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C.M.A.Nos.362 and 1990 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T.ASHA

C.M.A. Nos.362 and 1990 of 2013

and

M.P. No.1 of 2013

Muthu

... Appellant in C.M.A.No.362 of 2013

vs.

The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.

... Respondent in C.M.A.No.362 of 2013

The Managing Director,
Tamil Nadu State Transport
Corporation,Villupuram.

... Appellant in C.M.A.No.1990 of 2013

vs.

Muthu

... Respondent in C.M.A.No.1990 of 2013

PRAYER in C.M.A.No.362 of 2013: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1986, against the judgment and decree dated 01.02.2011 made in M.A.C.T.O.P.No.550 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Judge, Thiruvannamalai.



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For Appellant : M/s.A.Subadra
in both C.M.A. Nos.

For Respondents : Mr.S.S.Santhosh Kumar
in both C.M.A. Nos.

COMMON JUDGMENT

The claimant as well as the Transport Corporation have filed appeals challenging the award passed by the Motor Accidents Claims Tribunal, Principal Sub-Judge, Tiruvarur in M.C.O.P.No.550 of 2006. The claimant has filed C.M.A.No.362 of 2013 and the Transport Corporation has filed C.M.A.No.1990 of 2013.

2. The facts leading to the filing of these appeals are as follows and the parties are referred to in the same ranking as before the Tribunal.



WEB COPY 3. The petitioner had filed M.C.O.P.No.550 of 2006 seeking a compensation of a sum of Rs.5,00,000/- for the injuries sustained by him in a road accident. It is his case that on 19.07.2005 at around 7 a.m., the petitioner had attempted to board the bus of the respondent /Corporation for proceeding towards Chennai, even before he could fully enter the bus, the driver of the bus had moved the bus, as a result of which he had fallen of the bus and sustained injuries. He would submit that prior to the accident, he was working as a mason and earning a minimum income of Rs.5,000/- per month. By reason of this accident he is unable to continue his work since his leg has become deformed and he has to work with the aid of a walking stick.

4. The Transport Corporation had filed a counter denying the narration of the petitioner with reference to the occurrence of the accident. It is the contention of the respondent/ Corporation that the petitioner had attempted to board a moving bus as a result of which he had fallen of the bus and therefore no negligence can be attributed to the driver of the respondent/ Corporation bus. They had further denied the age, income and



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occupation of the petitioner.

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5. The Tribunal below by its award dated 01.02.2011 had found the negligence squarely on the driver of the Transport Corporation bus and therefore held the Transport Corporation to be liable to compensate the claimant. As regards the quantum of compensation, the Tribunal had taken an income of Rs.3,000/-. Though the appellant had produced Exs.P8 and P10 to show the extent of his disability, the Tribunal has taken only 55% as the disability and awarded a compensation of Rs.3,82,600/-. Aggrieved by the fact that the Tribunal has taken a low monthly income and a lower percentage of disability, the petitioner is before this Court.

6. The appellant has pleaded that the petitioner had tried to board the bus when it had stopped and the driver has started the bus. Further, the FIR has been lodged against the driver of the bus which has not been challenged by them. Therefore, the arguments regarding negligence on the part of the petitioner has to necessarily fail.



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7. Per contra, the counsel appearing for the respondent/ Transport Corporation would submit that the accident had occurred only on account of the negligence on the part of the petitioner who had attempted to board the bus while it was moving. He would further submit that the accident had occurred when the respondent / Transport Corporation's Bus had slowed down to navigate a railway crossing. Therefore, there was no question of bus having stopped to pick up the passengers. Considering the facts that the accident had occurred only on account of the petitioner's negligence, the petitioner should also be mulcted with contributory negligence. He would submit that the compensation amount arrived at by the Tribunal is just and reasonable and it is not required to be enhanced.

8. Heard the counsel on both sides.

9. The Transport Corporation has not challenged the FIR filed against its driver who has been charged with negligence. Further, they have also not been able to prove that the accident had occurred at a level crossing. Therefore, the finding regarding negligence has to be confirmed.



10. A perusal of the Accident Register, Ex.P2, discharge summary, Ex.P5, disability certificate issued to the petitioner, Ex.P8, case sheet issued to the petitioner in Ex.P9 and Ex.P6 photographs would clearly show that on his right leg from the knee below, the petitioner has suffered a severe deformity to the extent that his leg appears to be bowed. It is also noticed by the Tribunal below that he is walking with the assistance of a stick. Ex.P8 which is the disability certificate issued by the Government assesses the disability of the petitioner at 60%. In the light of the above, the Tribunal ought to have taken the percentage of assessment as provided by the Government authority namely 60%. The income definitely requires a revision since the petitioner admittedly is a mason as is evident from Ex.P7 identity card. Therefore, I am of the considered view that the monthly income should be enhanced to a sum of Rs.4,000/-. Therefore, the amount under the head of loss of earning capacity would be Rs.4,000 x 12 x 17 x 60/100 i.e., Rs.4,89,600/-. In all other respects, the award will remain unaltered. Therefore, the Compensation awarded by the Tribunal is reworked as below:



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<i>S.No</i>	<i>Description</i>	<i>Amount awarded by Tribunal</i>	<i>Amount awarded by this Court</i>	<i>Award confirmed or enhanced or granted or reduced</i>
1	Transportation	Rs.2,000/-	Rs.2,000/-	Confirmed
2	Extra nourishment	Rs.2,000/-	Rs.2,000/-	Confirmed
3	Attender charges	Rs.2,000/-	Rs.2,000/-	Confirmed
4	Pain and sufferings	Rs.20,000/-	Rs.20,000/-	Confirmed
5	Mental agony and loss of happiness	Rs.20,000/-	Rs.20,000/-	Confirmed
6	Loss of income	Rs.3,36,600/-	Rs.4,89,600/-	Enhanced
	TOTAL	Rs.3,82,600/-	Rs.5,35,600/-	Enhanced

11. In the result, this Civil Miscellaneous Appeal in C.M.A.No.1990 of 2013 is dismissed and C.M.A.No.362 of 2013 filed by the claimant / petitioner is allowed and the compensation of Rs.3,82,600/- awarded by the Tribunal is hereby Enhanced to a sum of **Rs.5,35,600/-**. Therefore, the respondent / Transport Corporation is directed to deposit the enhanced amount of **Rs.5,35,600/-** to the credit of M.C.O.P.No.550 of 2006 on the file of the Motor Accident Claims Tribunal, Principal Sub-ordinate Judge, Thiruvannamali with interest @ 7.5% per annum from the date of claim



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petition till the date of deposit and costs, less, the amount, if any already deposited, within a period of four weeks from the date of receipt of a copy of this Judgement. On such deposit being made, the claimant is permitted to withdraw the amount in deposit along with interest and costs, after adjusting the amount, if any already withdrawn, by filing necessary application before the Tribunal. The claimant is directed to pay the Court fee for the enhanced compensation amount, if required. The Tribunal below shall not disburse the enhanced amount till such time as the certified copy showing proof of payment of Court fee has been produced by the claimant. No costs. Consequently, the connected miscellaneous petition is closed.

02.12.2022

Index : Yes/No
Speaking / Non-speaking order
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To:

- 1.The Principal Sub-ordinate Judge,
Motor Accident Claims Tribunal,
Thiruvannamali.
- 2.The Managing Director,
Tamil Nadu State Transport Corporation,
Villupuram.
- 3.The Section Officer,
V.R.Section,High Court of Madras,
Chennai.



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P.T. ASHA, J.

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