

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	31.03.2021
Date of Judgment	01.07.2021

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THE HONOURABLE MRS. JUSTICE T. KRISHNAVALLI
C.M.A (MD) No. 709 and 710 of 2013

(1) CMA (MD) No. 709 of 2013 :-

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Coimbatore Division-II),
Chennimalai Road,
Erode-1. : Appellant/Respondent
Vs.

Pandiyan : Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy, made in MCOP No.517 of 2018, dated 07.01.2011.

(2) CMA (MD) No. 710 of 2013 :-

The Managing Director,
Tamil Nadu State Transport Corporation Limited,
(Coimbatore Division-II),
Chennimalai Road,
Erode-1. : Appellant/Respondent
Vs.

Kabilan : Respondent/Petitioner

PRAYER:- Civil Miscellaneous Appeal has been filed under Section 173 of the Motor Vehicles Act, 1988 against the award passed by the Motor Accident Claims Tribunal (3rd Additional Sub Court), Trichy, made in MCOP No.518 of 2018, dated 07.01.2011.

For Appellant : Mr.M.Prakash
For Respondent : Mr.C.Deepak

COMMON JUDGMENT

These Civil Miscellaneous Appeals have been filed challenging the common award passed by the Motor Accident Claims Tribunal (II Additional Sub Court), Trichy, in MCOP Nos.517 and 518 of 2008, dated 07.01.2011.



2.The short facts of the case is that on 15.10.2005 at about 20.30 hours near Thiruchendurai Government High School, in Trichy-Karur Main road, while the claimant in MCOP No.517 of 2008 was travelling as pillion rider in a TVS Victor two wheeler TN-45-AA-4516, while the riding of the two wheeler by one Kabilan, who is the claimant in MCOP No.518 of 2008 and at that time, the Bus TN-33-N-1692 came in a rash and negligent manner and dashed behind the two wheeler and due to which, the rider and the pillion rider of the two wheeler were sustained serious injuries all over the body and immediately, they were taken to KMC Hospital, Trichy, where they were taking treatment as inpatient. The claimant in MCOP No.517 of 2008 filed a claim petition seeking compensation of Rs.10,00,000/- and the claimant in MCOP No.518 of 2008 filed a claim petition seeking compensation of Rs.1,00,000/- for the injuries sustained by them in the accident.

3.In the counter filed by the appellant Transport Corporation, they disputed the manner of accident and their liability to pay compensation.

4.Before the tribunal, on the side of the claimants, 3 witnesses were examined and marked 13 documents. On the side of the appellant Transport Corporation, 1 witness was examined and no document was marked.

5.The Tribunal, on consideration of oral and documentary evidence adduced by the parties, came to the conclusion that the driver of the offending vehicle has caused the accident and awarded compensation of Rs.7,81,555/- in respect of MCOP No.517 of 2008 and Rs.18,655/- in respect of MCOP No.518 of 2008 together with interest @ 7.5% p.a. Aggrieved by the common award passed by the tribunal, the appellant Transport Corporation is before this court with these appeals.

6.Heard both sides and perused the materials available on record.

7.The main contention raised on the side of the appellant in respect of CMA(MD)No.709 of 2013 is that there was no permanent disability for the injured and for arriving loss of income, the tribunal wrongly adopted the multiplier method and there is no document filed on the side of the claimant in MCOP No.517 of 2008 to prove that he was the employee of the Municipal Corporation and earned Rs.6,000/- per month and hence, the compensation awarded by the tribunal is on the higher side and prays that reasonable compensation may be awarded.

<https://hcservices.courts.gov.in/hcservices/> 8.In the case, the claimant was examined as PW1. PW1 deposed that due to the accident, he sustained injuries in his right hand, right leg and there was fracture on his right hand and surgery was



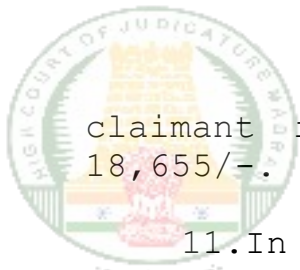
done for the fracture on his right hand and hence, it is not possible for him to do the work as usual and hence, he is entitled to compensation as claimed for.

9. The Doctor, who determined the disability for PW1 was examined as PW3. PW3 deposed that there was fracture in the right hand and only one bone is available in his right hand and hence, it is not possible for the injured to write, eat and comb his hair and determined the disability as 85% partial permanent disability. PW3 has not determined that PW1 had 85% partial permanent disability. PW3 during his cross examination stated that when PW1 took psychotherapy regularly there is a chance in the reduction of disability. PW1 has not filed any document to show that he has taken psychopathy. PW1 deposed that he was working in the Trichy Municipality and earned Rs.6,000/- per month. He has not specifically stated what was his occupation. To prove the occupation, no document was filed by PW1. When there was functional disability for an injured for arraying loss of income, multiplier method can be adopted. Further, there was no permanent disability and functional disability for PW1. Hence for arriving loss of income, the tribunal adopted the multiplier method is not correct. Hence, PW1 is entitled to Rs.3,000/- for 1% disability. Hence, PW1 is entitled to Rs.2,55,000/- for 85% disability. In respect of all other heads, the amount ordered by the tribunal reasonable. Accordingly, the award of the tribunal is re-calculated as follows:-

Head	Award of the Tribunal	Award of this Court
Loss of Income	5,76,000/-	-
Partial Permanent disability of 85%	-	2,55,000/-
Pain and Sufferings	50,000/-	50,000/-
Nutrition	25,000/-	25,000/-
Transport expenses (As per Ex.P5)	8,325/-	8,325/-
Attender Charges	25,000/-	25,000/-
Medical Bills (as per Exs.P3, P4 and P6)	97,230/-	97,230/-
Total	7,81,555/-	4,60,555/-

CMA(MD) No.710 of 2013:-

10. In this case, the claimant was examined as PW2. He deposed that in the alleged accident, he sustained injuries on his right leg, right hand and right chest and face and he was taking treatment in KMC Hospital Trichy and to that effect, he produced Discharge Summary and medical bills, which were marked as Exs.P8 and P9 to P11. Baed on the medical evidence, the tribunal has rightly come to the conclusion that the injuries sustained by the



claimant is simple in nature and awarded compensation of Rs. 18,655/-.

11. In the result, CMA(MD)No.709 of 2013 is **partly allowed**. The award of the tribunal is reduced to Rs.4,60,555/- from Rs.7,81,555/-. CMA(MD)No.710 of 2013 is **dismissed**, confirming the award of the tribunal. The appellant Transport Corporation is directed to deposit the award amount together with interest at the rate of 7.5% p.a from the date of petition till the date of deposit, less the amount already deposited, within a period of six weeks from the date of receipt of copy of this order. On such compliance, both the claimants are entitled to get the amount with accrued interest and costs. No costs.

Sd/-

Assistant Registrar (CO)

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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,

1.The Motor Accident Claims Tribunal/
III Additional Sub Court, Trichy.

2.The Record Keeper,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2 Copies)

Judgement made
in CMA(MD)Nos.709 and 710 of 2013

01.07.2021