invited the accident and hence, he prayed for dismissal of the claim petition.

5.Before the Tribunal, on the side of the claimant, P.W.1 to P.W.3 were examined and 19 documents were marked as Ex.P1 to P19. On the side of the insurance company and the owner of the bus, neither any witness was examined nor any documents were marked.

6.Finding of the Tribunal:

The Tribunal, considering the pleadings, oral and documentary evidence, especially Ex.P6 and the evidence of P.W.1, and arguments of the counsel for the appellant and claimant held that the accident occurred



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only due to the rash and negligent driving by the driver of the bus and directed the appellant Insurance Company and the second respondent / owner of the vehicle, to pay a sum of Rs.21,29,715/- (Rupees Twenty One Lakhs and Twenty Nine Thousand and Seven Hundred and Fifteen only) as compensation along with 7.5% interest and the following heads:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Permanent disability and Loss of Income	Rs.16,20,000/-
2	Pain and suffering	Rs. 1,00,000/-
3	Nourishment Expenses	Rs. 25,000/-
4	Assistant Expenses	Rs. 50,000/-
5	Lack of comfortable	Rs. 1,00,000/-
6	Medical Expenses	Rs. 1,51,215/-
7	Transport Expenses	Rs. 83,500/-
Total		Rs.21,29,715/-

7. Aggrieved against the said award, dated 04.12.2019, the appellant Insurance Company has filed the present appeal.

8.Submission of the learned counsel for the appellant:

The learned counsel appearing for the appellant insurance company stated that there was no mention about the vehicle bearing Reg.No.TN 55 AD 9398. Originally, the bus bearing Reg.No.TN-55-V-6234 was mentioned in the claim petition. Thereafter, only in an



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amendment petition, the bus bearing Reg.No.TN 55 AD 9398 was mentioned.

8.1.In this aspect, the learned counsel appearing for the appellant insurance company relied on the judgment of the Hon'ble Supreme Court in the case of *Janabai Dinkarrao Ghorpade vs. ICICI Lombord Insurance Company Ltd* reported in *2022 (10) SCC 512*.

8.2.The learned counsel appearing for the appellant insurance company relied upon the document dated 31.02.2013 namely, replacement of vehicle and stated that the disability of the claimant was not proved by the Doctor accordance to law. During his cross examination, the Doctor admitted that there is no certificate issued mentioning the percentage of the disability.

9.Submission of the learned counsel for the Respondent:

The learned counsel for the respondent/claimant submitted that after the investigation the bus number was clearly mentioned. There was no contra evidence adduced on the side of the insurance company. The claimant is leading a miserable life. He is practically living a vegetable life. In the said circumstances, the award amount was less and hence, he seeks for confirmation of the award.



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10. We have heard the learned Counsel appearing for the appellant and the learned counsel appearing for the first respondent and also perused all the materials available on record.

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

11.1. Whether the claimant proved the involvement of the vehicle in accordance with law?

11.2. Whether the learned Tribunal Judge is correct in awarding the compensation of Rs.21,29,715/-?

12. In this case, initially number of the bus was wrongly mentioned. Subsequently, the same was corrected by filing the amendment petition. The said order of the amendment has not been challenged by the appellant insurance company. The investigating agency also found the involvement of the appellant insured vehicle. There was no contra evidence adduced on the side of the insurance company. Apart from that, no counter also filed, for the amendment petition. The inadvertent mistake committed by the counsel can not be held against the injured claimant. The litigant cannot suffer due to the mistake committed by the counsel. Even though



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some mistake was committed in the FIR, relating to the number of the vehicle, the same cannot be taken as material when the eye witness deposed before the Court with correct number of the bus. The Hon'ble Supreme Court in the judgment in the case of **Janabai Dinkarrao Ghorpade vs. ICICI Lombard Insurance Company Ltd.**, reported in **2022 (10) SCC 512**, has held as follows:

“10. We find that the rule of evidence to prove charges in a criminal trial cannot be used while deciding an application under Section 166 of the Motor Vehicles Act, 1988 which is summary in nature. There is no reason to doubt the veracity of the statement of appellant No. 1 who suffered injuries in the accident. The application under the Act has to be decided on the basis of evidence led before it and not on the basis of evidence which should have been or could have been led in a criminal trial. We find that the entire approach of the High Court is clearly not sustainable.”

