



C.M.A(MD)No.744 of 2006

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.10.2022

Pronounced on : 25.11.2022

CORAM

THE HONOURABLE MRS.JUSTICE **R.THARANI**

C.M.A(MD)No.744 of 2006

Mohammed Yasif @ Mohammed Yasic

...Appellant /petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Tiruppur, Coimbatore District.

2.C.J.Hemanath

3.The Divisional Manager,
M/s.National Insurance Company Ltd.,
3-A North Veli Street,
Madurai – 625 001.

.. respondents / respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, against the judgment and decree dated 22.09.2005, passed in MCOP No.805 of 2002 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Madurai.



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For Appellant : Mr.Khan K.S.M.S.Ibrahim
For R1 : Mr.D.Sivaraman
For R2 & R3 : No Appearance

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in MCOP No.805 of 2002 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Madurai. The appellant herein is the claimant. Respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 15.04.2000, at about 4.45 pm, when the petitioner was travelling in a bus bearing registration number TN 38 819 along the Periyakulam - Theni main road, near G.G.N.Ginning factory, the driver of the bus drove the vehicle in a rash and negligent manner. Another bus bearing registration number TN 60 A 1537, came from the opposite direction in a rash and negligent manner and both the buses dashed against each other. The petitioner sustained injuries. He was taken to Theni NRT Hospital. Then he was admitted in Madurai Government Rajaji Hospital. The petitioner was 23 years old and he was doing tailoring business and was earning Rs.2250/- per



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month. The petitioner could not continue his work. He claims a sum of Rs. 3,00,000/- as compensation.

3. Brief substance of the counter filed by the first respondent is as follows:

It is wrong to state that the driver of the first respondent drove the vehicle in a rash and negligent manner. The driver of the bus bearing registration number TN 38 N 0819, drove the vehicle in a moderate speed. At that time, the area was full of smoke, due to the burning of sugarcane waste in the field, the first respondent driver stationed the vehicle at the extreme left side of the road, it was the second respondent driver who came in a rash and negligent manner came from the opposite direction and dashed against the stationed vehicle. The second respondent driver was responsible for the accident. The driver of the first respondent sustained injuries and he was admitted in hospital. Without examining the driver of the first respondent, a complaint was lodged against the driver of the first respondent. The age, avocation and income of the petitioner are to be proved.



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4.Two witnesses were examined and twelve(12) documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. By fixing liability on both the drivers, the Tribunal awarded a sum of Rs.1,55,000/- as compensation, to be paid by the 1 and 3 respondents.

5.Against the award, the claimant filed this appeal for enhancement of compensation on the following grounds:

The Tribunal failed to consider that the wounds are not yet healed. The Tribunal failed to consider that the appellant suffered multiple fractures and he was bedridden for a prolonged period. The Tribunal failed to consider the evidence of P.W.2 in determining the disability. Though the Doctor has certified the disability at 59%, the injuries are much more than that. The Tribunal ought to have applied multiplier 17 in fixing the loss of income. The Tribunal ought to have awarded Rs.20,000/- towards the shortening of life, Rs.45,000/- towards future medical expenditure, Rs.25,000/- towards loss of expectations, amenities and discomfort. The Tribunal ought to have fixed the the monthly income as Rs.5000/-. The Tribunal ought to have fixed 12% interest for the awarded amount.



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6. On the side of the appellant it is stated that the petitioner travelled as a passenger in a private bus and that bus dashed against a Government bus. The right leg of the petitioner was completely crushed and bend. He was inpatient for a period of three months. After the injury, he could not walk or climb the stairs and attend his work. The Doctor has deposed that there was 2.5 cm shortening of the leg and pray that multiplier method ought to have been followed.

7. On the side of the respondent it is stated that there is no functional disability and there was no need for applying multiplier method.

8. On the side of the appellant it is stated that there is loss of muscles and skin crafting was done in the fingers and that the petitioner need further treatment and that documents to that effect was also filed and that the Court has to consider the future prospects of the petitioner and to apply multiplier method. A judgment of this Court reported in **2016 (2) TN MAC 717** in the case of **National Insurance Company Ltd., Vs Minor. Johnjebhadurai**, is cited, wherein for multiple injuries with amputation of a leg, for 90% disability, the Court has applied multiplier method.



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9.A judgment of the Hon'ble Supreme Court reported in **2020(5) CTC 926** in the case of **Pappu Deo Yadav vs Naresh Kumar and others**, is cited, wherein it is held that "Just compensation" should be given and the claimant who sustained 40% disability is entitled for loss of future expectations.

10.Another judgment of this Court reported in **2021(1) TN MAC 48** in the case of **P.Vairamuthu vs R.Karunanithi**, is cited, wherein this Court has adopted multiplier method for 50% disability.

11.No cross objection or appeal was filed on the side of the respondent. There was head on collusion. The Tribunal has fixed responsibility on both the driver of the vehicles and hence it is decided that the accident has taken place due to the rash and negligent driving of both the bus drivers.

12.The wound certificate of the appellant was marked as Ex.P2, the case sheet was marked as Ex.P3, out patient card was marked as Ex.P4, photographs and negatives were marked as Ex.P5, the disability certificate was marked as Ex.P9, discharge summary was marked as Ex.P10, X-rays were marked as Ex.P11 and Ex.P12. P.W.2 has deposed that the petitioner



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took treatment as inpatient from 15.04.2000 till 25.07.2000. He has deposed that the petitioner sustained injury on the right foot and the toes and the bones are all fractured. There was 2.5 cm, shortening of the leg. It will be difficult for the petitioner to walk and climb the stairs. He fixed the disability as 59%. The Tribunal has awarded Rs.60,000/- as compensation for the disability. Considering the date of accident, it is decided that the amount fixed by the Tribunal is very reasonable.

13.On the side of the appellant it is stated that the appellant was earning Rs.2500/- per month at the time of accident and after considering the future prospects, the Tribunal ought to have awarded compensation calculating the loss of income as Rs.5000/- per month.

14.Considering the injuries sustained by the appellant and considering the period of treatment and rehabilitation, it is decided that the petitioner is entitled to Rs.30,000/- towards temporary loss of income. The Tribunal has awarded Rs.15,000/- towards pain and sufferings, Rs.60,000/- towards future loss of income, mental agony and loss of amenities, Rs.10,000/- towards loss of marriage prospects which are all reasonable.



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Temporary loss of income	- Rs.30,000/-
Pain and sufferings	- Rs.15,000/-
Future loss of income mental agony and loss of amenities	- Rs.60,000/-
Loss of marriage prospects	- Rs.10,000/-
For disability	- Rs.60,000/-
Total	----- - Rs.1,75,000/-

15. Accordingly, this Civil Miscellaneous Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,55,000/- to as Rs.1,75,000/- (Rupees One Lakh Seventy Five Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The respondents 1 and 3 are directed to deposit the enhanced compensation of Rs.87,500/-each (87,500 x 2), (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of MCOP No.805 of 2002 on the file of the Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Madurai, within a period of eight weeks from the date of receipt of a copy of this order.



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(iii) On such deposit being made by the appellant / claimant is permitted to withdraw the entire award amount of Rs.1,75,000/- with proportionate interest.

25.11.2022

Index: Yes / No
Internet : Yes / No

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To

- 1.The Motor Accidents Claims Tribunal, Chief Judicial Magistrate, Madurai.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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