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C.M.A.Nos.2159 and 3618 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE S.SOUNTHAR**

C.M.A.Nos.2159 and 3618 of 2021
and C.M.P.No.21169 of 2021

In C.M.A.No.2159 of 2021

M.Raghu

... Appellant

Vs.

The Managing Director

Tamil Nadu State Transport Corporation Ltd.

(VPM, Division III), Kancheepuram.

... Respondent

In C.M.A.No.3618 of 2021

The Managing Director

Tamil Nadu State Transport Corporation Ltd.

(VPM, Division III), Kancheepuram.

... Appellant

vs.

M.Raghu

... Respondent



C.M.A.Nos.2159 and 3618 of 2021

Prayer: These Civil Miscellaneous Appeals are filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree dated 09.10.2020 made in M.C.O.P.No.493 of 2018 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

In C.M.A.No.2159 of 2021

For Appellant : Mr.A.A.Venkatesan

For Respondent : Mr.G.Saravanakumar
for Mr.S.Mishra Sathya Seeman
Standing Counsel for TNSTC (VPM) Ltd.

In C.M.A.No.3618 of 2021

For Appellant : Mr.G.Saravanakumar
for Mr.S.Mishra Sathya Seeman
Standing Counsel for TNSTC (VPM) Ltd.

For Respondent : Mr.A.A.Venkatesan

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

C.M.A.No.2159 of 2021 is filed by the claimant for enhancement of compensation granted by the Tribunal in the award dated 09.10.2020 made in M.C.O.P.No.493 of 2018 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.



C.M.A.Nos.2159 and 3618 of 2021

C.M.A.No.3618 of 2021 is filed by the Transport Corporation challenging the award dated 09.10.2020 made in M.C.O.P.No.493 of 2018 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai.

2.Both the appeals are arising out of the same accident and same award and hence, they are disposed of by this common judgment. Parties in these appeals are referred to as per their respective ranks in the claim petition for the sake of convenience.

3.The claimant filed the claim petition in M.C.O.P.No.493 of 2018 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai. He filed the said claim petition claiming a sum of Rs.20,00,000/- as compensation for the injuries sustained by him in the accident that took place on 08.05.2017.

4.According to the claimant, on the date of accident, i.e., on 08.05.2017 at about 2.00 P.M., while he was travelling as a pillion rider in a motorcycle bearing Registration No.TN-20-BF-4113 along Tirupathi Road, from



C.M.A.Nos.2159 and 3618 of 2021

K.K.Chatram to Tiruvallur Road, near Navoor Coot Road, the driver of the bus bearing Registration No.TN-21-W-1490, who was coming in the opposite direction, drove the same in a rash and negligent manner and came to the wrong side of the road, dashed against the motorcycle, in which the claimant travelled as a pillion rider and caused the accident. Due to the accident, the claimant sustained grievous injuries and therefore, he filed the above claim petition claiming compensation against the respondent.

5.The respondent/Transport Corporation filed counter statement denying the averments made in the claim petition and stated that while the driver of the bus was driving the bus at moderate speed from Chennai to Tiruthani, at Kanagammal Chathiram and about to turn on the right hand side curve road, the rider of the motorcycle along with claimant as pillion rider, rode the same in a rash and negligent manner, dashed on the right hand side of the bus, fell down and invited the accident. The rider of the motorcycle did not wear helmet at the time of accident. Mere filing of F.I.R. against the driver of the bus is not substantial piece of evidence to come to the conclusion by the Tribunal that the accident has occurred due to negligence



C.M.A.Nos.2159 and 3618 of 2021

of the driver of the respondent. The rider of the motorcycle is solely responsible for the accident. Therefore, the respondent/Transport Corporation is not liable to pay any compensation to the claimant. In any event, the compensation claimed by the claimant is excessive and prayed for dismissal of the claim petition.

