

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

RESERVED ON	15.11.2021
DELIVERED ON	29.11.2021

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CORAM :**THE HONOURABLE MRS.JUSTICE S.ANANTHI****C.M.A. (MD) .No.756 of 2021****and****C.M.P. (MD) No.6890 of 2021**

The Managing Director,
T.N.S.T.C., Kanchipuram.

...Appellant/Respondent

Vs.

1. Anand

...1st Respondent/Petitioner

2.The Managing Director,
TNSETC, Trichy.

...2nd Respondent/2nd Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of Motor Vehicles Act, 1988, to set aside the Decree and Judgment, dated 02.03.2020 made in M.C.O.P.No.20 of 2015 on the file of the learned Motor Accident Claims Tribunal/Additional Sub Judge, Pudukkottai and be pleased to dismiss the above claim as against the appellant.

For Appellant :Mr.D.Venkatachalam

For R-1 :Mr.I.Vel Pradeep

For R-2 :Mr.P.M.Vishnu Vardhanan

ORDER

This Civil Miscellaneous Appeal has been filed to set aside the Decree and Judgment, dated 02.03.2020 in M.C.O.P.No.20 of 2015 passed by the learned Motor Accident Claims Tribunal/Additional Sub Judge, Pudukkottai.

2.It is a case of accident, which took place on 30.06.2014, while the claimant travelling from Trichy to Chennai with his friend Manikandan in TN-01-AN-010 belonging to the 2nd respondent herein at about 04.30 a.m., the driver of the first respondent bus bearing Regn. No.TN-21-N-1707 coming from the rear side in a rash and negligent manner and dashed against their bus. Due to the accident, the claimant sustained severe injuries.

3.The claimant has filed a petition in M.C.O.P. No.20 of 2015 on the file of the learned Motor Accident Claims Tribunal/Additional Sub Judge, Pudukkottai, seeking compensation.

4.Before the Tribunal, on the side of the claimant he was examined as P.W.1 and marked nine documents as Exs.P.1 to P.9 and P.W.1 was examined.

<https://hcservices.ecourts.gov.in/hcservices/>

5.The Tribunal, after considering the pleadings, oral and documentary evidences and the arguments of the counsel for the



claimant and the Corporation and also on appreciating the evidences on record, held that the accident occurred only, due to the rash and negligent driving of the driver of the appellant herein and directed the appellant to pay a sum of Rs.22,21,547/-as compensation.

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6.The appellant/Corporation has filed this present appeal.

7. Heard on either side.

8. This Civil Miscellaneous Appeal is filed on the ground that the tribunal has failed to note that there is no oral and documentary evidence adduced by the claimant to prove his age, occupation and income. The tribunal ought not to have fixed the earning capacity as 40% without any proof. The claimant did not produce any oral or documentary evidence to prove the loss of earning capacity. Without any proof, the Tribunal ought not to have adopted multiplier method to calculate the loss of earning capacity. The tribunal while adopting multiplier method has to follow a principle that due to the disability, the entire earning capacity of the claimant would be affected and the same has to be proved by the claimant. Hence, it is not a fit case for adopting multiplier method.

9.The appellant herein/1st respondent has filed this appeal against the order, dated 02.03.2020 in M.C.O.P.No.20 of 2015 passed by the learned Motor Accident Claims Tribunal/Additional Sub Judge, Pudukkottai.

10.The claimant has filed a claim petition in M.C.O.P.No.20 of 2015 for claiming compensation for the injuries sustained in the road accident occurred on 30.06.2014. On the date of accident, when the claimant was travelling in a bus being Regn. No.TN-01-AN-010 which is belongs to the 2nd respondent herein, the driver of the appellant herein drove a bus bearing Regn. No.21-N-1707 in a rash and negligent manner and dashed the bus in which the claimant was travelled.

11.After full-fledged trial, the Tribunal has awarded a sum of Rs.22,21,547/-as compensation, with 7.5% and directed the appellant herein to deposit the entire award amount. Aggrieved by the same, the appellant is before this Court.

12.The appellant has not raised any objection regarding negligence and liability.

13.The learned counsel appearing for the appellant/1st respondent has raised on the grounds of the appeal is that the monthly income fixed by the Tribunal is very high. Without any proof, the Tribunal has fixed amount for loss of earning capacity. Multiplier method also wrongly applied.

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14.The claimant is a Mechanical Engineer and he was working in a Private company. At the time of accident, his age was 23 years.

To prove his qualification, employment and salary he has filed Ex.P.4 to Ex.P.6. As per Ex.P.6/salary certificate, he earned a sum of Rs.15,000/-as monthly income.

15. There is no pleadings that after the accident he lost his job. The Doctor was also not examined to show that he could not do his duty due to the accident. There was fracture on the left femur. On request by him, he was discharged from the hospital on 05.07.2014 and treated as outpatient.

16. Due to the said accident, the claimant has permanent disability at 40%. The claimant has not pleaded anything about the loss of earning capacity. The claimant only contested that he may earn Rs.1 lakh if the accident was not occurred.

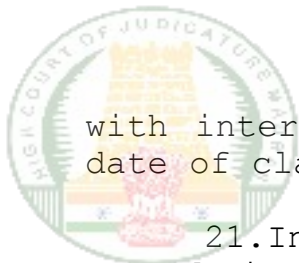
17. So, without any pleadings and evidences, the Tribunal adopting multiplier method for calculating loss of earning capacity.

18. The claimant ought to have examined a witness to prove the present stage and also he is unable to work. He ought to have prove that he lost his job after the accident. Therefore, the claimant is entitled only for permanent disability at 40%.

19. On hearing both sides, this Court is inclined to modify the award amount of compensation passed by the Tribunal.

20. Accordingly, the claimant is entitled for compensation as follows:

S. No.	Description	Amount awarded by		Award confirmed / enhanced / granted
		Tribunal	this Court	
1.	For 40% permanent disability 40x3000	Rs.18,14,400/-	Rs. 1,20,000/-	modified
2.	Loss of income for 3 months (3 x 15000/-	--	Rs. 45,000/-	granted
3.	Medical Expenses	Rs. 3,67,147/-	Rs. 3,67,147/-	confirmed
4.	Transport Expenses	Rs. 5,000 /-	Rs. 10,000/-	enhanced
4.	Extra Nourishment Expenses	Rs. 5,000/-	Rs. 5,000/-	confirmed
5.	Attender Expenses	Rs. 3,000/-	Rs. 3,000/-	confirmed
6.	Pain and Sufferings (Due to fracture)	Rs. 25,000/-	Rs. 1,00,000/-	enhanced
7.	Damages to clothing and articles	Rs. 2,000/-	Rs. 2,000/-	confirmed
Total		Rs.22,21,547/-	Rs. 6,52,147/-	



with interest at 7.5% p.a., as awarded by the Tribunal, from the date of claim petition till the date of realization.

21. In view of the said modification, this Civil Miscellaneous Appeal is partly allowed, and the award amount of Rs.22,21,547/- granted by the learned Motor Accident Claims Tribunal/Additional Subordinate Judge, Pudukkottai, is reduced to Rs.6,52,147/-with 7.5%. The appellant is directed to deposit the award amount, within a period of Four weeks, from the date of receipt of copy of the order. The claimant is permitted to withdraw the entire amount, after depositing. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /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

1. The Motor Accident Claims Tribunal/
Additional Subordinate Judge,
Pudukkottai.

2. The Record Keeper, V.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.D. VENKATACHALAM, Advocate (SR-36448[F] dated
30/11/2021)

C.M.A. (MD) .No.756 of 2021

29.11.2021

RD(20.12.2021) 4P 5C