



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

C.M.A.Nos.939 and 940 of 2015

Yegatha @ Yesodha ...Appellant in C.M.A.No.939 of 2015/Petitioner

Johani ...Appellant in C.M.A.No.940 of 2015/Petitioner

Vs.

The Managing Director,
Metropolitan Transport Corporation Ltd.,
Annasalai,
Chennai - 2.

...Respondents in both cases/Respondent

PRAYER in C.M.A.No.939 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.12.2014 and made in M.A.C.T.O.P.No. 1922 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

PRAYER in C.M.A.No.940 of 2015: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the award dated 11.12.2014 and made in M.A.C.T.O.P.No. 1959 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai.

For Appellant : Mr.F.Terry Chellaraja in both cases
For Respondent : Mr.K.Moorthy in both cases

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

The appellants are the claimants in M.C.O.P.No.1922 of 2013 and M.C.O.P.No.1959 of 2013 on the file of the Motor Accidents Claims Tribunal, III Court of Small Causes, Chennai. They have filed the above claim petition under Section 166 of the Motor Vehicles Act and Rule 3 of M.A.C.T.Rules, seeking compensation of Rs.6,00,000/- in M.C.O.P.No.1922 of 2013 and Rs.3,00,000/- restricted to Rs.2,00,000/- in M.C.O.P.No.1959 of 2013 for the injuries sustained by them in a road accident that took place on 07.03.2013.



2. The brief case of the appellants/claimants in both cases are as follows:

On 07.03.2013 at about 09.00 hours while the appellants/petitioners were proceeding in a motor cycle bearing Registration No.TN 01 AD 6005 at Pallavan House near Pallavan Salai, opposite of State Transport Corporation from West to East, at that time a MTC bus bearing Registration No.TN 01 N 4111 was driven by its driver in a rash and negligent manner and hit behind the motor cycle, thereby both of them sustained grievous injuries. The driver of the respondent's Corporation bus was responsible for the accident. The respondent as the owner of the vehicle is liable to pay compensation.

3. The learned Tribunal, after analysing the evidence on record, held that the claimants are entitled for compensation of Rs.1,20,500/- in M.C.O.P.No.1922 of 2013 and a sum of Rs.95,500/- in M.C.O.P.No.1959 of 2013 together with interest at the rate of 7.5% per annum to the appellant/claimant. Not satisfied with the quantum of compensation awarded by the Tribunal, the claimants have filed these present appeals under Section 173 of the Motor Vehicles Act, 1988.

4. The learned counsel appearing for the appellant/claimant in both cases contended that the compensation awarded by the Tribunal under the head 'disability' is too meagre, especially, when the appellant/claimant has sustained laceration over right parietal region, abrasion over right posterior aspect of shoulder and contusion over chin and loss of teeth. He would further contend that the compensation awarded by Tribunal under other heads is also meagre and therefore, it should be enhanced.

5. Per contra, the learned counsel appearing Transport Corporation would contend that at the time of the accident, the bus reached opposite side of SETC building, the MTC driver saw scooty bearing Regn.No.TN 01 AD 6005 came in the same direction towards the left side of the bus. On seeing the high speed of the scooty rider, the MTC driver turned the bus towards the right side of the road with the good intention of allowing the scooty rider to over take the bus freely. But the front tyre of the scooty slipped by a stone since the surface of the road was uneven. In this impact, the scooty rider could not control his balance and grazed the left side body of the MTC bus voluntarily. Due to which, both riders fell down and sustained injuries. The accident had happened only due to the rash and negligent act of the private vehicle and not due to the fault of this respondent drive. The driver of the lorry bearing Registration No.TN 01 N 4111 did not possess valid driving



licence at the time of the alleged accident. The appellant/claimant should prove that the age, monthly income, the nature of injuries, period of treatment, medical expenditure and the percentage of disability suffered. The amount of compensation claimed is highly excessive.

6. Heard both the parties and perused the documentary and oral evidence adduced before the Tribunal.

7. Before the Tribunal, on the side of the claimant in both cases, P.W.1 to P.W.4 were examined and Exhibits P1 to P11 were marked. On behalf of the respondent-Transport Corporation, R.W.1 was examined and no documents were marked.

