



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 26.07.2021	Delivered on: 06.09.2021
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CORAM:

THE HONOURABLE TMT.JUSTICE S.KANNAMMAL

C.M.A.Nos.3164 of 2011 & 3299 of 2017
and
C.M.P.No.20833 of 2017

C.M.A.No.3164 of 2011:

M.Kumar

.. Appellant/Petitioner

Vs.

1.The Managing Director,

Tamil Nadu State Transport Corporation Limited,

Kanchipuram - 2.

..Respondent/Respondent

2.Thiyagarajan

3.United India Insurance Company,

Third Party Cell,

Anna Salai, Chennai - 600 002.

.. Respondents

(R2 & R3 were impleaded as respondents vide order of this Court dated 12.04.2018 made in C.M.P.No.22065 of 2017 in C.M.A.No.3299 of 2017 and C.M.P.No.6038 of 2018 in C.M.A.No.3164 of 2011)

C.M.A.No.3299 of 2017:

The Managing Director,

Tamil Nadu State Transport Corporation Limited,

No.1, Sheikpet Nadu Street,

Vedhachalam Maligai,

Kancheepuram.

.. Appellant/Respondent

Vs.

1.M.Kumar

..Respondent/Petitioner

2.Thiyagarajan



3.United India Insurance Company,
Third Party Cell,
Anna Salai, Chennai - 600 002.

.. Respondents

(R2 & R3 were impleaded as respondents vide order of this Court dated 12.04.2018 made in C.M.P.No.22065 of 2017 in C.M.A.No.3299 of 2017 and C.M.P.No.6038 of 2018 in C.M.A.No.3164 of 2011)

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the Judgment and Decree dated 24.02.2011 made in M.C.O.P.No.5820 of 2004 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

In C.M.A.No.3164 of 2011:

For Appellant : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For R1 : Mr.S.S.Swaminathan

For R3 : Mr.C.Paranthaman

In C.M.A.No.3299 of 2017:

For Appellant : Mr.S.S.Swaminathan

For R1 : Ms.Ramya V.Rao
for Mr.A.N.Viswanatha Rao

For R3 : Mr.C.Paranthaman

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

(The matter is heard through "Video Conferencing/Hybrid mode".)

These Civil Miscellaneous Appeals have been filed against the award of the Tribunal dated 24.02.2011 made in M.C.O.P.No.5820 of 2004 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment. The parties are referred to as per their respective ranks in C.M.A.No.3164 of 2011 for the sake of convenience.



3.The appellant filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 01.05.2004 against the 1st respondent-Transport Corporation.

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4.According to the appellant, on 01.05.2004 at about 15.50 hours, while he was travelling as passenger in the bus bearing Registration No.TN 21 N 0349 belonging to 1st respondent-Transport Corporation at Thenmeli, Kancheepuram District, the driver of the bus drove the same in a rash and negligent manner endangering public safety, suddenly turned the bus to the right side and hit the Tanker Lorry bearing Registration No.TCF 2200, which was coming in the opposite direction and caused the accident. In the accident, the appellant sustained Grade III B Shattered Right Elbow, Fracture SDH m/3 extension fixation, Segmental fracture shaft of Humerus, communitied Fracture distal humerus, communitied of PNX end Ulna, Radial Pulse, Finger armext, Thumbext and multiple injuries all over the body. He was admitted at Government General Hospital, Chennai - 3 on 01.05.2004 and discharged on 04.06.2004 and has taken treatment till filing of the claim petition. Therefore, he filed the above said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him against the 1st respondent-Transport Corporation.

5.The 1st respondent-Transport Corporation filed counter statement and denied all the averments made by the appellant. The 1st respondent denied the manner of accident as alleged by the appellant. According to 1st respondent, on 01.05.2004, the driver of the bus was driving the same with due care and caution by observing the traffic rules from Mahapalipuram to Chengelpet. When the bus was nearing Nemani Curve Road, the driver of the bus saw a Water Tanker Lorry bearing Registration No.TCF 2200, which was coming from the opposite direction in a rash and negligent manner. On seeing the lorry, the driver of the bus swerved the bus to the left side. But, the driver of the lorry dashed on the right side of the bus and caused the accident. Due to this accident, the appellant sustained injuries. Therefore, there is no negligence on the part of the driver of the bus and the accident has occurred only due to the negligence on the part of the driver of the lorry. Immediately after the accident, the driver of the bus gave a complaint to the Police against the driver of the lorry and based on the said complaint, F.I.R. is also registered against the driver of the lorry in Crime No.194 of 2004. This shows that there is no negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation. The driver, owner and insurer of the tanker lorry have to be impleaded as necessary parties in the claim petition. The appellant has filed the present claim petition against the 1st respondent-Transport Corporation only with an intention to



