



WEB COPY



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

CORAM:

THE HONOURABLE **MS.JUSTICE V.M.VELUMANI**
and
THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.2957 of 2021 and
C.M.P.No.16893 of 2021

The Oriental Insurance Company Ltd.,
having its branch office at
G.S.Oorali Complex, Sankari Main Road,
Opp.State Bank of India,
Pallipalayam, Tiruchengode Taluk,
Namakkal District – 638 006.

...Appellant

Vs.

1.K.Kannan
S/o.Komarasami alias Kumarasamy

2.K.Kannan
S/o.Krishnan,

3.T.Kalaivani
W/o.Baranidharan

...Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, against the award and decree dated 03.02.2020 made in M.C.O.P.No.184 of 2018 on the file of the Motor Accidents Claims Tribunal(Special Sub Court), Erode.



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

For Appellant : Mr.D.Bhaskaran
For R1 : M/s.Amar D.Pandia
for Mr.M.Mohammed Riyaz

JUDGMENT

(Judgment of the Court was delivered by SUNDER MOHAN,J.)

This Civil Miscellaneous Appeal has been filed by the appellant against the award and decree dated 03.02.2020 made in M.C.O.P.No.184 of 2018 on the file of Motor Accident Claims Tribunal (Special Sub Court), Erode.

2.The 1st respondent herein filed a claim petition stating that on 16.02.2018 at about 7.00 P.M while he was riding his TVS 50 Moped bearing Reg.No.TN-33-U-7913 in Vellode to Chennimalai Road from East to West direction on the left hand side, at Thaneerpandal in front of Thattankadu Thottam, the 2nd respondent herein drove the bus in the same direction in a rash and negligent manner and dashed against the 1st respondent's moped. The 1st respondent was thrown off from his moped and sustained fractures and greivous injuries. He was earning not less than Rs.30,000/- to Rs.40,000/- per month at the time of accident. Hence, he claimed a sum of Rs.1,00,00,000/- as compensation against the owner of the bus and the appellant/insurer of the bus.



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

3.The appellant filed a counter statement stating that the averments made in the claim petition are false. The claim petition is bad for non-joinder of proper and necessary parties. The first respondent failed to implead the owner and insurer of the Motor Cycle TN 33-U-7913. The bus was not driven in a rash and negligent manner and it was the 1st respondent who was responsible for the accident. The appellant was therefore not liable to pay compensation and prayed for dismissal of the claim petition.

4.Before the Tribunal, the 1st respondent examined four witnesses on his side as P.W.1 to P.W.4 and marked Ex.P.1 to P.43. The appellant did not examine any witness or mark any documents on their side. The disability certificate issued by the District Medical Board was marked as Ex.C.1.

5.The Tribunal after considering the pleadings, evidence and documents on record held that the accident occurred due to the negligent act of the bus driver and awarded a sum of Rs.61,13,000/- (Rupees Sixty One Lakh Thirteen Thousand only) as compensation to the 1st respondent.



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

6. Aggrieved over the said award, the appellant had preferred the above appeal challenging the finding on negligence and quantum awarded by the Tribunal.

7. The learned counsel for the appellant submitted that the driver of the bus was not guilty of negligence. The rough sketch and other documents would establish the said fact. In any event, the learned counsel for the appellant submitted that the compensation awarded to the victim is excessive. The Tribunal had assessed 100% permanent functional disability though, the Medical Board had assessed the permanent disability at 63%. The report of the Medical Board would suggest that the functional disability would not be more than 25%. The first respondent was able to do his day-to-day activities. The reason given by the Tribunal that the first respondent was in wheel chair and was in a vegetative state is without any basis. Ex.P.36 Photograph relied upon by the Tribunal was taken at the time of the accident and that cannot be relied upon to assess the functional disability in the absence of any medical evidence. The compensation awarded by the Tribunal towards attendant charges, future medical expenses, pain and sufferings are highly excessive and prayed for setting aside the award of the Tribunal.



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

WEB COPY

8.The learned counsel for the first respondent submitted that the first respondent is unable to carry on his day-to-day activities, the first respondent is mentally unfit and the Tribunal was right in assessing the functional disability at 100%. The learned counsel for the first respondent further submitted that in view of the injury suffered by the first respondent the compensation under the head Extra Nourishment at Rs.18,000/- is meagre and the Tribunal ought to have granted a higher amount for extra nourishment. He took treatment in three spells and therefore, the award passed by the Tribunal is just and need not be interfered and prayed for dismissal of the appeal.