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8. On re-appreciation of the evidence, this Court holds that based upon Exhibits P8 coupled with P.W.2 evidence, the injury has suffered laceration over right parietal region, abrasion over right posterior aspect of shoulder and contusion over chin and loss of teeth. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured.

9. As such P.W.4 Dr.T.S.Kalkura has been examined and the Disability Certificate issued by him is marked as Exhibits P8 and P11. The Doctor has assessed her disability at 25% for dental injuries. Considering the nature of injury she sustained the assessment of disability by P.W.3.

10. Taking into consideration of the medical evidence of P.W.3-Doctor J.R.R.Thiyagarajan and P.W.4-Doctor T.S.Kalkura and coupled with Exhibits P8 and P11, the Tribunal has fixed the disability at 30% and accordingly, awarded Rs.2,000/- per percentage and awarded a sum of Rs.60,000/-. Taking into consideration the disability suffered by the claimant, this Court enhances the compensation for 'disability' for 30% and the claimant was aged 45 years at the time of the accident Rs.3,000/- is awarded per percentage and accordingly, awards an amount of Rs.90,000/- (Rs.3,000/-x30%).

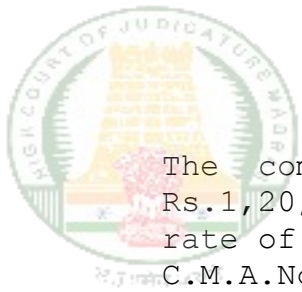
11. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 2 months. Hence, the tribunal has awarded a sum of Rs.10,000/- (Rs.500x2) per percentage towards 'loss of earning'. Since the accident has taken place in the year 2013, this Court has awarded a sum of Rs.12,000/- (Rs.600x2) per percentage towards 'loss of earning'.



12. The compensation awarded under the head 'Transport to Hospital' is enhanced from Rs.5,000/- to Rs.10,000/-. With regard to 'Extra Nourishment' 'Damage to clothing', 'medical expenses', Rs.10,000/- , Rs.500/- and Rs.10,000/- has awarded by the Tribunal and the same are hereby confirmed. With regard to 'pain and sufferings' a sum of Rs.25,000/- is awarded by the tribunal and this Court is reduced to Rs.10,000/-. With regard to 'loss of amenities' a sum of Rs.10,000/- is awarded. Since, the appellant/claimant took treatment at Government General Hospital, a sum of Rs.10,000/- is awarded towards 'attender's charges'.

13. Accordingly, the award of the Tribunal in M.C.O.P.No. 1922 of 2013 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income for 3 months	Rs. 10,000/-	Rs. 12,000/-
2.	Transport to Hospital	Rs. 5,000/-	Rs. 10,000/-
3.	Extra nourishment	Rs. 10,000/-	Rs. 10,000 /-
4.	Damage to clothing	Rs. 500/-	Rs. 500/-
5.	Medical expenses	Rs. 10,000/-	Rs. 10,000/-
6.	Pain and sufferings	Rs. 25,000/-	Rs. 10,000
7.	Disability at 30% at Rs.2000/- per percentage	Rs. 60,000/-	Rs. 90,000/-
8.	Loss of amenities	- ---	Rs. 10,000/-
9.	Attender's charges	-- --	Rs. 10,000/-
	Total	Rs.1,20,500 /-	Rs. 1,62,500/-



The compensation awarded by the Tribunal is enhanced from Rs.1,20,500/- to Rs.1,62,500/- which shall carry interest at the rate of 7.5% per annum.

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14. On re-appreciation of the evidence, this Court holds that based upon Exhibits P9 coupled with P.W.2 evidence, the injury has suffered laceration over right parietal region, abrasion over right posterior aspect of shoulder and contusion over chin and loss of teeth. On perusal of cross examination of P.W.2, he admits that he did not give treatment to the injured.

15. As such P.W.4 Dr.T.S.Kalkura has been examined and the Disability Certificate issued by him is marked as Exhibi9. The Doctor has assessed his disability at 25% for dental injuries. Considering the nature of injury he sustained the assessment of disability by P.W.3.

