



C.M.A.(MD)No.1933 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 13.10.2022

Delivered On : 23.11.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.1933 of 2013

S.Senthilvel

... Appellant /Petitioner

Vs.

Tamil Nadu State Transport Corporation Ltd.,

Through its Managing Director,

Vannarapettai, Tirunelveli.

... Respondent /Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree made in M.C.O.P.No.668 of 2012, dated 28.02.2013, on the file of the Motor Accident Claims Tribunal / III Additional District and Sessions Judge, Tirunelveli.

For Appellant : Mr.T.Selvakumaran

For Respondent : Mr.P.Prabhakaran

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.668 of 2012, dated 28.02.2013, on the file of the Motor Accident



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Claims Tribunal / III Additional District and Sessions Judge, Tirunelveli. The appellant herein is the claimant and the respondent herein is the respondent in the original M.C.O.P. Petition.

2. A brief substance of the claim petition, in M.C.O.P.No.668 of 2012, is as follows:

On 21.05.2012, at about 01.45 pm, when the petitioner was travelling in a bus bearing Registration No.TN-45-N-1521, along the Sankarankoil – Kalugumalai, nearing Balasubramanian Threatre, the driver of the bus drove the vehicle in a rash and negligent manner and the bus capsized and the petitioner sustained injuries. He was given first aid in the Primary Health Centre, Kalugumalai and then he was admitted in Tirunelveli Government Medical College Hospital, and he took treatment as inpatient for 15 days. He undergone surgery on 22.05.2012 and he claimed a sum of Rs.5,00,000/- as compensation.

3. Brief substance of the counter filed by the respondent, in M.C.O.P.No. 668 of 2012, is as follows-

The age, income, profession and medical expenses are all denied. There is no permanent disability. The manner of accident is wrongly stated. The petition to be dismissed.



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4. 2 witnesses were examined and 12 documents were marked, on the side of the claimant. 1 witness was examined and no document was marked, on the side of the respondent. The Tribunal, after considering both sides, awarded a sum of Rs.1,07,500/- as compensation along with interest at the rate of 8% p.a.

5. Against the order, the claimant /appellant has filed this Appeal, for enhancement, on the following grounds:-

The Tribunal ought to have been calculated the loss of income by applying multiplier method. The spleen of the claimant was removed, there is blunt injury on the abdomen, Tenderness over left chest wall and there was fracture on the 7 to 11th rib bones.. The Tribunal ought to have been calculated the loss of income as Rs.9,36,000/-. The Tribunal ought to have awarded Rs.1,00,000/- towards loss of amenities, Rs.7,20,000/- towards temporary loss of income, for the period of treatment. The Tribunal failed to award any amount towards loss of expectation of life. The Tribunal ought to have enhanced the amount for pain and sufferings. The Tribunal ought to have awarded Rs.15,000/- towards attender charges, Rs.25,000/- towards extra nourishment.



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6. On the side of the appellant, it is stated that the appellant sustained 35% disability, 5 rib bones were fractured. Portion of the spleen was removed. Fixing the compensation at the rate of Rs.2,000/- per percentage of disability is unfair. A judgment of this Court reported in 2013-2-TNMAC-583 (Mad) is cited.

7. On the side of the respondent, it is stated that the disability certificate was issued only by a Doctor-P.W.2, who did not give treatment to the appellant and that the evidence of P.W.2-Doctor is not reliable.

8. Copy of the wound certificate was marked as Ex.P6. C.T.scan report was marked as Ex.P7. Photo and C.D were marked as Ex.P8, Discharge summary was marked as Ex.P9. Disability certificate was marked as Ex.P11, X-Ray was marked as Ex.P12. P.W.2-Doctor has fixed the disability at 35%. It is seen that the Tribunal fixed the disability at 35%. From the evidence of P.W.2 and from Ex.P6 to Ex.P9 and Ex.P11, P12, it is decided that the percentage of disability fixed by the Tribunal is reasonable.

9. For 35% of the disability, the Tribunal has awarded Rs.70,000/- as compensation. The appellant is entitled to Rs.3,000/- per percentage of disability, hence, for 35% disability, the claimant is entitled to Rs.1,05,000/- as compensation.



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10. For the period of treatment, the Tribunal has awarded Rs.13,500/- . It is stated that the claimant was a Mason and he was earning Rs.12,000/- per month. The notional income during the year 2012 is Rs.9,000/- and hence, it is decided that for the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.54,000/- as compensation. The claimant is entitled to Rs.5,000/- towards transport expenses, Rs.5,000/- towards extra nourishment, Rs.10,000/- towards attender charges and Rs.20,000/- towards pain and sufferings.

10. The total compensation calculated as follows:-

For 35% Disability	:	Rs.1,05,000/-
Temporary loss of income	:	Rs. 54,000/-
Transport expenses	:	Rs. 5,000/-
Extra nourishment	:	Rs. 5,000/-
Attender charges	:	Rs. 10,000/-
Pain and sufferings	:	Rs. 20,000/-
Total compensation	:	 Rs.1,99,000/-

11. It is seen that the Tribunal has fixed the interest at 8% p.a., which is excessive and the interest is reduced to 7.5% p.a..



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WEB COPY 12. Hence, this Appeal is partly allowed. No costs.

(i) The quantum of compensation awarded by the Tribunal is enhanced from Rs.1,07,500/- to Rs.1,99,000/-.

(ii) The respondent herein - Transport Corporation, is directed to deposit the entire compensation of Rs.1,99,000/- (less the amount if any 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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iii) On such deposit being made by the respondent herein /Transport Corporation, the Tribunal may permit the claimant to withdraw entire award amount along with interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. The claimant is not entitled for interest for the default period, if there is any.

23.11.2022

Index : Yes/No

Internet : Yes/No

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Note : In view of the present lock down owing to COVID – 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.



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To
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1.The III Additional District and Sessions Judge,
Motor Accident Claims Tribunal,
Tirunelveli

2.The Section Officer,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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R. THARANI, J.

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Pre-delivery Judgment made in
C.M.A.(MD)No.1933 of 2013

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