

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 03.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

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C.M.A. (MD) Nos.1478 to 1480 of 2016**and****C.M.P (MD) Nos.12398 to 12400 of 2016****C.M.A (MD) No.1478 of 2016:**

The Managing Director,
State Transport Corporation,
Thiruvalluvar House,
Pallavan Salai,
Chennai.

... Appellant/Respondent

Vs.

Nagarajan

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2016, made in M.C.O.P.No.206 of 2015, by the Motor Accident Claims Tribunal - cum - Special Sub Court, Tirunelveli.

For Appellant	: Mr.P.Prabhakaran
For Respondent	: Mr.R.Jim

C.M.A (MD) No.1479 of 2016:

The Managing Director,
State Transport Corporation,
Thiruvalluvar House,
Pallavan Salai,
Chennai.

... Appellant/Respondent

Vs.

Natarajan

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2016, made in M.C.O.P.No.207 of 2015, by the Motor Accident Claims Tribunal - cum - Special Sub Court, Tirunelveli.

For Appellant	: Mr.P.Prabhakaran
For Respondent	: Mr.R.Jim

**C.M.A(MD) No.1480 of 2016:**

The Managing Director,
State Transport Corporation,
Thiruvalluvar House,
Pallavan Salai,
Chennai.

... Appellant/Respondent

Vs.

Subbiah

... Respondent/Petitioner

PRAYER: Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the judgment and decree dated 29.01.2016, made in M.C.O.P.No.208 of 2015, by the Motor Accident Claims Tribunal - cum - Special Sub Court, Tirunelveli.

For Appellant	: Mr.P.Prabhakaran
For Respondent	: Mr.R.Jim

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed by the appellant-Transport Corporation against the common award passed by the Tribunal fixing the negligence on the part of the driver of the appellant-Transport Corporation bus and awarding various amounts to the respective respondent/claimant.

2. The respondents/claimants were travelling in a motorcycle together on 28.12.2014 on Vagaikulam Main Road near Pattarpuram Junction. At that time, the bus belonging to the appellant-Transport Corporation came behind and hit the motorcycle, resulting in sustaining of injuries by the respective respondent/claimant. Therefore, the claim petitions.

3. On contest and on appreciation of evidence, the Tribunal found that the driver of the appellant-Transport Corporation was negligent and fixed the award amounts.

4. Heard Mr.P.Prabhakaran, learned Counsel for the appellant-Transport Corporation and Mr.R.Jim, learned Counsel for the respective respondent/claimant.

5. Mr.P.Prabhakaran, learned Counsel for the appellant-Transport Corporation would submit that three claimants in the above appeals contrary to law were travelling together in the same motorcycle and that too, in a drunken stage which only caused the



accident and therefore, there is no negligence on the part of the driver of the appellant-Transport Corporation.

6. Alternately, he would submit that at least, 50% contributory negligence has to be fixed on the respective respondent/claimant for three persons having travelled in a motorcycle, by relying upon the judgment of the Division Bench of this Court in **Managing Director, Tamil Nadu State Transport Corporation (Coimbatore Division-I) Limited, Coimbatore v. Abdul Salam reported in (2003) 1 M.L.J. 489.**

7. Another judgment of the Division Bench of this Court in **New India Assurance Co. Ltd. v. E.Ponnurangam** reported in **2013 (1) TN MAC 47 (DB)**, is relied upon by the learned Counsel for the appellant-Transport Corporation to stress the point that the multiplier method is not automatically applied for injury cases.

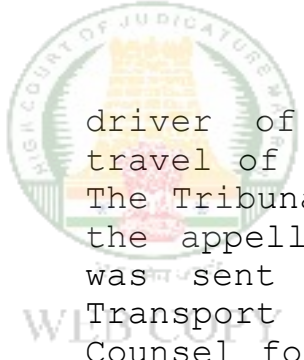
8. On the other hand, Mr.R.Jim, learned Counsel for the respective respondent/claimant would submit that the appellant-Transport Corporation bus came behind and hit the motorcycle and therefore, the Tribunal, based on the evidence, rightly found that the driver of the appellant-Transport Corporation bus was negligent and in fact, he supported the award passed by the Tribunal.

9. It is seen from the records that the appellant-Transport Corporation bus was coming behind the motorcycle and it only hit the backside of the motorcycle, resulting in the accident. The negligence as found by the Tribunal is really on the part of the driver of the appellant-Transport Corporation as he failed to note the motorcycle which was preceding his bus.

10. Assuming for a moment, if the two wheeler was not properly driven, taking note of the same, the driver of the appellant-Transport Corporation bus ought to have slowed down the bus, but, no such precaution was taken by the driver of the appellant-Transport Corporation bus.

