



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.08.2021

Delivered On : 02.09.2021

CORAM:

THE HONOURABLE **MRS.JUSTICE R.THARANI**

WEB COPY

C.M.A(MD) Nos.359 and 360 of 2014

C.M.A(MD) No.359 of 2014

Radha

... Appellant / Claimant

Vs.

The Managing Director,
State Express Transport Corporation Ltd.,
T.N.Division - I,
Chennai - 2.

... Respondent/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.08.2012 in M.C.O.P.No. 440 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchirappalli.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.Prabhakaran

C.M.A(MD) No.360 of 2014

Madhavan

... Appellant / Claimant

Vs.

The Managing Director,
State Express Transport Corporation Ltd.,
T.N.Division - I,
Chennai - 2.

... Respondent/ Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 17.08.2012 in M.C.O.P.No. 441 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchirappalli.

For Appellant : Mr.N.Sudhagar Nagaraj

For Respondent : Mr.Prabhakaran

COMMON JUDGMENT

C.M.A.(MD)No.359 of 2014 is filed against the award, dated 17.08.2012, in M.C.O.P.No. 440 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchirappalli.



2.C.M.A.(MD)No.360 of 2014 is filed against the award, dated 17.08.2012 in M.C.O.P.No. 441 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchirappalli.

3.Both the appellant herein were the claimants, the respondent herein was the respondent in the original claim petitions. Both the M.C.O.P.Nos.440 and 441 of 2008 were filed before the Sub Court, claiming compensation regarding the same accident and a common judgment was pronounced by the Tribunal.

4.Brief substance of the petitions, in M.C.O.P.Nos.440 and 441 of 2008, is as follows:

On 07.09.2007, both the claimants were travelling in a bus, that belonged to the respondent. At about, 11.30 p.m., the driver of the bus drove the vehicle in a rash and negligent manner and dashed against a lorry bearing Registration No.TN-69-Z-8899. Both the petitioners sustained injuries.The petitioner in M.C.O.P.No.440 of 2008, claimed a sum of Rs.2,50,000/- and the petitioner in M.C.O.P.No.441 of 2008, claimed a sum of Rs.10,00,000/- as compensation.

5.Brief substance of the counter, in M.C.O.P.Nos.440 and 441 of 2008, is as follows:

The Driver of the bus is not responsible for the accident. The lorry driver was responsible for the accident. Petition is bad for non-joinder of necessary parties. Petitioners have to prove their age, income and profession. Claim is excessive.

6.The Tribunal after considering both sides, awarded a sum of Rs.51,000/- as compensation for the petitioner in M.C.O.P.No.440 of 2008 and the Tribunal awarded a sum of Rs.7,53,790/- as compensation for the petitioner in M.C.O.P.No.441 of 2008. Against the award, both the petitioners have approached this Court, by way of these Civil Miscellaneous Appeals, for enhancement of compensation.

C.M.A. (MD)No.359 of 2014:

7.In C.M.A.(MD)No.359 of 2014, on the side of the appellant, it is stated that the Tribunal has fixed the disability at 20%. Instead of awarding Rs.3,000/- per percentage of disability, the Tribunal has awarded only Rs.1,500/- per percentage of disability and the same has to be enhanced. The Tribunal failed to consider Ex.P2, discharge summary and Ex.P3, wound certificate. The Tribunal failed to consider a judgment of the Supreme Court reported in **2011-ACJ-1 [Rajkumar V. Ajaykumar]**, in fixing the compensation for the disability. The tribunal failed to consider the expenses for fixing artificial teeth and prayed the amount to be enhanced.

8.On the side of the respondent, it is stated that the appellant has taken treatment only in the Government hospital that too only for two days. The Doctor, who gave treatment was not



examined. The accident took place in the year 2007. The amount fixed by the Tribunal at the time of accident is reasonable. In fact, the percentage fixed by the Tribunal is excessive and prayed the Appeal to be dismissed.

9. Considering the date of accident, the compensation is fixed at Rs.2,000/- per percentage of disability. Hence, it is decided that the appellant / Radha is entitled for a compensation of Rs.40,000/- for 20% of disability. The Tribunal has awarded a sum of Rs.5,000/- towards medical expenses. The appellant has lost five of her teeth for fixing artificial teeth, the appellant would have spent some amount. Considering the same, the Medical expenses is fixed at Rs.15,000/-. The amount fixed by the Tribunal under the other heads [ie., For pain and sufferings- Rs.5,000/-, For Damages to clothes - Rs.1,000/-, For Transport expenses - Rs.5,000/-, For Extra Nourishment - Rs.5,000/-] are reasonable. Hence, it is decided that the appellant is entitled to Rs.71,000/- as total compensation.

