



WEB COPY



C.M.A(MD)No.1023 of 2012

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.10.2022

Pronounced on : 09.11.2022

CORAM

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

C.M.A(MD)No.1023 of 2012

Anandhakumar

...Appellant / Petitioner

Vs

1.Subburaj

2.IFFCO Tokyo General Insurance Co.Ltd.,
represented by its Branch Manager,
Branch Office: No.28, Old No.195,
First and 2nd Floor,
North Usman Road,
T.Nagar, Chennai-600 017.

3.Tamil Nadu State Transport Corporation (Salem) Limited
represented by its
Managing Director,
No.12, Ramakrishna road,
Salem.

... Respondents/ Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor Vehicle Act, 1988, to enhance the award amount to Rs.6,50,000/- payable by the second respondent by modifying the award made in judgment



C.M.A(MD)No.1023 of 2012

and decree dated 07.04.2011 made in M.C.O.P.No.73 of 2008 on the file of the MACT/Additional Subordinate Judge, Karur.

For Appellant : Mr.P.Ganapathi Subramanian
For R1 : No appearance
For R2 : Mr.S.Srinivasa Raghavan
For R3 : Mr.K.A.Thirumalaiappan

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order made in M.C.O.P.No.73 of 2008 on the file of the Motor Accidents Claim Tribunal/Additional Subordinate Judge, Karur. The Appellant herein is the claimant. Respondents are the respondents in the claim petition.

2.Brief substance of the claim petition is as follows:

On 22.11.2007, when the petitioner and one Kabilan were travelling in a bus bearing registration number TN 30 N 0483 along the Dindigul-Karur main road, near Sabapathi timber mill in Aravakurichi, a lorry bearing registration number TN 31 J 3875 came in a rash and negligent manner proceeding in front of the bus, applying sudden brake on the middle of the



C.M.A(MD)No.1023 of 2012

road, as a result, the bus dashed against the lorry. The conductor of the bus died on the spot. The petitioner who was aged about 29 years sustained injury. He was running a printing press and earning Rs.10,000/- per month. He was running a travel agency and earning Rs.5,000/- per month. The petitioner claimed a compensation of Rs.10,00,000/-.

3.The case of the first respondent is as follows:

The driver of the bus alone is responsible for the accident. The driver of the lorry is having valid driving licence. The driver of the lorry is not responsible for the accident.

4.Brief substance of the counter filed by the second respondent is as follows:

The bus was driven in a high speed in a negligent manner and dashed against the lorry from behind and the driver of the bus caused the accident. The lorry driver is not responsible for the accident. There is contributory negligence on the part of the bus driver. The lorry driver was not having valid driving licence. The second respondent is not liable to pay compensation. The driver of the bus was also not having valid driving licence. The age,



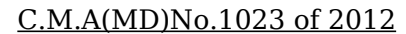
C.M.A(MD)No.1023 of 2012

occupation, employment, income, details of the injuries, period of treatment, medical expenditure, disability are all denied. The compensation claimed is excessive.

5.Brief substance of the counter filed by the third respondent is as follows:

The lorry was stationed on the left side of the road. The driver of the bus was driving the vehicle in a slow manner along the National Highways. But unexpectedly, without giving any signal, the lorry started to run from left to right. Though the bus driver tried to avoid collision by applying sudden brake, his efforts ended in failure and the bus dashed against the right side corner of the rear side portion of the lorry. The first respondent is responsible for the accident. The age, occupation, income, loss of income, period of treatment, medical expenses and disability are all denied. The compensation claimed is excessive and prayed the petition to be dismissed.

6.Another case in M.C.O.P.No.148 of 2008 was filed by one Kabilan who sustained injury in the same accident. Both the cases were taken up for joint trial and a common judgment was passed by the Tribunal. In the



The Tribunal ought to have granted Rs.40,000/- towards future medical expenses. Though P.W.4 has deposed that the claimant required further treatment which may cost Rs.50,000/-, the Tribunal has awarded only Rs.15,000/-, which is very low. The Tribunal failed to consider that the appellant took treatment in Karur, then he was shifted to Madurai and that he has to travel from Usilampatti. The Tribunal has awarded only Rs.6000/- towards transport expenses and the same has to be enhanced to Rs.10,000/-. The Tribunal failed to consider that the petitioner initially took treatment for a period of 127 days as inpatient and he underwent major surgery for the four fractures. Iron rods and plates were affixed. The Tribunal awarded only Rs.35,000/- towards pain and sufferings and the same has to be enhanced to



C.M.A(MD)No.1023 of 2012

Rs.2,50,000/-. The Tribunal failed to consider that the appellant sustained four fractures in both the legs and he was having 60% permanent disability. He could not do his normal works as before. He was not able to stand or walk freely. He has functionally disability and multiplier method has to be adopted and multiplier '16' for 60% disability, has to be awarded. P.W.4 was examined to prove the disability. There is functional disability. Since the appellant could not move or do his marketing work, his business was closed.

