



C.M.A.No.1219 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : **24.11.2022**

Coram:

The Hon'ble Ms. Justice **V.M.VELUMANI**
and

The Hon'ble Mr. Justice **SUNDER MOHAN**

C.M.A.No.1219 of 2022
and C.M.P.No.8759 of 2022

The Managing Director,
State ExpressTransport Corporation,
No.2, Pallavan Salai,
Chennai.

... Appellant

Vs.

1.S.Loganathan

2.The Managng Director,
Tamil Nadu State Transport Corporation
(Villupuram Division) Ltd.,
3/137, Salamedu,
Vazhudha Reddy Post,
Villupuram.

... Respondents

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree passed by the learned Principal Sub Judge, (MACT), Cuddalore in M.C.O.P. No.2141 of 2015 dated 27.04.2019.

For Appellant : Mr.K.Ponraj

For Respondent : Mrs.Ramya V. Rao
Mr.S.S.Santhosa Kumar for R2



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J U D G M E N T

[Judgment of the Court was made by **SUNDER MOHAN, J.**]

This appeal is filed against the award of the Tribunal dated 27.04.2019 made in MCOP.No.2141 of 2015.

2. The brief facts of the case is as follows:-

a) The first respondent herein had filed a claim petition stating that on 23.01.2005, at about 7.15 am., when he was driving the bus belonging to the second respondent Corporation herein bearing registration No.TN-21-N-1308, the bus belonging to the appellant Corporation herein bearing registration No.TN-01-AN-0537 which came in a rash and negligent manner in the opposite direction, caused head on collision. As a result of the accident, the first respondent had suffered multiple fractures and grievous injuries. Due to the said injuries, his leg below the ankle is amputated. He was treated in the hospital. Therefore, he made a claim for a sum of Rs.50 lakhs against the appellant Corporation herein.



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b) The appellant Corporation had filed a counter stating that the accident did not take place on account of the rash and negligent act of its driver but only due to the rash driving of the first respondent. He had overtaken two vehicles and had collided with the vehicle belonging to the appellant Corporation. In any event, the first respondent had not suffered loss of income as he was given alternative job in the second respondent's Corporation. Therefore, the claim made by the first respondent is exorbitant and hence, the claim petition is liable to be dismissed.

c) The second respondent Corporation/employer of the first respondent filed a counter and stated that the accident took place on account of the negligence of the driver of the appellant's Corporation. The first respondent was given alternate employment with the basic pay of Rs.25,000/- and therefore, he has not suffered any loss of income. The second respondent further submitted that the first respondent was not guilty of negligence and the appellant's Corporation driver was the tortfeasor.



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d) Before the Tribunal, the first respondent examined himself as P.W.1 and marked Exs.P1 to P15 on his side. The appellant Corporation did not mark any document or examine any witness on their side.

e) The Tribunal, after analysing the oral and documentary evidence placed before it, held that the driver of the appellant's Corporation bus was guilty of negligence on the basis of the evidence of P.W.1 and Ex.P1, FIR registered by E5, Koovathur Police Station, Kancheepuram District. The Tribunal found that the appellant did not examine any witness to disprove the version of the first respondent as regards negligence. However, the Tribunal found that the admission of P.W.1 in the cross examination would suggest that he was also liable for contributory negligence to the extent of 15%. The Tribunal also found that the first respondent had suffered 70% disability on the basis of Ex.P15 and adopted multiplier method, fixing his monthly income as Rs.11,000/-. The Tribunal, thus awarded a total compensation of Rs.33,90,500/-. In



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view of the contributory negligence fixed at 15% on the first respondent, the Tribunal directed the appellant to pay Rs.28,81,925/-, after deducting a sum of Rs.5,08,575/- towards the contributory negligence of the first respondent.

f) Aggrieved over the same, the appellant Corporation has filed the present appeal questioning their liability and the quantum of the award passed by the Tribunal.

3. The learned counsel for the appellant submitted that the Tribunal had erroneously fixed the loss of income as Rs.11,000/- per month and by adopting the multiplier method, had awarded a sum of Rs.13,86,000/- towards permanent disability and Rs.3,46,500/- towards future loss of income. The Tribunal having adopted the multiplier method in the first place ought not to have awarded compensation under the head of future loss of income. In any event, the first respondent had not established functional disability and the Tribunal ought to have awarded compensation only on percentage basis method. The quantum of compensation awarded by the Tribunal is highly excessive and prayed for setting



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aside the award of the Tribunal.

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4. The learned counsel for the first respondent submitted that the approach of the Tribunal in adopting the multiplier method, cannot be faulted. The first respondent was working as a driver and even if he had secured alternative employment, this Court should consider the fact that as a driver he would have earned even after retirement by joining private companies or by doing freelance job. Therefore, the very fact that he was given alternative employment should not deter from adopting the multiplier method. The award of compensation under the other heads, cannot be faulted. The learned counsel submitted that the compensation under the head 'pain and sufferings' and 'loss of amenities' at Rs.2 lakhs each has to be enhanced. Further, the compensation under the head 'extra-nourishment' also needs to be enhanced because of the nature of injuries suffered by the first respondent.

5. Heard the learned counsels for the parties and perused the pleadings, oral and documentary evidences placed on record.



