



WEB COPY

C.M.A(MD)No.1740 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.12.2020

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A(MD)No.1740 of 2008

and

M.P(MD)No.3 of 2008

and

Cross Appeal (MD)No.64 of 2009

1.Sahul Hameed ...1st Appellant/1st Respondent

2.The Divisional Manager,
The Oriental Insurance Co., Ltd.,
Pandiyan Buildings,
West Veli Street,
Madurai. ... 2nd Appellant/2nd Respondent

Vs.

1.J.Rajaiah ...1st Respondent/Petitioner

2.The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
(Division No.II),
Madurai Road,
Tirunelveli ...2nd Respondent/3rd Respondent

3.Seenivasan ... 3rd Respondent/4th Respondent

4.The United India Insurance Co., Ltd.,
7-A, West Veli Street,
Madurai.
(3rd respondent remained
ex-parte before the
lower Court) ... 4th Respondent/5th respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the Award made in M.C.O.P.No.532 of 1999, dated 01.03.2005 on the file of the Motor Accident Claims Tribunal-cum-Additional District and Sessions Judge, (FTC-II), Madurai.

For Appellants	: Mr.K.Bhaskaran
For R1	: Mr.I.Suthakaran
For R2	: Mr.M.Prakash
For R4	: Mr.J.S.Murali
For R3	: set Ex-parte before Tribunal



Cross Appeal (MD)No.64 of 2009

J.Rajaiah

...Cross Appellant/1st Respondent/
Petitioner

Vs

1.Sahul Hameed

... 1st Respondent/1st Appellant/
1st Respondent

2.The Divisional Manager,
The Oriental Insurance Co., Ltd.,
Pandiyan Buildings,
West Veli Street,
Madurai.

... 2nd Respondent/2nd Appellant/
2nd Respondent

3.The Managing Director,
Tamilnadu State Transport
Corporation Ltd.,
(Division No.II),
Madurai Road,
Tirunelveli

...3rd Respondent/2nd Respondent/
3rd Respondent

4.Seenivasan

... 4th Respondent/3rd Respondent/
4th Respondent

5.The United India Insurance
Co., Ltd.,
7-A, West Veli Street,
Madurai.

... 5th Respondent/4th respondent/
5th respondent

PRAYER: Cross Appeal filed under Order 41 Rule 22 of C.P.C., to modify the award and enhance the compensation for an additional amount of Rs.1,00,000/- in addition to the award passed in M.C.O.P.No.532 of 1999 by the Additional District Judge-cum-Fast Track Judge No.II, Madurai, dated 01.03.2005.

For Cross Appellant : Mr.I.Suthakaran
For R1 & R2 : Mr.K.Bhaskaran
For R3 : Mr.M.Prakash
For R5 : Mr.J.S.Murali
For R4 : set Ex-parte before Tribunal

C O M M O N J U D G M E N T

Cross Appeal (MD)No.64 of 2009

The present appeal is directed against the Judgment and award passed by the Motor Accident Claims Tribunal-cum-Additional District

<https://hcservices.ecourts.gov.in/hcservices/>



and Sessions Judge, (FTC-II), Madurai, in M.C.O.P.No.532 of 1999, dated 01.03.2005. Being dissatisfied with the quantum of compensation, the claimant has filed this Cross-Appeal seeking enhancement of compensation.

2. According to the claimant, on 26.12.1997 at 4.45 p.m. he was travelling in the bus bearing registration No.TN-72-N-0479 from Madurai to Sattur. When the bus was proceeding near Rengammal Oorani bridge, a bus bearing Registration No.TN-59-C-5279 which was coming from the opposite direction in a rash and negligent manner attempted to overtake a tanker lorry bearing registration No.TDE 4899, which was going ahead of the bus, dashed against the Transport Corporation bus. In the impact, the claimant sustained injuries and some of the passengers died on the spot. Alleging that the driver of the bus bearing Registration No.TN-59-C-5279 was responsible for the accident, the claim petition came to be filed.

3. The appellant Insurance Company filed counter disputing the manner of accident, age, avocation and income of the injured and its liability to pay the compensation.

4. On the side of the claimants P.W.1 & P.W.2 were examined and Ex.P1 to Ex.P10 were marked. On the side of the respondents R.W.1 & R.W.2 were examined and Ex.R1 and Ex.R2 were marked.

