



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**RESERVED ON : 14.12.2020
PRONOUNCED ON : 06.01.2021**

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

C.M.A(MD) No.1700 of 2010

Sendrayaperumal

... Appellant/Petitioner

vs.

Tamil Nadu State Transport Corporation Ltd.,
Rep by its Managing Director,
Erode Division,
Erode.

... Respondent / Respondent

Prayer: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act 1988, against the award and ex-order dated 21.11.2009 made in M.C.O.P.No.94 of 2007 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Periyakulam.

For Appellant	: Mr.T.Sivakumar for Mr.K.K.Ramakrishnan
For Respondent	: Mr.P.Prabhakaran

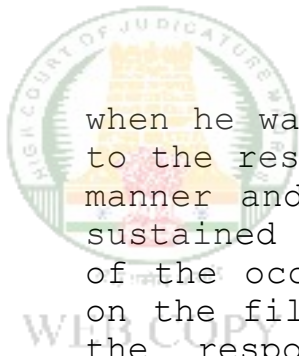
J U D G M E N T

This Civil Miscellaneous Appeal has been filed by the appellant against the order/award dated 21.11.2009, passed by the Motor Accident Claims Tribunal Cum Sub Court, Periyakulam in M.C.O.P.No.94 of 2007.

2. The appellant herein has filed a claim petition in M.C.O.P.No.94 of 2007 on the file of the Motor Accident Claims Tribunal Cum Sub Court, Periyakulam, under Sections 140 and 166-A of the Motor Vehicles Act, claiming a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) for the injuries sustained by him in a motor accident. The Tribunal, by the order/award, dated 21.11.2009, has partly allowed the said claim petition and directed the respondent / Transport Corporation to pay a sum of Rs.44,900/- (Rupees Forty Four Thousand and Nine Hundred Only) with interest at the rate of 7% per annum from the date of filing of petition till the date of deposit (excluding the period of default, if any). Feeling aggrieved, the appellant / claimant has filed the present Civil Miscellaneous Appeal.

3. The case of the claimant before the Tribunal:-

(I) On 11.02.2007, at about 05.15 p.m, in the evening, the appellant was riding his two wheeler in the North - South road and



when he was nearing the place of occurrence, the vehicle belonging to the respondent was driven by its driver in a rash and negligent manner and hit him back. As a result of which, he fell down and sustained injuries on the head and all over the body. In respect of the occurrence, a case in Crime No.110 of 2007 was registered on the file of the Thenkarai Police Station, Periyakulam, against the respondent's vehicle driver. Because of the accidental injuries, he is suffering from head ache and he is not in a position to work as before. Hence, claiming a compensation of Rs.7,00,000/-, he approached the Tribunal.

4. The case of the respondent is that the appellant was not owning proper driving licence. The insurer is a necessary party. The accident took place only because of the negligence on the part of the appellant. He only drove his two wheeler in a rash and negligent manner and hit against the vehicle.

5. In the enquiry, on the side of the appellant / petitioner, two witnesses were examined and 4 documents marked. On the side of the respondent, no witness was examined and no document marked.

6. At the conclusion of enquiry, the Tribunal came to the conclusion that the accident took only due to the rash and negligent driving on the part of the respondent's vehicle driver and with regard to the compensation, it fixed the same as Rs.44,900/- (Rupees Forty Four Thousand and Nine Hundred only). The Tribunal has also directed the respondent / Transport Corporation to pay the interest for the aforesaid amount at the rate of 7% per annum from the date of filing of petition till the date of deposit and also directed the respondent / Transport Corporation to pay the costs to the appellant / claimant.

7. Challenging the quantum of the award passed, the claimant is before this Court.

8. The only point which arises for consideration, is *whether the quantum fixed by the Tribunal is just and fair?*

9. With regard to the negligent aspects, no argument was advanced on the side of the respondent and from the evidence of P.W.1 and from the First Information Report, it is seen that only the respondent's vehicle driver drove the same in a rash and negligent manner and dashed against the appellant behind.

10. There is no evidence on record to show that only the appellant on seeing the vehicle, lost the balance and fell down. So, it cannot be accepted. Ex.P.2 is the Medical Bills, including scan report showing the expenses for treatment. Ex.P.3 is the Scan Report. Ex.P.4 is the Wound Certificate. Even though the medical



treatment bills pertaining to the period, is admitted, the Scan Report is much later only on 14.07.2009, that is, clearly after two years of the accident. The petitioner was examined by the Neurosurgeon attached to VJMS Hospital, Madurai, for assessing disability. In the First Information Report, it is found that after the occurrence, the petitioner was admitted in Theni Private Hospital, namely, Sree Mohan Hospital. Information was sent to the Police Station for recording the statement of the injured appellant. When the police officer visited him on 11.02.2007, the appellant / claimant was found in unconscious state and was taking treatment. So, the statement of the appellant's wife was recorded.