6.Before the Tribunal, the injured claimant examined himself as P.W.1 and 14 documents were marked as Exs.P1 to P14. The respondent/Transport Corporation examined the driver of the bus as R.W.1 and did not file any document. The report of the Medical Board with regard to disability of the claimant was marked as Ex.C1.

7.The Tribunal considering the pleadings, oral and documentary evidence, held that the accident occurred due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation and directed the respondent/Transport Corporation to pay a sum of Rs.17,52,000/- as compensation to the claimant.



C.M.A.Nos.2159 and 3618 of 2021

8. Not being satisfied with the amounts awarded by the Tribunal, the claimant has come out with C.M.A.No.2159 of 2021 seeking enhancement of compensation. Against the said award dated 09.10.2020 made in M.C.O.P.No.493 of 2018, the respondent/Transport Corporation has come out with C.M.A.No.3618 of 2021.

9. The learned counsel appearing for the respondent/Transport Corporation contended that the Tribunal failed to note that the driver of the bus drove the same at moderate speed. The rider of the motorcycle tried to overtake the bus while turning on the right hand side curve near Navoor Koot Road, rode the same in a rash and negligent manner and dashed against the bus. The accident has occurred only due to rash and negligent riding by the rider of the motorcycle. The Tribunal failed to note that the rider of the motorcycle did not wear helmet at the time of accident. The learned counsel further contended that the claimant has not filed any document to prove his avocation and income. In the absence of any material to prove his avocation and income, the Tribunal erred in fixing Rs.11,000/- per month as notional income of the claimant and also granting 10% towards future prospects. The



C.M.A.Nos.2159 and 3618 of 2021

amounts awarded by the Tribunal under different heads are excessive and prayed for allowing the appeal filed by the respondent/Transport Corporation and for dismissal of C.M.A.No.2159 of 2021 filed by the claimant.

10.The learned counsel appearing for the claimant contended that while the claimant was travelling as pillion rider in the motorcycle along K.K.Chatram to Thiruvallur Road, the driver of the bus belonging to the respondent/Transport Corporation drove the same in a rash and negligent manner, dashed on the motorcycle and caused the accident. The claimant has proved the same by examining himself as P.W.1 and marked the F.I.R., which was registered against the driver of the bus as Ex.R1. The Tribunal considering the materials on record, rightly fixed entire negligence on the driver of the bus. The learned counsel further contended that in the accident, the claimant sustained compound fracture in right leg femur, fracture in both bones right leg and also his right side limb was 3 c.m. shortened. The claimant has taken treatment as in-patient in Government Hospital and underwent several surgeries. The claimant is still taking treatment for the injuries as out-patient and the Tribunal ought to have awarded compensation



C.M.A.Nos.2159 and 3618 of 2021

towards future medical expenses. At the time of accident, the claimant was working as a Coolie and was earning a sum of Rs.600/- per day. The Tribunal without considering the same, fixed only a meagre sum of Rs.11,000/- per month as notional income of the claimant. The Tribunal ought to have granted 40% instead of 10% towards future prospects while arriving at compensation towards disability. The total compensation awarded by the Tribunal under different heads are meagre and prayed for enhancement of compensation and dismissal of C.M.A.No.3618 of 2021 filed by the respondent/Transport Corporation.

11.Heard the learned counsel appearing for the claimant as well as the learned counsel appearing for the respondent/Transport Corporation and perused the entire materials on record.

12.From the materials on record, it is seen that it is the case of the claimant that on the date of accident i.e. on 08.05.2017 at 2.00 P.M., while he was travelling as a pillion rider in a motorcycle bearing Registration No.TN-20-BF-4113 from K.K.Chathiram to Tiruvallur Road, along Tirupathi Road,



