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In the High Court of Judicature at Madras

Dated: 21.01.2021

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The Honourable Mr. Justice D.KRISHNA KUMAR

C.M.A.No.2770 of 2010

and

M.P.No.1 of 2010

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Salem Division,
12, Ramakrishna Road,
Salem-636 007.

...Appellant/Respondent

..Vs..

V.Sivakumar

... Respondent/Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Chief Judicial Magistrate, (MACT), Salem in M.C.O.P. No.209 of 2007 dated 27.10.2009.

For Appellant : Mr.D.Raghu

Respondent : Not ready
Notice Served

JUDGMENT

Aggrieved by the award passed by the learned Chief Judicial Magistrate, (MACT), Salem in M.C.O.P. No. 209 of 2007 dated 27.10.2009, the Tamil Nadu State Transport Corporation (Salem) Ltd., has filed this appeal.

2. The brief facts of the case are as follows:-

a) On 27.11.2006 at about 7.30 p.m., when the claimant was travelling as a pillion rider in a bicycle at Rasipuram-Namakal road near Muniyappan Koil, the bus belonging to the Transport Corporation bearing Registration No.TN-27-N-0982 which was driven by its driver in a rash and negligent manner dashed behind the cycle. Due to which, the claimant suffered fracture on his left leg and also sustained grievous injuries all over the body. He was admitted and taken treatment in Surya Hospital, Rasipuram. Hence the claimant has filed the claim petition before the Tribunal claiming a sum of Rs.5,50,000/- as compensation for the injuries sustained by him in the accident.



b) Before the Tribunal, P.W.1 & P.W.2 were examined and Exhibits P1 to P6 were marked on the side of the claimant whereas RW1 was examined on the side of the Transport Corporation but no documents were marked on their behalf.

c) After analysing the oral and documentary evidences, the Tribunal came to the conclusion that the accident had occurred only due to the rash and negligent driving of the driver of the Transport Corporation and awarded a sum of Rs.1,88,200/- as compensation to the claimant with interest at the rate of 7.5% p.a. from the date of petition till the date of realisation.

d) The break-up details of the award passed by the Tribunal are as follows:

Serial No.	Heads	Amount (Rs.)
1	Loss of earning capacity due to permanent disability	1,63,200
2	Pain and sufferings	10,000
3	Transportation	5,000
4	Extra Nourishment	5,000
5	Attendant benefits	5,000
	Total	1,88,200

3. Aggrieved over the same, the Transport Corporation has preferred the present appeal.

4. Though sufficient opportunity was granted to the appellant to serve notice on the respondent, they failed to comply with the same. Hence with the consent of the learned counsel for the appellant, the appeal is taken up today for "final disposal".

5. The learned counsel for the appellant submitted that the Tribunal had erred in adopting the multiplier as 17 instead of 16 as the age of the claimant is 35 years at the time of accident. He further submitted that the amount awarded under the other heads are also excessive and therefore pleaded the award passed by the Tribunal requires interference by this Court.

6. Considering the facts and circumstances of the case, this Court is of the view that the award passed by the Tribunal warrants no interference as the amount awarded by the Tribunal under pecuniary and non pecuniary heads are reasonable. However, taking into account the submission made by the learned counsel for the appellant Transport Corporation in respect of the multiplier 17 adopted by the Tribunal, this Court accepts the same as it is not in consonance with the II



Schedule of the Amended MV Act, 1988 and also by the dictum laid down by the Hon'ble Supreme Court in Sarala Verma's case [2009 ACJ 1298 (SC)] and hence by taking into consideration of the age of the claimant as 35 years, fixes the multiplier 16 instead of 17 for arriving at the loss of earning capacity due to permanent disability [24,000 x 16 x 40%], which comes to Rs.1,53,600/-. This Court opines that the amount awarded under the head of pain and sufferings is less taking note of the leg fracture sustained by the claimant in the accident that took place on 27.11.2006 and enhances the same to Rs.15,000/- from Rs.10,000 as against the award passed by the Tribunal. A sum of Rs.5000/- awarded by the Tribunal towards extra nourishment is reduced to Rs.4,600/-. Since no amount has been awarded by the Tribunal towards loss of amenities, this Court grants a sum of Rs.4,600/- under the said head. Except the above said modifications, the amount awarded by the Tribunal under the other heads viz., transportation and attendant benefits remain intact.

7. The break-up details of the modified compensation amount under the various heads are as follows:-

Serial No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Enhanced /Reduced Amount
1	Loss of earning capacity due to permanent disability	1,63,200	1,53,600	9600
2	Pain and sufferings	10,000	15,000	5000
3	Transportation	5,000	5,000	-
4	Extra Nourishment	5,000	5,000	-
5	Attendant benefits	5,000	5,000	-
6	Loss of amenities	-	4,600	4,600
	Total	1,88,200	1,88,200	

8. With the above modifications, this Court confirms the award dated 27.10.2009 passed by the Tribunal in MCOP.No.209 of 2007. Consequently, the Civil Miscellaneous Appeal is disposed of with the aforesaid modifications. The appellant/Transport Corporation is directed to deposit the compensation amount less the amount already deposited if any, with proportionate interest to the credit of MCOP. No. 209 of 2007 before the Chief Judicial Magistrate Court, MACT, Salem,



within a period of 6 weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant respondent is permitted to withdraw the entire/balance of the compensation amount on filing appropriate petition before the Tribunal. Connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

DP

To

The Chief Judicial Magistrate Court,
(The Motor Accident Claims Tribunal)
Salem.

Copy to:

The Record Keeper,
V.R. Section, High Court, Madras.

+1CC to Mr.D.Raghu, Advocate, Sr.No.3734

C.M.A.No.2770 of 2010
and
M.P.No.1 of 2010

CA (CO)
K.RK. (07.09.2021)