



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.M.A. (MD) Nos.173 & 249 of 2010

WEB COPY

M.Subramani ... Appellant in C.M.A.
(MD) No.173 of 2010

T.Ramar ... Appellant in C.M.A.
(MD) No.249 of 2010

-vs-

1.The Managing Director
Tamil Nadu State Transport
Corporation Ltd.,
Kumbakonam Division-II
Periyamelaguparai, Trichy ... Respondent in C.M.A.
(MD) No.173 of 2010 &
1st Respondent in C.M.A.
(MD) No.249 of 2010

2.S.Selvi

3.United India Insurance Co. Ltd.,
52, Katchery Road
A.K.T.Complex
Kallakurichi-606 202 ... Respondents 2 & 3 in
C.M.A. (MD) No.249 of 2010

(R2-Died memo filed)

PRAYER (in C.M.A. (MD) No.173 of 2010): Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 28.02.2007, in M.C.O.P.No.2647 of 2003, on the file of the Principal Sub Judge-cum-Motor Accident Claims Tribunal, Tiruchirapalli.

PRAYER (in C.M.A. (MD) No.249 of 2010): Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the Judgment and Decree, dated 28.02.2007, in M.C.O.P.No.2545 of 2003, on the file of the Principal Sub Judge-cum-Motor Accident Claims Tribunal, Tiruchirapalli

For Appellant : Ms.J.Maria Roseline
(in both C.M.As.)

For Respondent : Mr.M.Prakash
(in C.M.A. (MD) No.173 of 2010)



For Respondents : Mr.M.Prakash for R1
(in C.M.A.(MD) No.249 of 2010) R2 - Died (Memo filed)
Mr.A.S.Mathiyalagan for R3

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

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These civil miscellaneous appeals have been preferred by the claimants being dissatisfied with the common Award, dated 28.02.2007, passed in M.C.O.P.Nos.2647 & 2545 of 2003 respectively, by the Motor Accident Claims Tribunal / Principal Sub Court, Tiruchirapalli.

2. The facts in brief are that this is a case of injury. The claimant - Subramani in M.C.O.P.No.2647 of 2003 was a rider and the claimant - Ramar in M.C.O.P.No.2545 of 2003 was a pillion rider of TVS Suzuki Motorcycle bearing registration No.TN32 W0871 owned by the second respondent and insured with the third respondent - Insurance Company in C.M.A.(MD) No.249 of 2010. According to the claimants, while they were proceeding in the Motorcycle on Thuraiyur - Thampatty Main Road, near Oothukulikadu, a Bus bearing registration No.TN45 N1615 belonging to the respondent - Transport Corporation, which was coming from opposite direction in a rash and negligent manner, hit against the Motorcycle. In the impact, both the rider and the pillion rider were thrown away from the Motorcycle and sustained multiple grievous injuries all over the body. It is further stated that the said Subramani was working as Driver and was earning Rs.300/- per day and the said Ramar was working as Labour in a Borewell Lorry and he was earning Rs.100/- per day. According to the claimants, the accident had occurred only due to the negligent driving of the driver of the Bus and hence, they filed claim petitions claiming compensation of Rs.5,00,000/- and Rs.3,00,000/- respectively.

3. By a common Award, the Tribunal awarded Rs.1,56,585/- in the case of Subramani (i.e.M.C.O.P.No.2647 of 2003) and Rs.42,000/- in the case of Ramar (i.e.M.C.O.P.No.2545 of 2003) along interest at the rate of 7.5% per annum as compensation. Seeking enhancement of the award amount, the present appeals have been filed.

4. Ms.J.Maria Roseline, learned counsel for the claimants, would argue that the amount awarded by the Tribunal is very meagre in all heads and it has to be enhanced considerably.

5. Per contra, Mr.J.Prakash, learned counsel appearing for the respondent - Transport Corporation, made submissions justifying the Award passed by the Tribunal and prayed for dismissal of the appeals.



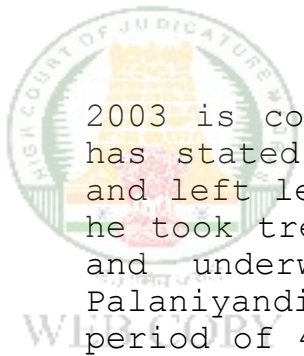
6. Heard the rival submissions and perused the materials available on record.

7. In the instant case, the claimant - Ramar in M.C.O.P.No.2545 of 2003 was examined as P.W.1. He deposed before the Tribunal that in the accident, his left rib got fractured and spleen was also severally damaged. So, he took treatment as inpatient in the Government Hospital, Trichy, for twelve days. In view of the injuries sustained by him in the accident, he could not walk and sleep normally and he had digestion problems also. Ex.P15 - Case Sheet shows that the claimant - Ramar underwent a surgery and his spleen was also removed. P.W.4 - Dr.Ravi assessed his disability at 35%. However, the Tribunal taken the disability as 32% and awarded Rs.32,000/- towards disability. In addition, the Tribunal awarded Rs.2,000/- towards loss of income during treatment period, Rs.1,000/- towards nutrition expenses and Rs.2,000/- towards transport expenses. In toto, the Tribunal awarded Rs.42,000/-. It is seen that the award amount under the above four heads comes to Rs.37,000/-, however, the Tribunal has wrongly awarded Rs.42,000/- instead of Rs.37,000/-.