11. So, it is seen that the appellant was admitted in the Private Hospital, subsequent to the occurrence. Ex.P.2, medical examination conducted by the Apollo Hospital, Madurai, has shown that there is a linear fracture in the right high parietal bone. No evidence of Intracranial haemorrhage was noted. So, from the medical investigation, it was found that there was only a fracture on the right parietal bone and no significant abnormality of brain parenchyma was noted. The Neuro Surgeon attached to the Apollo Hospital has given opinion that MRI Scan is found be normal and so, the appellant was advised to take conservative treatment. Even in the discharge summary of Mohan Hospital, Theni, it is found that he was admitted on 11.02.2007 and discharged on 15.02.2007. He was an inpatient only for four days. A cut injury was noted, on the right parietal region and a cut injury on the left upper eye lid portion. So, all these documents would show that the petitioner suffered a fracture on the right parietal region. But, no abnormality was noted in the brain's function. So, the assessment made by P.W.2 was rightly disbelieved by the Tribunal. This Court, by its order dated 10.02.2017, on the representation made by the learned counsel for the respondent, the petitioner was referred to Government Rajaji Hospital, Madurai for assessing disability. Subsequent records would show that there was no orthopedic disability as per the opinion of Ortho Surgeon attached to the Government Rajaji Hospital, who is also the Chairman of Regional Medical Board (MCOP). As per the Neuro Surgeon's opinion, it was noted that there was no history of seizures at the time and he had not taken any antibiotic drugs. He was also subjected to MMSC test. From that, it was found that there was no evidence of neurological problem at the time of the test. Old records were also not produced before him. He was also advised to take CT Scan, to rule out any possibility (ineligible) damaging. As per the letter, dated 22.02.2017, the Ortho Surgeon attached to the Government Rajaji Hospital, advised the appellant / claimant to take CT Scan. But, it appears that the petitioner did not undergo the test. A specific question was put by this Court to the learned counsel for the appellant about the development. He stated that the claimant did not undergo any further test and investigation.



12. So, it is seen that efforts made by this Court to assess the correct disability of the appellant did not yield any result. The appellant was not co-operative as suggested by the experts attached to Regional Medical Board (MCOP), Government Rajaji Hospital, Madurai. So as things stand to-day, only the available documents are to be perused to find out whether any enhancement of compensation is required. The Tribunal came to the conclusion that the assessment of disability by P.W.2 is highly excessive and found that no disability was caused to the appellant and awarded lumpsum compensation of Rs.20,000/- with other customary amounts along with Medical Expenses.

13. Now, the only grievance of the appellant is that when 69% of disability was assessed by the Doctor, as per the judgment in **Syed Sadiq and other Vs Divisional Manager, United India Insurance Co.Ltd.**, reported in **2014 1 TN MAC 459 (SC)**, compensation must be awarded. But, the facts narrated above would show that the appellant has not established his disability properly through medical examination. The assessment made by P.W.2 has been rightly rejected by the Tribunal. Probably a sum of Rs.20,000/- has been awarded for the head injury. The Tribunal, in those days, used to award Rs.10,000/- to Rs.20,000/- for head injury. So, the argument on the side of the appellant that he suffered disability at 69% is not acceptable to this Court also.

14. Regarding interest, the appellant says that interest at the rate of 9% per annum is to be fixed. But here, only at 7% interest per annum was awarded and the same must be enhanced at 9% per annum. Normally, the Motor Accident Claims Tribunal would only award interest 7.5% per annum. So, if at all, only 0.5% interest can be raised. In other respects I find no reason to interfere with the award passed by the Tribunal.

15. In the result, the Civil Miscellaneous Appeal is partly allowed, fixing interest at the rate of 7.5% from the date of petition. In other respects the award is confirmed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



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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

The Subordinate Judge,
Motor Accident Claims Tribunal,
Periyakulam.

Copy to

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

+1 CC to Mr.K.K.RAMAKRISHNAN, Advocate (SR-541[F] dated
07/01/2021)

**JUDGMENT MADE IN
C.M.A(MD) No.1700 of 2010
06.01.2021**

KM (05.02.2021) 5P 5C