C.M.A.Nos.2159 and 3618 of 2021

near Navoor Coot Road, the driver of the bus belonging to the respondent/Transport Corporation, who was coming in the opposite direction, drove the same in a rash and negligent manner, came to the wrong side of the road, dashed on the motorcycle in which the claimant travelled as a pillion rider and caused the accident. In the accident, the claimant sustained severe injuries. To substantiate his case, the claimant examined himself as P.W.1 and deposed to that effect and marked the F.I.R., which was registered against the driver of the bus as Ex.R1. On the other hand, it is the case of the respondent/Transport Corporation that place of accident is a curve road and in order to cross the said road before the bus passes, the rider of the motorcycle rode the same in a rash and negligent manner, dashed on the right hand side of the bus and caused the accident. The driver of the bus drove the same at moderate speed. The accident has occurred only due to negligence of the rider of the motorcycle. To substantiate their case, the respondent examined the driver of the bus as R.W.1. In cross-examination of R.W.1, a question was put to him that F.I.R. is registered against him. He answered that he does not know. The Tribunal considering his answer, evidence of P.W.1 and F.I.R., held that accident has occurred due to rash and negligent



C.M.A.Nos.2159 and 3618 of 2021

driving by R.W.1/driver of the bus. The respondent to prove their case, did not lodge any complaint with Police against the rider of the motorcycle. In addition to that, the respondent also has not taken any steps for filing objection to the F.I.R., which was registered against their employee. Considering all the above materials, we are of the opinion that finding of the Tribunal that accident has occurred only due to rash and negligent driving by the driver of the bus belonging to the respondent/Transport Corporation is proper and valid and does not warrant any interference by this Court.

13.As far as quantum of compensation is concerned, the claimant has stated that at the time of accident, he was a Coolie and was earning a sum of Rs.600/- per day and in a month, he was getting a sum of Rs.18,000/- as income. He has not filed any document or examined any witness to substantiate the same. In the absence of any materials, the Tribunal fixed a sum of Rs.11,000/- per month as notional income of the claimant. The income so fixed is meagre. Considering the age, date of accident and avocation of the claimant, we are of the opinion that it would be just and proper to fix a sum of Rs.12,500/- per month as notional income of the claimant. The Tribunal



C.M.A.Nos.2159 and 3618 of 2021

fixed age of the claimant as 32 years as per Ex.P13/Aadhar card of the claimant and granted 10% enhancement towards future prospects, which is not correct. As per the judgment of the Hon'ble Apex Court reported in **2017(2)TNMAC 609 (SC) (National Insurance Company v. Pranay Sethi)**, the claimant is entitled to 40% enhancement towards future prospects.

13(i).The Regional Medical Board, Government Kilpauk Medical College Hospital, Chennai, examined the claimant and certified that claimant has suffered 71% disability. The said disability certificate was marked as Ex.C1. As per Ex.C1, the claimant has suffered following disability:

“Post-traumatic sequelae of Right lower limb due to (R) lateral condyle fracture (R) both bone fracture due to RTA with malunion (R)”

The said disability assessed by the Medical Board is for part of the body. The claimant suffered following injuries as per Ex.P10/discharge summary:

“Compound fracture in right leg femur and fracture in both bones in right leg and also right side limb 3 c.m. shortened.”



C.M.A.Nos.2159 and 3618 of 2021

The claimant has not let in any evidence to show that he cannot do any work.

In the absence of any document with regard to loss of earning capacity, the Tribunal granted compensation towards disability by adopting multiplier method by fixing disability at 71%.

13(ii).The claimant has taken treatment as in-patient in Rajiv Gandhi Government General Hospital, Chennai, from 08.05.2017 to 17.07.2017 (Ex.P2), 17.07.2017 to 19.08.2017(Ex.P5) and in Tagore Medical College and Hospital, Rathinamangalam, Melakkottaiyur Post, Chennai, from 07.03.2019 to 18.04.2019(Ex.P6), from 29.04.2019 to 25.06.2019(Ex.P7), 01.07.2019 to 13.07.2019(Ex.P8) and in M.R.Hospital, Aminjikarai, Chennai, from 26.08.2019 to 28.08.2019 (Ex.P10) and underwent surgeries. Ex.P5 is the case record issued by Madras Medical College and Rajiv Gandhi Government General Hospital, Chennai. Considering the nature of injuries, fracture, treatment and avocation of the claimant, the disability assessed by the Medical Board is converted into whole body and disability of the claimant is fixed at 41%. The Tribunal following the judgment of the Hon'ble Apex Court reported in **2009 (2) TNMAC 1 SC [Sarla Verma & Others vs. Delhi Transport Corporation & another]**, has rightly applied multiplier '16'.