11. The Tribunal taking note of the filing of the F.I.R against the driver of the appellant-Transport Corporation bus and the inconsistencies between the pleadings and the evidence of the appellant-Transport Corporation, rightly disbelieved the evidence of R.W.1 and fixed the liability on the driver of the appellant-Transport Corporation.

12. Though the point raised by the learned Counsel for the appellant-Transport Corporation that the travel of three persons in a motorcycle is against law, that alone has not caused the accident and it was due to the negligence on the part of the



driver of the appellant-Transport Corporation. Therefore, the travel of three persons could not be the reason for the accident. The Tribunal also took note of the admission made by the driver of the appellant-Transport Corporation bus in the evidence that he was sent for training after the accident by the appellant-Transport Corporation. Hence, the contention of the learned Counsel for the appellant-Transport Corporation in this regard is rejected.

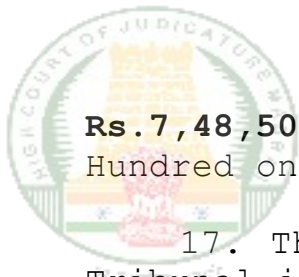
C.M.A(MD)No.1478 of 2016:

13. Insofar as the quantum in C.M.A.(MD)No.1478 of 2016 is concerned, the respondent/claimant, aged 32 years, was a mason. He suffered a fracture in the left hand and distortion of muscles and three nerves in the right hand were affected and there was a blood clot in the chest and therefore, by having a hole, the blood was sucked out from the chest. Due to that, the strength and movement of the left hand has been restricted and he cannot raise beyond the shoulder. Moreover, the left hand lost sensation, resulting in loss of gripness in the hand and therefore, based on the evidence of P.W.6 - Doctor and as per Ex.P.2 - Discharge Summary (Nagarajan) and Ex.P.14 - Disability Certificate (Nagarajan) and other medical records, the Tribunal rightly determined the disability at 65%. Due to loss of sensation in the left hand and loss of gripness and restriction of movements, the respondent/claimant could not carry on his mason work and therefore, there would be functional disability, resulting in loss of income.

14. In view of that, the Tribunal rightly applied the multiplier method by taking a sum of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) as monthly income and applied the multiplier '15' as the aged of the respondent/claimant is 32 years and determined the compensation for the partial permanent disability at **Rs.5,26,500/-** (Rupees Five Lakhs Twenty Six Thousand and Five Hundred only) [Rs.4,500/- X 12 X 15 X 65/100].

15. Ex.P.2 - Discharge Summary would show that the respondent/claimant was admitted in the hospital from 28.12.2014 to 16.02.2015. Therefore, the Tribunal rightly awarded a sum of **Rs.27,000/-** (Rupees Twenty Seven Thousand only) for loss of income for six months at the rate of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) per month.

16. Similarly, the amounts awarded under the other heads, viz., a sum of **Rs.75,000/-** (Rupees Seventy Five Thousand only) towards pain and sufferings; a sum of **Rs.1,00,000/-** (Rupees One Lakh only) towards future loss of amenities and a sum of **Rs.20,000/-** (Rupees Twenty Thousand only) towards attendant charges are all reasonable and therefore, the award of



Rs. 7,48,500/- (Rupees Seven Lakhs Forty Eight Thousand and Five Hundred only) is confirmed.

17. The interest at the rate of 9% per annum awarded by the Tribunal is on the higher side and the same is reduced to 7.5% per annum.

C.M.A(MD)No.1479 of 2016:

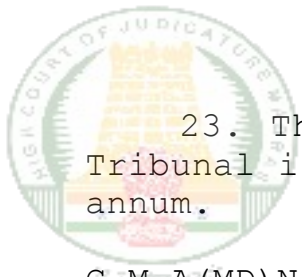
18. As far as the quantum in C.M.A.(MD)No.1479 of 2016 is concerned, the respondent/claimant, aged 28 years, was a mason. He sustained a fracture of left collar bone and rib bones 2 and 3 got fractured and it resulted in I.C.D. surgery. Further, for the fracture in the collar bone, the respondent/claimant was operated and wires and screw have been fixed. It is also proved by Ex.P.6 - Discharge Summary (Natarajan) and P.W.6 - Doctor through his oral evidence. Further, the pain is suffered by the respondent/claimant in the left chest and in the left hand. Moreover, there is a restriction in the movement of left hand and the left chest, resulting in pain. Therefore, the respondent/claimant is unable to raise his left hand above the shoulder.

19. In view of that, the Tribunal, based on the medical records and evidence of P.W.6 - Doctor, rightly determined the disability at 36%.

