



C.M.A(MD)No.1145 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.11.2022

Pronounced on : 22.11.2022

CORAM

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

C.M.A(MD)No.1145 of 2013

K.Murugesan

...Appellant / Petitioner

Vs

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Division -1) Ltd.,
Kumbakonam.

2.V.Muthammed Kutty

3.M/s. United India Insurance Company Ltd.,
Divisional Office-2,
2nd Floor, Seema Towers,
Bank Road, Mavoor Road Junction,
Calicut -1.

... Respondents / Respondents

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act 1988, to set aside the award passed in M.C.O.P.No.138 of 2001 on the file of the Motor Accident Claims Tribunal / 2nd Additional Sub Judge, Trichy, dated 04.02.2005.



C.M.A(MD)No.1145 of 2013

For Appellant : Mr.A.Saravanan
For R1 : Mr.D.Sivaraman
For R2 : No appearance
For R3 : Mr.J.S.Murali

JUDGMENT

This Civil Miscellaneous Appeal is filed against the order in M.C.O.P.No.138 of 2001 on the file of the Motor Accident Claims Tribunal / 2nd Additional Sub Judge, Trichy. The appellant is the claimant. Respondents are the respondents in the claim petition.

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

On 27.07.2000, when the petitioners and others were travelling in a bus bearing registration number TN 49 N 1100 along the Trichy-Kumbakonam main road, a van bearing registration number KL 10 H 5614 came from the opposite direction and dashed against the bus. Both the vehicles were driven by its drivers in a rash and negligent manner. The petitioner and others sustained injuries. The petitioner sustained fracture in the facial bone, bones in the spinal cord and he sustained rib fracture. He took treatment as inpatient from 27.07.2000 till 16.08.2000. The petitioner was disabled and he could



C.M.A(MD)No.1145 of 2013

not do his day to day works. Before the accident, the petitioner was working as a painter and was earning a sum of Rs.4500/- per month. He claimed a sum of Rs.10,00,000/- as compensation.

3.Brief substance of the counter filed by the first respondent in the claim petition, is as follows:

The driver of the bus drove the vehicle in a slow and cautious manner, keeping the extreme left side of the road. A lorry came from the opposite direction and a mini van came behind the lorry. When the lorry was crossing the bus, the van tried to over take the lorry and dashed against the right side of the bus. The complaint was lodged by the cleaner of the van. The age, income, profession of the petitioner are all denied.

4.Brief substance of the counter filed by the third respondent in the claim petition is as follows:

The accident has taken place only due to the rash and negligent driving of the bus driver. The van driver died on the spot. The second respondent is not a necessary party. Hence, the case filed against the second respondent is to be dismissed. The age, profession, income are all denied.

5. Three other persons who were injured in the same accident filed



C.M.A(MD)No.1145 of 2013

claim petitions in M.C.O.P.Nos.3159, 3160 and 3163/ 2001 and the legal representatives of the deceased who died in the accident filed a claim petition in M.C.O.P.No.939 of 2001. All the four petitions were taken up for trial along the M.C.O.P.No.138 of 2001. In the joint trial, ten witnesses were examined and twenty documents were marked on the side of the petitioners. One witness was examined and no document was marked on the side of the respondent. The Tribunal fixed the liability on the first respondent and awarded a sum of Rs.5,67,900/- as compensation for the petitioner in M.C.O.P.No.138 of 2001, to be paid with 9% interest.

6.Against the award, the appellant preferred this appeal for enhancement of compensation on the following grounds:

The Tribunal awarded a sum of Rs.50,000/- as compensation towards pain and sufferings. The petitioner has suffered paraplegia due to the fracture in the spinal cord. There were grievous injuries in the head which resulted in pain and sufferings. The Tribunal fixed the age of the petitioner as 36 years but in reality, the age of the petitioner at the time of accident is only 33 years. Multiplier 17 is applicable. The Tribunal has wrongly applied multiplier 15 in computing the loss of income. The Tribunal fixed the monthly income as



C.M.A(MD)No.1145 of 2013

Rs.2000/- instead of Rs.4000/-. Without considering that the appellant has been paralysed for life and the chance of marriage was a foreclosure, the Tribunal has awarded only Rs.50,000/- towards loss of marriage prospects. The Tribunal ought to have awarded Rs.2,00,000/- as compensation for the loss of marriage prospects. Considering that the appellant is in need of assistance through out his life. The Tribunal ought to have awarded a sum of Rs.2,00,000/- towards attendant charges. The petitioner sustained 100% disability. The Tribunal deducted 1/3 of the income without any grounds.