5. Before the trial court, claimant examined himself as P.W.1 and also produced the copy of FIR, a copy of the charge sheet, accident register and the report of the Motor Vehicle Inspector to substantiate that the accident had taken place due to the negligence of the driver of the bus bearing Registration No.TN-59-C-5279. The trial court, upon consideration of the evidence both oral and documentary held that the driver of the private bus was responsible for the accident and awarded Rs.47,000/- towards compensation with interest at the rate of 9% p.a. Assailing the same, these appeals have been filed.

6. It is urged by the learned counsel appearing for the appellant that arising out of the same accident, several claim petitions have been filed before the different Motor Accident Claims Tribunal and in some cases, negligence was fixed equally on the drivers of the three vehicles, but in the case on hand, the entire negligence has been fixed on the driver of the SNR bus Transport.

7. It is true that a number of claim petitions came to be filed by the persons, who sustained injuries in the accident that had taken place on 26.12.1997. Different Tribunals dealt with the matters and they gave different findings. However, considering the findings and the evidence adduced by the parties before the different Tribunals, this Court in C.M.A(MD)No.2104 of 2003 etc., batch confirmed the finding on negligence as award amount was meagre. So, this Court is not inclined to interfere with the



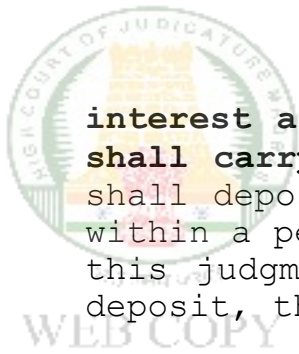
8. Heard the learned counsel for the parties and perused the materials available on record.

9. Insofar as quantum, P.W.1 deposed that he sustained grievous injuries and his right leg knee joint was also broken. He was taken to Rajaji Government Hospital, Madurai and then he was admitted on 27.12.1997 in Tembavani Hospital, Madurai and took treatment till 17.01.1997. Operation was done in his leg. He spent more than Rs.50,000/- for medical expenses. P.W.2 doctor, who treated the claimant, issued Ex.P9 disability certificate after examining the claimant and Ex.P.10 X-ray stating that the claimant sustained 30% of permanent disability. He would further state that due to the injury, the claimant was unable to sit, stand and walk as before the accident. However, the Tribunal assessed the disability at 30% and awarded a compensation of Rs.30,000/- towards disability for applying Rs.1,000/- for per Percentage.

10. It is seen that the Tribunal has awarded Rs.30,000/- towards permanent disability, by applying Rs.1,000/- per percentage. It would be appropriate to order Rs.2,000/- for per Percentage. By applying Rs.2,000/- for one percentage of disability, Rs.60,000/- awarded towards permanent disability. The award under the head of conventional damages, in our opinion, is very low and they have to be enhanced. The Tribunal has not awarded any compensation towards loss of income, so under the head a sum of **Rs.15,000/-** is awarded. The award of the tribunal is modified as under:-

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	For permanent disability(30%) (30%x2,000)	30,000	60,000	enhanced
2.	For pain and sufferings	5,000	25,000	enhanced
3.	For Nutrition	1,000	1,000	confirmed
4.	For medical expenses	11,000	11,000	confirmed
5.	For loss of income	-	15,000	awarded
	Total	Rs.47,000	Rs.1,12,000/-	By enhancing a sum of Rs.65,000/-

11. In the result, this Cross Appeal (MD)No.64 of 2009 is allowed, enhancing the award of the Tribunal from Rs.47,000/- to a sum of **Rs.1,12,000/-**. The award amount of the Tribunal shall carry



interest at the rate of 9% per annum and the enhanced award amount shall carry interest at the rate of 6% p.a. The respondents 1 & 2 shall deposit the enhanced award amount with 6% interest and costs, within a period of eight weeks from the date of receipt of a copy of this judgment, less the amount already deposited, if any. On such deposit, the claimant is entitled to withdraw the entire amount.

12.In the result, the Cross Appeal (MD)No.64 of 2009 is allowed and C.M.A(MD)No.1740 of 2008 is dismissed. No costs. Consequently, connected M.P(MD)No.3 of 2008 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

am

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Additional District and Sessions Judge,
Motor Accident Claims Tribunal-cum-
(FTC-II), Madurai.

2.The Record Keeper, (2 copies)
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.K.Bhaskaran ,Advocate Sr.No.24714
+1cc to Mr.M.Prakash,Advocate Sr.No.24343
+2cc to Mr.J.S.Murali, Advocate Sr.No.25220,25221
+1cc to Mr.K.Sekar, Advocate Sr.No.24329

C.M.A(MD)No.1740 of 2008

and

Cross Appeal (MD)No.64 of 2009

07.12.2020