



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2021

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CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.M.A.Nos.4245 of 2019 & 1086 of 2021
and C.M.P.No.5700 of 2021

C.M.A.No.4245 of 2019

S.Dhanasekaran

... Appellant/Petitioner

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation
(VPM-Divn I) Limited,
3/137, Salamedu,
Vazhudhareddy Post,
Villupuram - 605 602.

... Respondent/Respondent

C.M.A.No.1086 of 2021

The Managing Director,
Tamil Nadu State Transport Corporation
(VPM-Divn I) Limited,
3/137, Salamedu,
Vazhudhareddy Post,
Villupuram - 605 602.

... Appellant/Respondent

Vs.

S.Dhanasekaran

... Respondent /Petitioner

Common Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of the Motor Vehicles Act, 1988, against the decree and judgment dated 07.06.2019 made in M.C.O.P. No.1704 of 2011 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

(In C.M.A.No.4245 of 2019)

For Appellant : Mr.S.Udayakumar

For Respondent : Mr.K.J.Sivakumar



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(In C.M.A.No.1086 of 2021)

For Appellant : Mr.K.J.Sivakumar

For Respondent : Mr.S.Udayakumar

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

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

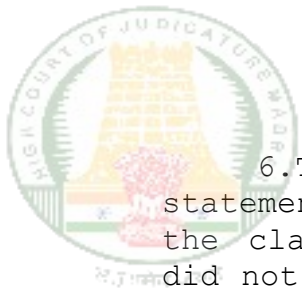
C.M.A. No.4245 of 2019 is filed for enhancement of the compensation and C.M.A. No.1086 of 2021 to set aside the award of the Tribunal dated 07.06.2019 made in M.C.O.P. No.1704 of 2011 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore.

2.Both the appeals arise out of the same accident and same award and hence, they are disposed of by this common judgment.

3.The parties are referred to as per their rank in the claim petition, for the sake of convenience.

4.The claimant filed M.C.O.P. No.1704 of 2011 on the file of the Special Sub Court, (Motor Accident Claims Tribunal), Cuddalore, claiming a sum of Rs.10,00,000/- as compensation for the injuries sustained by him in the accident that took place on 24.05.2011.

5.According to the claimant, on the date of accident, when he was riding a Motorcycle bearing Registration No.PY-01-AX-2779 along with his sister, Dhanalakshmi as pillion, from North to South at moderate speed, keeping extreme left, near Balaji Theatre and opposite to Union Bank, Cuddalore and turned to right to go to the Petrol Bunk, a pedestrian crossed suddenly. As a result, the claimant applied the brake, however he fell down along with her sister. At that time, the driver of the Bus bearing Registration No.TN-32-N-3478 owned by the respondent-Transport Corporation, came from behind at a great speed, in a rash and negligent manner and dashed against the claimant and caused the accident. In the accident, the claimant sustained grievous injuries. The accident occurred only due to rash and negligent driving by driver of the Bus and hence, the claimant filed the claim petition, claiming compensation against the respondent as owner of the offending vehicle.



6.The respondent-Transport Corporation filed counter statement and denied all the averments made by the claimant in the claim petition. According to the respondent, the accident did not occur involving the Bus bearing Registration No.TN-32-N-3478 owned by the Transport Corporation. The sister of the claimant has given statement in the FIR that the Bus whose Registration Number is not known dashed on the claimant and caused the accident. Hence, the respondent is not entitled to pay any compensation to the claimant. In any event, the claimant has to prove that he possessed valid driving license to ply the vehicle at the time of accident. He also has to prove his age, avocation and income, injuries sustained, treatment taken and disability suffered to claim compensation. The total compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

7.Before the Tribunal, the claimant examined himself as P.W.2, examined the pillion rider, eye-witness to the accident as P.W.1, Dr.Venugopal as P.W.3. One Mr.Devit, Liaison Officer as P.W.4 and marked 14 documents as Exs.P1 to P14. The respondent did not let in any oral and documentary evidence.

8.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the respondent and directed the respondent to pay a sum of Rs.3,53,000/- as compensation to the claimant.