C.M.A.Nos.2159 and 3618 of 2021

Thus, the compensation awarded by the Tribunal towards functional disability is modified to Rs.13,77,600/- (Rs.12,500/- + 5,000 (Rs.12,500/- X 40%) X 12 X 16 X 41/100).

13(iii).The claimant has proved that he took treatment as in-patient for more than 220 days on six different spells and marked the discharge summaries as Exs.P2, P5 to P8 and P10. Somebody would have attended the claimant during his treatment period and also after discharge from the hospital. Due to the injuries, surgeries and long period of treatment, the claimant would have spent considerable amount for nutritious food and also suffered pain due to the injuries. Though the claimant had taken treatment in Government Hospital, he would have spent considerable amount towards transport and also towards medicines. Considering all the above materials, the amounts awarded by the Tribunal towards pain and suffering, extra nourishment, transportation and attendant charges are hereby enhanced to Rs.75,000/-, Rs.75,000/-, Rs.50,000/- and Rs.75,000/- respectively. The claimant has not filed any document to show that he is continuing his treatment till date and therefore, he is not entitled to any compensation towards future medical expenses. The amounts awarded by the Tribunal under



C.M.A.Nos.2159 and 3618 of 2021

all other heads are just and reasonable and hence, the same are hereby confirmed. Thus, the compensation awarded by the Tribunal is modified as follows:

S.No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Functional disability	16,49,472	13,77,600	Reduced
2.	Pain and suffering	20,000	75,000	Enhanced
3.	Extra nourishment	15,000	75,000	Enhanced
4.	Transportation	10,000	50,000	Enhanced
5.	Damage to clothes	1,000	1,000	Confirmed
6.	Attendant charges	25,000	75,000	Enhanced
7.	Medical expenses	10,891	10,891	Confirmed
8.	Loss of amenities	20,000	20,000	Confirmed
	Total	17,51,363 rounded off to 17,52,000	16,84,491 rounded off to 16,85,000	Reduced by Rs.67,000/-

14.In the result, C.M.A.No.2159 of 2021 filed by the claimant is partly allowed enhancing compensation towards pain and suffering, extra nourishment, transportation and attendant charges and C.M.A.No.3618 of



C.M.A.Nos.2159 and 3618 of 2021

2021 filed by the respondent/Transport Corporation is partly allowed in respect of the head 'functional disability'. The compensation awarded by the Tribunal at Rs.17,52,000/- is hereby reduced to Rs.16,85,000/- together with interest at the rate of 7.5% per annum from the date of petition till the date of deposit. The respondent/Transport Corporation is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited if any, within a period of twelve weeks from the date of receipt of a copy of this judgment. On such deposit, the claimant is permitted to withdraw the award amount now determined by this Court, along with interest and costs, less the amount if any, already withdrawn. The respondent/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.493 of 2018 on the file of Motor Accident Claims Tribunal, IV Small Causes Court, Chennai, if the entire award amount has already been deposited by them. No costs. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (S.S., J)
13.07.2022

Index : Yes / No
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C.M.A.Nos.2159 and 3618 of 2021

**V.M.VELUMANI,J.
and
S.SOUNTHAR,J.**

kj

To

1.IV Judge
Motor Accident Claims Tribunal
Small Causes Court, Chennai.

2.The Section Officer
VR Section
High Court
Madras.

C.M.A.Nos.2159 and 3618 of 2021
and C.M.P.No.21169 of 2021

13.07.2022