20. Relying upon the judgment of this Court in **National Insurance Company Limited v. G.Ramesh and another** reported in **2013 (2) TN MAC 583**, the Tribunal awarded a sum of Rs.3,000/- (Rupees Three Thousand only) for 1% disability and accordingly, a sum of **Rs.1,08,000/-** (Rupees One Lakh and Eight Thousand only) [36 X Rs.3,000/-] was rightly awarded by the Tribunal for 36% disability.

21. Since the respondent/claimant was taking treatment for three months, a sum of **Rs.13,500/-** (Rupees Thirteen Thousand and Five Hundred only) at the rate of Rs.4,500/- (Rupees Four Thousand and Five Hundred only) as monthly income, was rightly awarded by the Tribunal towards loss of income during the treatment period.

22. Similarly, the amounts awarded under the other heads, viz., a sum of **Rs.10,000/-** (Rupees Ten Thousand only) towards attendant charges; a sum of **Rs.15,000/-** (Rupees Fifteen Thousand only) towards pain and sufferings; a sum of **Rs.25,000/-** (Rupees Twenty Five Thousand only) towards loss of amenities and a sum of **Rs.76,500/-** (Rupees Seventy Six Thousand and Five Hundred only) towards medical expenses, are all reasonable and therefore, the award of **Rs.2,48,000/-** (Rupees Two Lakhs and Forty Eight Thousand only) is confirmed.



23. The interest at the rate of 9% per annum awarded by the Tribunal is on the higher side and the same is reduced to 7.5% per annum.

C.M.A(MD)No.1480 of 2016:

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24. As far as the quantum in C.M.A(MD)No.1480 of 2016 is concerned, the respondent/claimant suffered the following injuries:

- (a) Abrasion to an extent of 7 X 6 cm in the left shoulder;
- (b) Abrasion to an extent of 3 X 2 cm in the left forearm;
- (c) Abrasion to an extent of 6 X 2 cm in the left knee; and
- (d) Abrasion to an extent of 4 X 1 cm in the right knee.

and therefore, the Tribunal rightly awarded a sum of Rs.8,000/- (Rupees Eight Thousand only) for the aforesaid injuries sustained by the respondent/claimant.

25. Similarly, the amounts awarded under the other heads, viz., a sum of **Rs.2,000/-** (Rupees Two Thousand only) towards loss of income during the treatment period; a sum of **Rs.3,000/-** (Rupees Three Thousand only) towards attendant charges and a sum of **Rs.6,000/-** (Rupees Six Thousand only) towards pain and sufferings, are all reasonable and therefore, the award of **Rs.19,000/-** (Rupees Nineteen Thousand only) is confirmed.

26. The interest at the rate of 9% per annum awarded by the Tribunal is on the higher side and the same is reduced to 7.5% per annum.

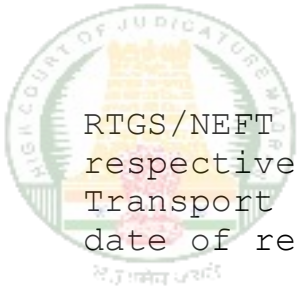
27. In the result,

(i) C.M.A(MD)No.1478 of 2016 is partly allowed and the respondent/claimant (Nagarajan) is entitled to a sum of **Rs.7,48,500/-** (Rupees Seven Lakhs Forty Eight Thousand and Five Hundred only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(ii) C.M.A(MD)No.1479 of 2016 is partly allowed and the respondent/claimant (Natarajan) is entitled to a sum of **Rs.2,48,000/-** (Rupees Two Lakhs and Forty Eight Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iii) C.M.A(MD)No.1480 of 2016 is partly allowed and the respondent/claimant (Subbiah) is entitled to a sum of **Rs.19,000/-** (Rupees Nineteen Thousand only) along with interest at the rate of 7.5% per annum from the date of petition till date of realisation and proportionate costs;

(iv) The appellant-Transport Corporation is directed to transfer the respective award amounts to the respective Personal Savings Bank Account Numbers of the respondents/claimants in these appeals, less the amount already deposited, if any, through



RTGS/NEFT system, after getting the Account Details from the respective respondent/claimant by the Officials of the appellant-Transport Corporation, within a period of eight weeks from the date of receipt of a copy of this judgment; and

(v) In the facts and circumstances of the case, there shall be no order as to costs in all the appeals. Consequently, all the connected civil miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Motor Accident Claims Tribunal - cum - Special Sub Court,
Tirunelveli.

Copy To: The Record Keeper,

V.R.Section,

Madurai Bench of Madras High Court, Madurai.

+3 cc's to M/s.P.Prabhakaran, Advocate in SR.Nos.321 to 323

+3 cc's to M/s.R.Jim, Advocate in SR.No.342 to 344

C.M.A. (MD) Nos.1478 to 1480 of 2016

and

C.M.P (MD) Nos.12398 to 12400 of 2016

03.01.2017

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