9.To set aside the award of the Tribunal dated 07.06.2019 made in M.C.O.P. No.1704 of 2011, the respondent - Transport Corporation has filed C.M.A. No.1086 of 2021 and not being satisfied with the amounts awarded by the Tribunal, the claimant has filed C.M.A.No.4245 of 2019, seeking enhancement of compensation.

10.The learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal failed to note that the accident occurred only due to rash and negligent riding of the Motorcycle by the claimant. The Tribunal ought not to have considered the evidence of P.W.1, which has not been corroborated by any other independent witness. The Tribunal failed to consider the evidence let in by the respondent and erroneously fixed negligence on the driver of the Bus merely relying on the FIR. It is well settled that negligence cannot be fixed relying on the FIR or judgments of the Criminal Court. The Tribunal has to independently consider the evidence let in before it. The learned counsel further



contended that the Tribunal failed to note that no valid document was filed by the claimant to prove his age, avocation and income. The Tribunal ought not to have taken the permanent disability of the claimant as 50%, which is on higher side. The Tribunal erred in awarding a sum of Rs.1,00,000/- towards pain and suffering, which is excessive and prayed for setting aside the award of the Tribunal and dismissal of appeal filed by the claimant in C.M.A.No.4245 of 2019.

11.Per contra, the learned counsel appearing for the claimant contended that the accident occurred only due to rash and negligent driving by driver of the Bus owned by the respondent-Transport Corporation and the Tribunal has rightly fixed liability on the respondent-Transport Corporation. The learned counsel further submitted that in the accident, the claimant suffered crush injury on left foot and compound fracture II and V metatarsals, loss of skin on Dorsum of left foot. He has taken treatment as in-patient at MIOT Hospital, Chennai for a period of 18 days and filed Ex.P16 - discharge summary to prove the same. The Tribunal has not awarded any amount spent by the claimant in MIOT Hospital, Chennai, as per Ex.P16. The claimant suffered 50% permanent disability, as assessed by the Medical Board and hence, could not continue his Fitter Job in the Asian Company at Cuddalore. The Tribunal ought to have adopted multiplier method in awarding compensation towards disability, instead of awarding a sum of Rs.3,000/- per percentage for 50% disability. The Tribunal failed to award future prospects to the claimant. The Tribunal ought to have fixed the minimum wage of Rs.10,000/- per month as notional income of the claimant. The total compensation granted by the Tribunal is meagre and prayed for enhancement of the compensation and dismissal of the appeal filed by the respondent-Transport Corporation in C.M.A.No.1086 of 2021.

12.Heard the learned counsel appearing for the claimant as well as the respondent - Transport Corporation and perused the materials available on record.

13.It is the case of the respondent that when he was riding a Motorcycle along with his sister, Dhanalakshmi in pillion, from North to South at moderate speed, keeping extreme left, near Balaji Theatre and opposite to Union Bank, Cuddalore and turned to right to go to the Petrol Bunk, a pedestrian crossed suddenly. As a result, the claimant applied the brake, however he fell down along with her sister. At that time, the driver of the Bus owned by the respondent-Transport Corporation, came from behind at a great speed, in a rash and negligent manner and



dashed against the claimant and caused the accident. To prove his case, the respondent examined himself as P.W.2 and marked FIR registered against the driver of the Bus as Ex.P1. On the other hand, it is the contention of the appellant/Transport Corporation that the accident occurred only due to rash and negligent riding by the claimant/rider of the Motorcycle. They did not file any document to prove the same. The Tribunal considering all the materials on record in proper perspective, including Ex.P1 - FIR, Ex.P2 - Motor Vehicle Inspector's report and the evidence of P.W.1 to P.W.4, in the absence of any contra evidence to the evidence of P.W.1 and objection raised to the FIR being registered against the driver of the Bus, rightly fixed negligence on the driver of the Bus and directed the respondent to pay the compensation to the claimant. There is no error in the said finding of the Tribunal warranting interference by this Court.