grab money from the Transport Corporation. The appellant has to prove that at the time of accident, he was travelling as passenger in the bus. The 1st respondent-Transport Corporation denied the age, avocation, income, nature of injuries, medical expenses, transportation, period of treatment taken and disability suffered by the appellant. In any event, the quantum of compensation claimed by the appellant is highly excessive and prayed for dismissal of the claim petition.

6. Before the Tribunal, the appellant examined himself as P.W.1, Dr.K.J.Mathiazhagan was examined as P.W.2 and 15 documents were marked as Exs.P1 to P15. The 1st respondent-Transport Corporation examined one Nagarajan, Conductor of the bus as R.W.1 and no document was marked.

7. The Tribunal considering the pleadings, oral and documentary evidence, held that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to 1st respondent-Transport Corporation and directed the 1st respondent-Transport Corporation to pay a sum of Rs.3,41,800/- as compensation to the appellant.

8. To set aside the said award dated 24.02.2011 made in M.C.O.P.No.5820 of 2004, the 1st respondent-Transport Corporation has come out with an appeal in C.M.A.No.3299 of 2017 and not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with an appeal in C.M.A.No.3164 of 2011.

9. The learned counsel appearing for the 1st respondent-Transport Corporation contended that the Tribunal came to a wrong conclusion that the accident has occurred only due to the rash and negligent driving by the driver of the bus belonging to 1st respondent-Transport Corporation. The Tribunal ought to have fixed entire negligence on the part of the driver of the lorry belonging to 2nd respondent when the F.I.R. was registered only against the driver of the lorry. The Tribunal ought not to have applied the decision rendered in the case of non-Identification of vehicle by the Karnataka High Court, whereas, in the present case, the F.I.R. was registered against the driver of the lorry belonging to 2nd respondent. The Tribunal ought to have fixed atleast contributory negligence on the part of the driver, owner and insurer of the tanker lorry. The Tribunal erred in applying multiplier method for awarding compensation towards loss of earning capacity when the appellant has not proved that the disability suffered by him has resulted in loss of earning capacity. The percentage of disability fixed by the Tribunal at 40% is on the higher side. The amounts awarded by the Tribunal towards pain and sufferings and loss of amenities are highly excessive and prayed for setting aside the award passed by the Tribunal and for dismissal of C.M.A.No.3164 of 2011 filed by the appellant.



10.The learned counsel appearing for the appellant contended that in the accident, the appellant sustained Grade III shattered Rt.elbow, fracture SDH m/3 extn.fixation, segmental fracture shaft of humerus, comminuted fracture of distal humerus, comminuted fracture of PNX end ulna, radial nerve palsy, etc. and has taken treatment in the Government General Hospital, Chennai as inpatient from 01.05.2004 to 04.06.2004. He then continued his treatment as outpatient. The Tribunal has not awarded any amount towards mental agony. The Tribunal failed to note the fact that if the appellant has not met with the said accident, he would have worked till 31.03.2035 and earned more amount. Therefore, the Tribunal ought to have granted future prospects and awarded compensation for loss of earning capacity. The Tribunal ought to have fixed the permanent disability of the appellant at 100% instead of 40% as the appellant has lost entire functioning of his right hand. The amounts awarded by the Tribunal for pain and sufferings, medical expenses and loss of amenities are meagre and prayed for enhancement of compensation and for dismissal of C.M.A.No.3299 of 2017 filed by the 1st respondent-Transport Corporation.

11.The learned counsel appearing for the 3rd respondent-Insurance Company contended that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation and there is no negligence on the part of the driver of the lorry belonging to 2nd respondent. The Tribunal considering the entire materials on record, has rightly held that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation and there is no error in the said award. The total compensation awarded by the Tribunal at Rs.3,41,800/- is also not meagre and prayed for dismissal of both the appeals.