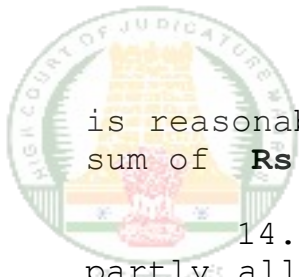
C.M.A. (MD) No.359 of 2014 :

10. In C.M.A. (MD) No.359 of 2014, on the side of the appellant, it is stated that the right ankle of the appellant was amputated and there was an acute kidney injury and two fractures. The appellant worked as a Wiring Contractor and was earning Rs.15,000/-, but, the Tribunal has fixed only Rs.3,000/- p.m., as nominal income. The Tribunal ought to have fixed the nominal income at Rs.4,500/- p.m., as per the judgment of the Hon'ble Supreme Court reported in **2011 (2) TNMAC 190 (SC)**. The Tribunal failed to consider that the appellant is entitled for compensation the permanent disability and for the loss of earning capacity. The age of the appellant is 64 years and multiplier '7' has to be applied. But, the Tribunal applied only multiplier '5', which is very low and prayed the amount to be enhanced.

11. On the side of the appellant, it is stated that the nominal income was fixed at Rs.6,500/- by this Court in the judgment reported in **2014 (1) TNMAC-459**.

12. On the side of the respondent, it is stated that the appellant was only a retired Wire Man, no document was produced to show that he worked as a Wiring Contractor and there was no proof of income. Fixing nominal income at Rs.3,000/- p.m., is reasonable, at the time of accident and no inference is required.

13. Considering the contentions raised by both sides, Rs.4,500/- is fixed as the monthly income and the loss of income is calculated at Rs.3,78,000/- [Rs.4,500/- X 12 X 7 = Rs.3,78,000/-]. Amount fixed by the Tribunal under all other heads [ie., For pain and suffering - Rs.25,000/-, For extra nourishment - Rs.10,000/-, For Transport expenses - Rs.18,338/-, For attendant - Rs.10,000/-, For damages to clothes - Rs.1,000/-, For Medical Bills - Rs.4,86,452/-]



is reasonable. In total, the appellant / Madhavan is entitled for a sum of **Rs.9,28,790/-** and the same is rounded off **Rs.9,29,000/-**.

14. In the result, both the Civil Miscellaneous Appeals are partly allowed. The award, dated 17.08.2012 in M.C.O.P.Nos. 440 and 441 of 2008 on the file of the Motor Accident Claims Tribunal / Sub Court, Tiruchirappalli, is hereby enhanced. The appellant/Radha, in C.M.A.(MD)No.359 of 2014, is entitled to Rs.71,000/- as total compensation. The appellant / Madhavan, in C.M.A.(MD)No.360 of 2014, is entitled to Rs.9,29,000/- as total compensation.

14. The respondent / Transport Corporation is directed to deposit **Rs.71,000/-** in M.C.O.P.No.440 of 2008 and **Rs.9,29,000/-** in M.C.O.P. No.441 of 2008, along with interest at the rate of 7.5% p.a from the date of petitions till the date of deposit with cost within a period of eight weeks from the date of receipt of a copy of this judgment, if not already deposited. On such deposit being made, the appellants in C.M.A.(MD)Nos.359 and 360 of 2012/ injured claimants are permitted to withdraw the entire award amount, after deducting amount, if any, already received by them. The Claimant in both petitions is not entitled for interest for the default period, if there is any default. No Costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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 /
Sub Court, Tiruchirappalli.

2. The Section Officer, (2C)
VR Section,
Madurai Bench of Madras High Court,
Madurai.

+2 CC to M/s.P.PRABHAKARAN, Advocate (SR-27924[F], 27923 dated 02/09/2021)

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



C.M.A(MD)Nos.359 and 360 of 2014

+1 CC to M/s.N.SUDHAGAR NAGARAJ, Advocate (SR-28160[F] dated
03/09/2021)

C.M.A(MD)Nos.359 and 360 of 2014
02.09.2021

WEB COPY

KM(CO)
KB(08.11.2021) 5P 7C