14.As far as quantum of compensation is concerned, in the claim petition, the claimant has contended that at the time of accident, he was working as a ITI (Fitter) in Asian Paints, Cuddalore and was earning a sum of Rs.7,500/- per month. In the accident, he suffered grievous injuries. He examined Orthopaedic Surgeon, Cuddalore as P.W.3, who deposed about the nature of injuries suffered by the claimant. He was referred to the Medical Board. The Medical Board examined the claimant and certified that the claimant suffered 50% disability due to injuries in the left forearm and left knee. It is not the case of the claimant that due to the disability, his income was reduced or he could not do his work as he was doing earlier. The contention of the respondent is only that his future prospects and promotional chances are affected. The respondent has not let in any evidence to show that he lost entire earning capacity and lost job. In view of the same, he is not entitled to compensation towards loss of earning capacity by adopting multiplier method. The Tribunal rightly by giving reason, has adopted percentage method. The accident is of the year 2011. The sum of Rs.1,50,000/- awarded by the Tribunal towards loss of earning capacity, at the rate of Rs.3,000/- per percentage for 50% disability is not meagre.

15.The claimant contended that he has taken treatment as in-patient at the MIOT Hospital, Chennai from 24.05.2011 to 10.06.2011, for a period of 18 days. It is the case of the learned counsel for the claimant that he has produced Ex.P16 - medical bill to show that the claimant has spent a sum of Rs.1,15,834/- towards medical expenses and the Tribunal did not grant the said amount. On a perusal of Ex.P16, it is seen that



the same is only the statement issued by MIOT Hospital with Bill No.CPF2001877 and it is not the receipt for payment of said amount. The claimant has not produced any bills issued by the MIOT Hospital for having paid the said amount to the Hospital and has not given any reason for not producing the said bill and for producing only the statement. The Tribunal considering Ex.P16, rightly rejected the same. There is no error in the said finding of the Tribunal. The Tribunal has not awarded any amount for loss of amenities and damage to clothes. Hence, a sum of Rs.25,000/- is granted for loss of amenities and Rs.2,000/- for damage to clothes. The amount of Rs.1,00,000/- awarded by the Tribunal towards pain and suffering is excessive and hence, the same is reduced to Rs.60,000/-. This Court is of the considered view that the amounts granted 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 earning capacity	1,50,000/-	1,50,000/-	Confirmed
2.	Transportation	25,000/-	25,000/-	Confirmed
3.	Special diet	25,000/-	25,000/-	Confirmed
4.	Pain and sufferings	1,00,000/-	60,000/-	Reduced
5.	Medical bills	8,000/-	8,000/-	Confirmed
6.	Attendant charges	25,000/-	25,000/-	Confirmed
7.	Loss of income	20,000/-	20,000/-	Confirmed
8.	Loss of amenities	-	25,000/-	Granted
9.	Damage to clothes	-	2,000/-	Granted
	Total	3,53,000/-	3,40,000/-	Reduced by Rs.13,000/-



16. In the result, C.M.A.No.1086 of 2021 is partly allowed in respect of the head, pain and sufferings and C.M.A.No.4245 of 2019 is partly allowed in respect of the heads, loss of amenities and damage to clothes. The amount awarded by the Tribunal at Rs.3,53,000/- is modified to Rs.3,40,000/- along with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, 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.1704 of 2011. On such deposit, the claimant is permitted to withdraw the award amount, now determined by this Court, along with interest and costs, after adjusting the amount, if any, already withdrawn, by filing necessary applications before the Tribunal. The respondent-Transport Corporation is permitted to withdraw the excess amount available in the deposit to the credit of M.C.O.P. No.1704 of 2011, if the entire amount has already deposited been by them. It is made clear that if the claimant has already withdrawn the entire award amount, the respondent/Transport corporation is not entitled to recover the same from the claimant. Consequently, connected Miscellaneous Petition is closed. No costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

gsa
To

1.The Special Subordinate Judge,
(Motor Accident Claims Tribunal)
Cuddalore.

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

+1cc to Mr.S.Udayakumar, Advocate Sr.20328

C.M.A.Nos.4245 of 2019 & 1086 of 2021

gmr[col]
srg 13/12/2021