7.On the side of the appellant it is stated that P.W.2-Doctor has deposed that the petitioner sustained severe injuries including a fracture on the spinal cord. He became paralysed from the hip. He fixed the disability at 100%. The disability certificate was marked as Ex.P9. He has further deposed that the petitioner could not stand or walk and could not attend even his day to day affairs. The Tribunal fixed the disability as 100%, which is reasonable.

8.On the side of the appellant it is stated that the appellant was working as a painter and was earning a sum of Rs.4500/- per month. The Tribunal fixed the monthly income as Rs.2000/-. The accident has happened in the



C.M.A(MD)No.1145 of 2013

year 2000. The notional income during the relevant period is Rs.3000/-.

Hence, the monthly income is fixed as Rs.3000/-.

9.On the side of the appellant it is stated that the age of the appellant is 33 years at the time of accident. The Tribunal has fixed the age as 36 years. No document was filed on the side of the appellant to prove the age of the appellant. No reason was stated in the award, for fixing the age of the appellant. In the above circumstances, the age of the appellant is fixed as 33 years. For the age of 33 years, multiplier 17 is applicable. Hence, the income is fixed at Rs.6,12,000/- (3000 x 17 x 12).

10.On the basis of Ex.P2 to Ex.P9, the Tribunal has awarded a sum of Rs.65,000/- towards medical expenses, which is reasonable. The Tribunal awarded Rs.3,000/- towards purchase of wheel chair, which is reasonable. On the side of the appellant, it is stated that the Tribunal ought to have awarded Rs.1,75,000/- compensation for pain and sufferings instead of Rs.50,000/-. Considering the nature of injuries it is decided that the appellant is entitled to Rs.1,00,000/- towards pain and sufferings.



C.M.A(MD)No.1145 of 2013

11.The Tribunal has awarded Rs.15,000/- towards transport expenses and extra nourishment, Rs.15,000/- towards attendant charges. The amount fixed by the tribunal requires enhancement. It is decided that the appellant is entitled to Rs.7000/- towards transport expenses and Rs.20,000/- towards extra nourishment and Rs.28,000/- towards attendant charges. Considering the nature of injuries, Rs.1,00,000/- is awarded towards future medical expenses.

12.Accordingly, the award is modified as under:

Loss of income	-	Rs.6,12,000/-
Medical expenses	-	Rs. 65,000/-
For pain and sufferings	-	Rs.1,00,000/-
Attendant charges	-	Rs. 28,000/-
Transport expense	-	Rs. 7,000/-
Extra nourishment	-	Rs. 20,000/-
Wheel chair	-	Rs. 3,000/-
Future medical expense	-	Rs.1,00,000/-
Loss of Marriage prospects-		Rs. 45,000/-

Total	-	Rs.9,80,000/-

The tribunal is wrong in fixing the interest at 9%. Hence, the rate of interest is reduced to 7.5%.



C.M.A(MD)No.1145 of 2013

WEB COPY

13. Accordingly, this Civil Miscellaneous Appeal is allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.5,67,900/- to Rs.9,80,000/- (Rupees Nine Lakhs Eighty Thousand only) which shall carry interest at the rate of 7.5% per annum.

(ii) The first respondent herein is directed to deposit the entire compensation of Rs.9,80,000/- (if not already deposited) together with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit and proportionate costs to the credit of M.C.O.P.No.138 of 2001 on the file of the Motor Accident Claims Tribunal / 2nd Additional Sub Judge, Trichy, within a period of eight weeks from the date of receipt of a copy of this order.

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

(iv) On such deposit being made by the first respondent herein, the appellant herein/ claimant is permitted to withdraw the entire award amount of Rs.9,80,000/- (Rupees Nine Lakhs Eighty Thousand only) with interest and cost. The appellant is not entitled to interest for the default period, if there is any.

22.11.2022

Index: Yes / No

Internet : Yes / No

pnn

8 / 10



WEB COPY



C.M.A(MD)No.1145 of 2013

To

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



WEB COPY



C.M.A(MD)No.1145 of 2013

R. THARANI, J

pnn

C.M.A(MD)No.1145 of 2013

22.11.2022