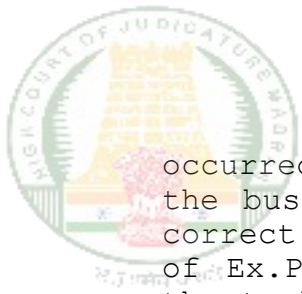
12.Heard the learned counsel appearing for the appellant as well as the learned counsel appearing for the 1st respondent-Transport Corporation and the learned counsel appearing for the 3rd respondent-Insurance Company and perused the entire materials on record.

13.From the claim petition filed by the appellant, it is seen that it is the case of the appellant that on 01.05.2004 at about 15.50 hours, while he was travelling as passenger in the bus bearing Registration No.TN 21 N 0349 belonging to 1st respondent-Transport Corporation at Thenmeli, Kancheepuram District, the driver of the bus drove the same in a rash and negligent manner endangering public safety, suddenly turned the bus to the right side and hit the Tanker Lorry bearing Registration No.TCF 2200, which was coming in the opposite



direction and caused the accident. To prove the said contention, the appellant examined himself as P.W.1. On the other hand, it is the case of the 1st respondent-Transport Corporation that on 01.05.2004, the driver of the bus was driving the same with due care and caution by observing the traffic rules from Mahapalipuram to Chengelpet. When the bus was nearing Nemani Curve Road, the driver of the bus saw a Water Tanker Lorry bearing Registration No.TCF 2200, which was coming from the opposite direction in a rash and negligent manner. On seeing the lorry, the driver of the bus swerved the bus to the left side. But, the driver of the lorry dashed on the right side of the bus and caused the accident. To prove the said contention, the Conductor of the bus was examined as R.W.1. Ex.P6 is the F.I.R. given by the driver of the bus against the driver of the lorry belonging to 2nd respondent.

14.The main contention of the learned counsel appearing for the 1st respondent-Transport Corporation is that the Tribunal ought to have fixed entire negligence on the part of the driver of the tanker lorry belonging to 2nd respondent as the F.I.R. was registered only against the driver of the tanker lorry belonging to 2nd respondent. From the award passed by the Tribunal, it is seen that the appellant as P.W.1 has deposed that the accident has occurred only due to the negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation. On the other hand, the 1st respondent-Transport Corporation has examined the conductor of the bus as R.W.1, who deposed that the accident has occurred due to the negligence on the part of the driver of the tanker lorry and there is no negligence on the part of the driver of the bus. It is the further case of the 1st respondent-Transport Corporation that the F.I.R. was registered only against the driver of the tanker lorry belonging to 2nd respondent based on the complaint given by the driver of the bus. The driver of the bus in the F.I.R. has stated that the driver of the tanker lorry only drove the same in a rash and negligent manner from the opposite direction and embraced on the right side body of the bus and left the place without stopping the lorry. R.W.1 - conductor of the bus also deposed that the accident has occurred only due to the negligence on the part of the driver of the tanker lorry. But, the appellant has deposed that the accident has occurred only due to rash and negligent driving by the driver of the bus belonging to 1st respondent-Transport Corporation. Further, the driver of the tanker lorry left the place without stopping the lorry. This creates suspicion with regard to negligence on the part of the driver of the Tanker Lorry. The accident could have been averted had the driver of the bus drove the same cautiously and also the driver of the Tanker Lorry would have driven the same by minding the vehicles which were coming in the opposite direction. Hence, the finding of the Tribunal that accident has



occurred only due to the negligence on the part of the driver of the bus belonging to 1st respondent-Transport Corporation is not correct. Considering the evidence of P.W.1, R.W.1 and contents of Ex.P6/F.I.R., this Court is of the view that the driver of the tanker lorry also contributed negligence to the accident and 50% negligence each is fixed on the part of the driver of the bus belonging to 1st respondent-Transport Corporation as well on the part of the driver of the Tanker Lorry belonging to 2nd respondent. Therefore, the 1st respondent-Transport Corporation and 3rd respondent-Insurance Company are liable to pay 50% of the award amount each.