16. Taking into consideration of the medical evidence of P.W.3-Doctor J.R.R.Thiyagarajan and P.W.4-Doctor T.S.Kalkura and coupled with Exhibit P9, the Tribunal has fixed the disability at 20% and accordingly, awarded Rs.2,000/- per percentage and awarded a sum of Rs.40,000/-. Taking into consideration the disability suffered by the claimant, this Court enhances the compensation for 'disability' for 30% and the claimant was aged 45 years at the time of the accident Rs.3,000/- is awarded per percentage and accordingly, awards an amount of Rs.90,000/- (Rs.3,000/-x30%).

17. Due to the injuries sustained in the accident, the appellant/claimant would have been prevented from attending his work to a maximum of 2 months. Hence, the tribunal has awarded a sum of Rs.15,000/- (Rs.500x3) per percentage towards 'loss of earning'. Since the accident has taken place in the year 2013, this Court has awarded a sum of Rs.18,000/- (Rs.600x3) per percentage towards 'loss of earning'.

18. The compensation awarded under the head 'Transport to Hospital' is enhanced from Rs.5,000/- to Rs.10,000/-. With regard to 'Damage to clothing', 'medical expenses', Rs.500/- and Rs.10,000/- has awarded by the Tribunal and the same are hereby confirmed. With regard to 'extra nourishment' a sum of Rs.5,000/- has been awarded by the Tribunal and the same is enhanced to Rs.10,000/-. With regard to 'pain and sufferings' a sum of Rs.25,000/- is awarded by the tribunal and this Court is reduced to Rs.15,000/-. With regard to 'loss of amenities' a sum of Rs.10,000/- is awarded. Since, the appellant/claimant



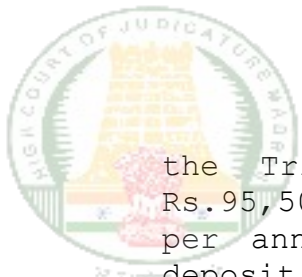
took treatment at Government General Hospital, a sum of Rs.10,000/- is awarded towards 'attender's charges'.

19. Accordingly, the award of the Tribunal in M.C.O.P.No. 1959 of 2013 is modified as follows:

Sl. No.	Particulars	Amount granted by the Tribunal	Amount granted by this Court
1.	Loss of income for 3 months	Rs. 15,000/-	Rs. 18,000/-
2.	Transport to Hospital	Rs. 5,000/-	Rs. 10,000/-
3.	Extra nourishment	Rs. 5,000/-	Rs. 10,000 /-
4.	Damage to clothing	Rs. 500/-	Rs. 500/-
5.	Medical expenses	Rs. 5,000/-	Rs. 5,000/-
6.	Pain and sufferings	Rs. 25,000/-	Rs. 15,000
7.	Disability at 20% at Rs.2000/- per percentage	Rs. 40,000/-	Rs. 90,000/-
8.	Loss of amenities	---	Rs. 10,000/-
9.	Attender's charges	--	Rs. 10,000/-
	Total	Rs. 95,500/-	Rs. 1,68,500/-

The compensation awarded by the Tribunal is enhanced from Rs.95,500/- to Rs.1,68,500/- which shall carry interest at the rate of 7.5% per annum.

20. In the result, the Civil Miscellaneous Appeal in C.M.A.No.939 of 2015 is partly allowed. No costs. The Civil Miscellaneous Appeal in C.M.A.No.940 of 2015 is partly allowed and the compensation awarded by the Tribunal in M.C.O.P.No.1922 of 2013 is enhanced from Rs.1,20,500/- to Rs.1,62,500/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The compensation awarded by



the Tribunal in M.C.O.P.No.1959 of 2013 is enhanced from Rs.95,500/- to Rs.1,68,500/- with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit. The appellants in C.M.A.Nos.939 and 940 of 2015 are directed to pay difference of Court fee, if any, on the enhanced compensation. The respondent/Transport corporation is directed to deposit the enhanced award amount now determined by this Court 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. On such deposit being made, the appellant/claimant are permitted to withdraw the entire amount after following the due process of law.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

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

2. The Section Officer,
V.R.Section,
High Court, Chennai.

+2 CCs to Mr.K.Moorthy, Advocate sr 20215
+2 Ccs to M/s.M. Malar, Advocate sr 19549.

C.M.A.Nos.939 and 940 of 2015

RLD(CO)
SP(23/11/2021)