8. Taking into consideration the facts and circumstances of the case and the disability suffered by the claimant - Ramar, this Court enhances the award amount as detailed below:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount / enhanced / reduced by this Court (Rs.)	Total (Rs.)
1.	Disability	32,000.00	(+) 38,000.00	70,000.00
2.	Pain and Suffering	Nil	(+) 25,000.00	25,000.00
3.	Loss of Amenities	Nil	(+) 20,000.00	20,000.00
4.	Loss of Income during treatment period	2,000.00	(+) 8,000.00	10,000.00
5.	Extra Nourishment	1,000.00	(+) 4,000.00	5,000.00
6.	Transport Expenses	2,000.00	Nil	2,000.00
	Grand Total	37,000.00	(+) 95,000.00	1,32,000.00

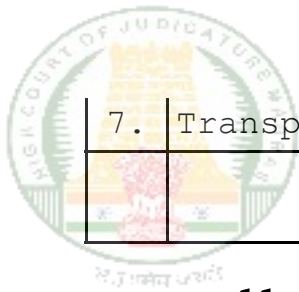
9. Insofar as the claimant Subramani in M.C.O.P.No.2647 of



2003 is concerned, he was examined as P.W.2. In his evidence, he has stated that he sustained injuries on his head, right shoulder and left leg. According to him, he sustained multiple fractures and he took treatment in the Government Hospital, Trichy, for four days and underwent a surgery. Thereafter, he took treatment in Palaniyandi Mudaliyar Memorial Hospital at Salem, as inpatient for a period of 40 days. He would further state that in view of the head injury sustained by him in the accident, he lost his memory and he is not able to carry on his profession as driver as he was doing earlier. He produced medical records to prove his case. P.W.3 - Dr.Muralidharan, who was working at Trichy Government Hospital as Neurologist, has stated that due to the head injury, the claimant - Subramani suffered 27% neural disability. The Disability Certificate was marked as Ex.P7 and the X-Ray was marked Ex.P8. P.W.4 - Dr.Ravi, Specialist in Ortho, has stated that the claimant - Subramani suffered 46% ortho disability. The Tribunal has awarded Rs.73,000/- for the total disability of 73% (i.e.27% neural disability + 46% ortho disability). In addition, the Tribunal awarded Rs.74,585/- towards medical expenses, Rs.2,000/- towards loss of income during treatment period, Rs.5,000/- towards pain and suffering, Rs.1,000/- towards transport expenses and Rs.1,000/- towards nutrition expenses. In toto, the Tribunal awarded Rs.1,56,585/-.

10. Taking into consideration the facts and circumstances of the case and the disability suffered by the claimant - Subramani, this Court enhances the award amount as detailed below:

Sl. No.	Heads	Amount awarded by Tribunal (Rs.)	Amount / enhanced / reduced by this Court (Rs.)	Total (Rs.)
1.	Disability	73,000.00	(+) 73,000.00	1,46,000.00
2.	Medical Expenses	74,585.00	Nil	74,585.00
3.	Loss of Income during treatment period	2,000.00	(+) 8,000.00	10,000.00
4.	Pain and Suffering	5,000.00	(+) 20,000.00	25,000.00
5.	Loss of Amenities	Nil	(+) 25,000.00	25,000.00
6.	Extra Nourishment	1,000.00	(+) 4,000.00	5,000.00



7.	Transport Expenses	1,000.00	Nil	1,000.00
	Grand Total	1,56,585.00	(+) 1,30,000.00	2,86,585.00

11. For the enhanced compensation amount, the claimants are entitled for interest at the rate of 6% per annum from the date of filing the claim petitions till the date of realization. The appellants /claimants are directed to pay the additional Court Fees, if any, within a period of two weeks from the date of receipt of a copy of this Judgment. The respondent - Transport Corporation is directed to deposit the entire award amount with accrued interest and costs, less the amount already deposited, if any, within a period of eight weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellants / claimants are permitted to withdraw their respective award amount, less the amount already withdrawn, if any, together with interest and costs.

12. Accordingly, the civil miscellaneous appeals are partly allowed and the common Award, dated 28.02.2007, passed in M.C.O.P.Nos.2647 & 2545 of 2003 respectively, by the Motor Accident Claims Tribunal / Principal Sub Court, Tiruchirapalli, is modified to the extent as indicated above. No costs.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

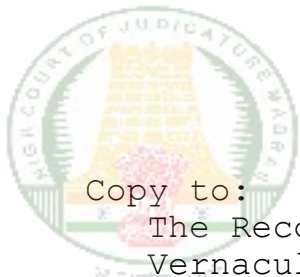
Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the Judgment may be utilized for official purposes, but, ensuring that the copy of the Judgment that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

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To:

The Principal Sub Judge,
Motor Accident Claims Tribunal,
Tiruchirapalli.



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Madurai.(2C)

+1 CC to M/s.J.MARIA ROSELINE, Advocate (SR-11659[F] dated
17/03/2021)

C.M.A. (MD) Nos.173 & 249 of 2010
16.03.2021

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