15.As far as quantum of compensation is concerned, it is the claim of the appellant in the claim petition that in the accident he sustained Grade III shattered Rt.elbow, fracture SDH m/3 extn.fixation, segmental fracture shaft of humerus, comminuted fracture of distal humerus, comminuted fracture of PNX end ulna, radial nerve palsy and grievous injuries all over the body. To prove the nature of injuries and disability suffered by him, he examined himself as P.W.1 and examined Dr.K.J.Mathiazhagan as P.W.2. P.W.2/Doctor examined the appellant and certified that the appellant suffered 40% permanent disability and issued Ex.P14/disability certificate to that effect. P.W.2/Doctor also deposed that the appellant sustained fracture of right elbow and had underwent four surgeries and has taken treatment in the Hospital as inpatient for 45 days, there is ugly look and the right hand of the appellant is not functioning, shortening of 2 inches, loss of sensitivity, nerve palsy and the right hand is fully affected. P.W.2/Doctor further deposed that the appellant cannot fold the right hand and cannot eat with right hand, there is no chance of reduction of disability and the right hand is fully functionless and it is a permanent disability. It is the further claim of the appellant in the claim petition that at the time of accident, he was aged 27 years, working as Production Assistant at PL Agro Technologigies Limited, Madurantagam Taluk, Kancheepuram District and was earning a sum of Rs.3,000/- per month. To prove the avocation and income, the appellant produced Ex.P7/Appointment Order, Ex.P8/Identity Card, Ex.P9/Salary Slip and Ex.P10/Service Certificate. The appellant also produced Ex.P11/Relieving Order to show that after the accident, he was relieved from the service on the ground of injury. The Tribunal considering the nature of injuries, disability, evidence of P.W.2/Doctor and the nature of work done by the appellant, adopted multiplier method and awarded compensation for 40% loss of earning capacity and the same is proper. P.W.2/Doctor in his evidence has deposed that the right hand of the appellant is completely functionless and the Tribunal has not granted any enhancement towards future prospects. The appellant was aged 27 years at the time of accident. Considering the evidence of P.W.2/Doctor, nature of



injuries, disability, nature of work done by the appellant and the fact that the right hand of the appellant is completely functionless, he is entitled to 40% enhancement towards future prospects. The multiplier '17' applied and the monthly income of the appellant fixed at Rs.3,000/- by the Tribunal are proper. Thus, by granting 40% enhancement towards future prospects, the compensation awarded by the Tribunal for loss of earning capacity is modified to Rs.3,42,720/- {Rs.4,200/- [Rs.3,000/- + Rs.1,200/- (40% of Rs.3,000/-)] X 12 X 17 X 40/100}. The appellant has taken treatment in the Government General Hospital, Chennai as inpatient from 01.05.2004 to 04.06.2004. Considering the nature of injuries and period of treatment taken by the appellant, the amounts awarded by the Tribunal under other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Loss of income	18,000/-	18,000/-	Confirmed
2.	Loss of earning capacity	2,44,800/-	3,42,720/-	Enhanced
3.	Pain and sufferings	30,000/-	30,000/-	Confirmed
4.	Extra nourishment	7,000/-	7,000/-	Confirmed
5.	Medical expenses	5,000/-	5,000/-	Confirmed
6.	Transportation	7,000/-	7,000/-	Confirmed
7.	Attendant charges	5,000/-	5,000/-	Confirmed
8.	Loss of amenities	25,000/-	25,000/-	Confirmed
	Total	Rs.3,41,800/-	Rs.4,39,720/-	Enhanced by Rs.97,920/-

16.The compensation awarded by the Tribunal at Rs.3,41,800/- is hereby enhanced to Rs.4,39,720/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The 1st respondent-Transport Corporation as well as the 3rd respondent-Insurance Company are directed to deposit 50% each of the award amount now determined by this Court, i.e., Rs.2,19,860/- each, along with interest and costs, less the amount already deposited, if any, within a period of twelve weeks from the date of receipt of a copy of



this judgment, to the credit of M.C.O.P.No.5820 of 2004 on the file of the Motor Accident Claims Tribunal, III Small Causes Court, Chennai. On such deposit, the appellant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn by making necessary applications before the Tribunal. The 1st respondent-Transport Corporation is permitted to withdraw the award amount lying in the credit of M.C.O.P.No.5820 of 2004, if the award amount has already been deposited by them.

17.In the result, both the Civil Miscellaneous Appeals are partly allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-I)

//True copy//

Sub Assistant Registrar

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To

1.The III Judge,
Motor Accident Claims Tribunal,
Small Causes Court,
Chennai.

2.The Section Officer,
VR Section,
High Court,
Madras.

+2ccs to Mr.C.Paranthaman, Advocate SR.No.45288

+2ccs to Dr.S.S.Swaminathan, Advocate SR.No.45258, 45259

+2ccs to Ms.Ramya V.Rao, Advocate SR.No.45053

C.M.A.Nos.3164 of 2011 & 3299 of 2017

PVS(CO)
GMY(02/12/2021)