8.On the side of the respondent it is stated that there was no functional disability and hence multiplier method need not be applied. Multiplier method cannot be applied in a routine manner without any proof for functional disability.

9.On the side of the appellant, a judgment of the Hon'ble Supreme Court reported in **2011 ACJ 1** in the case of **Raj Kumar Vs Ajay Kumar and another** is cited, wherein it is held that,

"13. ---

(iv) The same permanent disability may result in different percentages of loss of earning capacity in different persons,



C.M.A(MD)No.1023 of 2012

WEB COPY

depending upon the nature of profession, occupation or job, age, education and other factors."

10.On the side of the respondent it is stated that there was no proof that the business of the appellant was sold out and application of multiplier method is not necessary.

11.On the side of the respondent a judgment of this Court reported in **2012 (1) TN MAC 611(DB)** in the case of **New India Assurance Co.Ltd., Vs Kannayiram**, is cited. Another judgment of this Court reported in **2013(1) TN MAC 47(DB)** in the case of **New India Assurance Co.Ltd., Vs E.Ponnurangam**, is cited.

12.On the side of the appellant it is stated that the appellant sustained four injuries. He was the proprietor in his printing press. He has to travel throughout Tamil Nadu to get orders and the fracture affected his job and he could not carry out the same job. P.W.4-Doctor has deposed that the right Tibia bone was broken into two pieces. P.W.4-Doctor has issued the disability certificate Ex.P.18. P.W.4 has deposed that the disability is 60%



C.M.A(MD)No.1023 of 2012

and the height of the left leg is reduced to 20%. Accordingly, the Tribunal has fixed the disability at 60%. The Tribunal has awarded Rs.2000/- for each percentage of disability and that multiplier method has to be adopted, in fixing the loss of income.

13.On the side of the respondent it is stated that the appellant being the owner of the printing press can continue business and the disability is not a bar to the same business.

14.There is no proof that the entire business of the appellant was sold out or closed. Considering the date of accident, it is decided that awarding Rs.3,000/- is fixed for each percentage of disability will be reasonable. Hence, for 60% disability, the appellant is entitled to Rs.1,80,000/-(60 x 3000) as compensation.

15.On the side of the appellant it is stated that P.W.4 has deposed that the petitioner has to undergo another surgery and it requires Rs.50,000/- towards medical expenses. Considering the fact that the appellant has undergone four surgeries, it is decided that the appellant is entitled to Rs.



C.M.A(MD)No.1023 of 2012

30,000/- towards future medical expenses. The Tribunal has awarded Rs.35,000/- towards pain and suffering, Rs.30,000/- towards loss of amenities, Rs.30,000/- towards attendant charges which are reasonable.

16.The Tribunal has awarded Rs.12,000/- towards extra nourishment and Rs.6,000/- towards transport expenses. It is decided that the petitioner is entitled to Rs.22,900/- towards extra nourishment and transport expenses. The Tribunal awarded Rs.22,100/- towards medical expenses which is reasonable. Considering the period of treatment, the Tribunal has awarded Rs.30,000/- towards temporary loss of income, which is reasonable.

For Disability	- Rs.1,80,000/-
Loss of earning capacity	- Rs. 30,000/-
For Extra nourishment and Transport expenses	- Rs. 22,900/-
Attendant charges	- Rs. 30,000/-
For pain and sufferings	- Rs. 35,000/-
Loss of amenities	- Rs. 30,000/-
Medical expenses	- Rs. 22,100/-
Future medical expenses	- Rs. 30,000/-
Total	- Rs.3,80,000/-



C.M.A(MD)No.1023 of 2012

17. Accordingly, this Civil Miscellaneous Appeal is partly allowed.

WEB COPY

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.3,00,800/- to **Rs.3,80,000/- (Rupees Three Lakhs Eighty Thousand only;**

(ii) The respondents 2 and 3, are directed to deposit the said amount (if not already deposited) together with interest at the rate of 7.5% per annum and proportionate costs to the credit of MCOP No.73 of 2008 on the file of the Motor Accident Claims Tribunal / Additional Subordinate Judge, Karur, within a period of eight weeks from the date of receipt of a copy of this order.

The appellant is not entitled for interest for the default period;

(iii) the appellant is directed to pay the additional Court fee for the enhanced amount;

(iv) On such deposit being made by the respondents 2 and 3 herein, the appellant is permitted to withdraw the compensation amount of Rs.3,80,000/- (Rupees Three Lakhs Eighty Thousand only), along with proportionate interest at the rate of 7.5% per annum.

09.11.2022

Index: Yes / No
Internet : Yes / No
pnn

10 / 12



WEB COPY



C.M.A(MD)No.1023 of 2012

To

- 1.The Motor Accident Claims Tribunal / Additional Subordinate Judge,
Karur.
- 2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



WEB COPY



C.M.A(MD)No.1023 of 2012

R. THARANI, J

pnn

C.M.A(MD)No.1023 of 2012

09.11.2022