Therefore, the submission of the learned counsel for the appellant that the vehicle was wrongly mentioned in this case cannot be accepted.



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WEB COPY **13.Discussion on the negligence:**

According to the first respondent, on 30.11.2014 at 9.30 am., while the first respondent was going to buy groceries by his cycle near ECR Road State Bank East, a private bus namely Saratha Bus bearing Reg.No.TN 55 AD 9398 coming from the opposite direction was driven at high speed without following the traffic rules by its driver and dashed against him, due to which, he was thrown away and his thigh bones got fractured. P.W.2 clearly deposed that due to the rash and negligent of the driver, who was driving the bus belonging to the second respondent, the accident happened. His evidence was cogent and trustworthy and nothing was elicited to disbelieve the same and also no contra evidence was adduced. Therefore, the learned Tribunal Judge has correctly fixed the negligence upon the appellant insurance company bus driver. This Court finds no reason to interfere with the said findings. Therefore, this Court concurs with the finding of the learned trial Judge that the driver of the vehicle of the appellant insurance company is responsible for the accident. The appellant insurance company is liable to pay the compensation.



14.Discussion on quantum:

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The injured sustained injuries in both thighs and undergone surgeries. His private part also is seriously injured and hence, a tube has been inserted to drain the urine. It is the evidence of the doctor that they are unable to cure the injuries in the kidney. Apart from that, the doctor assessed the injured and opined that he has sustained permanent disability of 100%. The mother of the injured also clearly deposed that he is in a vegetable state, therefore, the learned tribunal Judge has correctly assessed the entire facts and awarded the just compensation stated below and the same needs no interference.

14.1.Calculation of the amount:

In the monthly income, adding 50% future prospects and applying multiplier 18 for calculating the loss of income of the claimant, it is calculated as follows:-

$$5000 + 50\% (2500) = \text{Rs.}7,500/-$$

$$\text{Rs.}7,500/- \times 12 \times 18 = \text{Rs.}16,20,000/-$$

$$\text{Loss of Income} = \text{Rs.}16,20,000/-$$

14.2. The non pecuniary damages as per the *Pranay Sethi case* is calculated as follows:



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<i>Heads</i>	<i>Amount in Rupees</i>
Pain and suffering	Rs.1,00,000/-
Nourishment Expenses	Rs. 25,000/-
Assistant Expenses	Rs. 50,000/-
Lack of comfortable	Rs.1,00,000/-
Medical Expenses	Rs.1,51,215/-
Transport Expenses	Rs. 83,500/-

14.3. Therefore, we are of the considered view that the compensation awarded by the Tribunal is just and fair and does not require any interference.

15.Conclusion:

For the foregoing reasons, the compensation awarded by the Tribunal to the claimant under various heads are as follows:-

<i>Sl. No.</i>	<i>Heads</i>	<i>Amount in Rupees</i>
1	Permanent disability and Loss of Income	Rs.16,20,000/-
2	Pain and suffering	Rs. 1,00,000/-
3	Nourishment Expenses	Rs. 25,000/-
4	Assistant Expenses	Rs. 50,000/-
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Total		Rs.21,29,715/-



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In view of the above, this Court finds no merit in the contention of the learned counsel appearing for the appellant insurance company.

16. Accordingly, this Civil Miscellaneous Appeal is dismissed and the judgment and award passed by the Motor Accident Claims Tribunal / Additional District Judge, E.C. Court, Pudukkottai in M.C.O.P.No.206 of 2015, dated 04.12.2019 is hereby confirmed. The appellant Insurance Company and the second respondent are directed to deposit the award amount, as passed by the Tribunal, with proportionate accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this order. Further, the Tribunal is directed to deposit the share of the minor claimant in any one of the nationalised banks, as fixed deposit under the cumulative deposit scheme, till the minor attains majority and the mother/guardian of the claimant is permitted to withdraw the interest once in six months directly from the bank. The minor claimant on attaining majority is

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permitted to withdraw his share. No costs. Consequently, connected miscellaneous petition is closed.

(V.B.S.J.,) (K.K.R.K.J.,)
23.02.2024

Index: Yes/No
Internet: Yes/No
sm/sbn

To

1. The Motor Accident Claims Tribunal / Additional District Judge,
E.C. Court, Pudukkottai.
2. The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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and
K.K. RAMAKRISHNAN, J.

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Dated: 23.02.2024