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6. We find from the evidence that the Tribunal had fixed the negligence on the bus driver of the appellant's Corporation based on the deposition of P.W.1 and also, the FIR dated 23.01.2015 in Cr.No.27 of 2015, on the file of E5, Koovathur Police Station, Kancheepuram District, which was marked as Ex.P1. The appellant has not let in any evidence to contradict the evidence let in by the first respondent on this aspect. The Tribunal, therefore was justified in holding that the driver of the appellant's bus was the tortfeasor. However, the Tribunal on the basis of the evidence and considering the manner in which the accident took place had concluded that the first respondent is liable for contributory negligence and fixed his liability at 15%. We see no reason to interfere with the said findings of the Tribunal.

7. As regards the quantum of compensation, the only medical record filed on behalf of the first respondent to prove disability is Ex.P15. Ex.P15 is the disability certificate issued by the Chief Civil Surgeon of the Government TB Hospital at Cuddalore. The



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disability certificate does not suggest that the first respondent had suffered functional disability. The first respondent had not let in any evidence to show that he suffered functional disability so as to warrant the award of compensation by adopting the multiplier method. It is admitted by the first respondent that he has been given alternate employment in the second respondent Corporation, where he was working as a driver. The first respondent has not produced any evidence to show that he had suffered loss of income on account of the alternate employment. On the other hand, the second respondent had filed the counter before the Tribunal, wherein they had stated that the first respondent was given an alternative employment with the basic pay of Rs.25,000/- per month and that the first respondent had not suffered any loss of income.

8. In the light of the above evidence, we are of the view that the Tribunal erred in fixing the loss of income at Rs.11,000/- per month without any basis. In the absence of any evidence to prove that the first respondent suffered functional disability, the Tribunal ought not to have adopted the multiplier method for awarding



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compensation towards permanent disability. Therefore, the first respondent is not entitled to compensation awarded under the head permanent disability by adopting the multiplier method. Further, the compensation awarded under the head 'future loss of income' at the rate of 25% for the loss of future income, is erroneous. The Tribunal ought to have awarded the compensation towards permanent disability on percentage basis. Therefore, in our view, the first respondent is entitled to compensation only on percentage basis. We accept the percentage of disability assessed by the doctor in Ex.P15 disability certificate as 70%. Therefore, the first respondent is entitled to Rs.2,80,000/- (70xRs.4000/- per percentage of disability) as compensation for the disability. The amounts awarded by the Tribunal under the heads permanent disability and future loss of income, are liable to be set aside and are hereby set aside.

9. The Tribunal has awarded a sum of Rs.2 lakhs each towards pain & sufferings and loss of amenities. Considering the fact that the first respondent had suffered grievous injuries and underwent surgeries which included amputation of his right leg



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below the ankle, we are of the view that the compensation under these two heads can be enhanced to Rs.3 lakhs each. Considering the nature of injuries and period of treatment, the compensation awarded under the head extra nourishment is enhanced from Rs.50,000/- to Rs.1 lakh. The award under the other heads remains unaltered and are hereby confirmed.

10. The break-up details of the modified compensation amount under the various heads are as follows:-

<i>Serial No.</i>	<i>Heads</i>	<i>Amount awarded by the Tribunal (Rs.)</i>	<i>Amount awarded by this Court (Rs.)</i>	<i>Enhanced/ Reduced/ granted/ confirmed/set aside</i>
1	Loss of earning capacity due to permanent disability/Permanent Disability 70%	13,86,000	2,80,000	reduced
2	Future loss of income	3,46,500	---	Set aside
3	Pain and sufferings	2,00,000	3,00,000	enhanced
4	Fixation of Artificial leg	2,00,000	2,00,000	confirmed
5	Medical bills	7,07,000	7,07,000	confirmed
6	Mental agony	50,000	50,000	confirmed



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Serial No.	Heads	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Enhanced/ Reduced/ granted/ confirmed/set aside
7	Transportation	50,000	50,000	Confirmed
8	Extra Nourishment	50,000	1,00,000	enhanced
9	Attendant benefits	1,00,000	1,00,000	confirmed
10	Future medical expenses	1,00,000	1,00,000	confirmed
11	Damage to clothing	1,000	1,000	confirmed
12	Loss of amenities	2,00,000	3,00,000	enhanced
	Total	33,90,500	21,88,000	Reduced
	85% of the compensation [15% negligence fixed on the first respondent]	28,81,925/-	18,59,800/-	Rs.10,22,125/-

11. With the above modifications, this Court modifies the award passed by the learned Principal Sub Judge, (MACT), Cuddalore in M.C.O.P. No.2141 of 2015 dated 27.04.2019 to the tune of Rs.18,59,800/- as compensation to the first respondent after deducting 15% contributory negligence (Rs.3,28,200/-). Consequently, the Civil Miscellaneous Appeal stands partly allowed with the aforesaid modifications. The appellant/Transport Corporation is directed to deposit the compensation amount less the



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amount already deposited if any, with proportionate interest to the credit of MCOP. No.2141 of 2015 before the learned Principal Sub Judge, MACT, Cuddalore, within a period of six weeks from the date of receipt of a copy of this order. On such deposit being made, the claimant/first respondent herein is permitted to withdraw the entire/balance of the compensation amount on filing appropriate petition before the Tribunal. The appellant/Transport Corporation is permitted to withdraw the excess amount lying in the deposit to the credit of MCOP.No.2141 of 2015, if the entire award amount has already been deposited by them. Connected Miscellaneous Petition is closed. There shall be no orders as to costs.

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

24.11.2022

Index:Yes/No

Order:Speaking/Non Speaking

DP

To

1.The Principal Sub Judge,
(The Motor Accident Claims Tribunal)
Cuddalore.

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

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

DP

JUDGMENT MADE IN

C.M.A.No.1219 of 2022
and
C.M.P.No.8759 of 2022

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