9.We have heard the learned counsels on either side and perused the pleadings, evidence and documens on record.

10.Though the learned counsel for the appellant submitted that the driver of the bus was not guilty of negligence, no evidence has been let in to show that the driver was not guilty. In the absence of any evidence contrary to the evidence let in by the first respondent we cannot conclude there was no negligence on the part of the driver of the bus.



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

11.As regards the compensation, we find that the Tribunal has assessed the functional disability at 100%. The permanent disability has been assessed at 63% by the District Medical Board. It is contended on behalf of the appellant that 63% permanent disability would only mean that the functional disability would not exceed 25%. It is the case of the first respondent that the functional disability is 100% in view of the injuries noted by the Medical Board. Neither the appellant nor the first respondent have let in evidence in support of their respective claims with regard to the functional disability of the first respondent. The Medical Board has assessed permanent disability at 63% and we see no reason why we should not take the same as his functional disability. Hence, the disability is taken as 63% instead of 100% taken by the Tribunal.

12. From the materials on record, it is seen that the first respondent was aged 30 years at the time of accident. The Tribunal fixed a sum of Rs.12,000/- as monthly income of the first respondent. Following the judgments of the Hon'ble Apex Court in **2009 (2) TNMAC 1 SC (Sarla Verma and others vs. Delhi Transport Corporation and another)** and **2017 (2) TN MAC 609 (SC) [National Insurance Co. Ltd., Vs. Pranay Sethi and others]**, the Tribunal rightly applied multiplier 17 and granted 40% towards future prospects.



WEB COPY



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

13.The other factors considered by the Tribunal to fix the loss of earning power cannot be faulted. Hence, fixing 63% as functional disability the loss of earning power is reduced to Rs.21,59,136/- [Rs.12,000/- + 4800 (40% of 12000) X 12 X 63% X 17.

14.We have also find that the compensation awarded under the head extra nourishment at Rs.18,000/- is meagre. Considering the injuries suffered by the first respondent, we deem it appropriate fix Rs.50,000/- as compensation under the said head. The amounts awarded by the Tribunal under 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.	Transport to Hospital	25,000/-	25,000/-	Confirmed
2.	Extra nourishment	18,000/-	50,000/-	Enhanced
3.	Attender charges	2,00,000/-	2,00,000/-	Confirmed
4.	Future Medical Expenses	4,10,000/-	4,10,000/-	Confirmed
5.	Damages for Clothes and Articles	2,000/-	2,000/-	Confirmed



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
6.	Medical Expenses	18,30,000/-	18,30,000/-	Confirmed
7.	Pain and sufferings	2,00,000/-	2,00,000/-	Confirmed
8.	Permanent Disability and loss of Earning Power	34,28,000/-	21,59,136/-	Reduced
	Total	Rs.61,13,000/-	Rs.48,76,136/-	Reduced by Rs.12,36,864/-

15. In the result, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.61,13,000/- is hereby reduced to Rs.48,76,136/- together with interest at the rate of 7.5% per annum (excluding the default period, if any) from the date of petition till the date of deposit. The Appellant/Insurance Company 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 six weeks from the date of receipt of a copy of this Judgment. On such deposit, the first respondent 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 Appellant/Insurance Company is permitted to withdraw the excess amount lying in the deposit to the credit of M.C.O.P.No.184 of 2018 if the entire award amount has already been



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

deposited by them. Consequently, connected miscellaneous petition is closed. No

WEB COPY
costs.

[V.M.V.,J] [S.M.,J]
14.11.2022

Index: Yes/No
dk

To

- 1.The Special Sub Judge
Erode District.
- 2.The Section Officer
VR Section
Madras High Court
Chennai 600 104.



WEB COPY



C.M.A.No.2957 of 2021
and C.M.P.No.16893 of 2021

V.M.VELUMANI.J.
and
SUNDER MOHAN,J.

dk

C.M.A.No.2957 of 2021 and
C.M.P.No.16893 of 2021

14.11.2022