



C.M.A.(MD)No.238 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 14.12.2022

Delivered On : 19.12.2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.238 of 2020

The Managing Director

Tamil Nadu State Transport Corporation Limited,

Periyamilaguparai.

.. Appellant /Respondent

Vs.

A.Nagarajan

.. Respondent/ Petitioner

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree made in M.C.O.P.No.46 of 2019, dated 25.10.2019, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate Court, Dindigul.

For Appellant

: Mr.P.M.Vishnu Varthanan

For Respondents

: Mr.R.Venkatesan

JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.46 of 2019, dated 25.10.2019, on the file of the Motor Accident Claims



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Tribunal / Chief Judicial Magistrate, Dindigul. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. A brief substance of the claim petition in M.C.O.P.No.46 of 2019, is as follows:

On 24.11.2018, at about 4.00 pm., when the petitioner was riding his two wheeler bearing Registration No.TN-57-H-2804, a bus bearing Registration No.TN-45-N- 2962 came in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries, he was admitted in Dindigul Government Hospital. After getting first aid, he was admitted in Madurai Government Hospital and he took treatment as inpatient from 24.11.2018 till 26.11.2018, then he was admitted in Coimbatore Ganga Hospital and took treatment as inpatient from 27.11.2018 till 10.12.2018. The left leg of the petitioner was amputated. Before the accident, the petitioner was working as a painter and he indulged in agricultural activities by rearing cattles and he was earning Rs.30,000/- per month. The petitioner claimed a sum of Rs.15,00,000/- as compensation.

3. A brief substance of the counter filed by the respondent in M.C.O.P.No. 46 of 2019 , is as follows:



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The driver of the bus drove the vehicle in a careful and cautious manner in a slow speed. It was the petitioner, who came in a rash and negligent manner from the service road without wearing helmet, tried to over take the bus and dashed against the left corner of the bus and he invited the accident. The petitioner was not having valid driving licence. The accident has happened due to the negligence of the petitioner himself. The respondent is not liable to pay compensation.

4. 1 witness was examined and 11 documents were marked, on the side of the claimant. 1 witness was examined and no document was marked, on the side of the respondent. After considering both sides, the Tribunal awarded a sum of Rs.9,89,540/- as compensation to be paid by the Transport Corporation.

5. Against the order, the appellant / Transport Corporation has filed this appeal on the following grounds:-

The Tribunal is wrong in fixing the monthly income as Rs.9,000/- per month. The Tribunal is wrong in fixing the liability on the appellant, on the basis of Ex.P1-F.I.R. The Tribunal is wrong in adding 40% towards future prospects for an injury case. The award of compensation under the head of medical expenses, pain and sufferings are excessive. The Tribunal failed to consider that it was the



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claimant, who was rash and negligent and he invited the accident, when he was attempting to overtake the bus.

6. On the basis of the evidence of P.W.1 and on the basis of Ex.P1-copy of the F.I.R, the Tribunal has fixed the liability on the bus driver. The evidence of R.W.1- bus driver, cannot be treated equivalent to the evidence of an independent witness. Hence, it is decided that the liability fixed by the Tribunal is reasonable.

7. The discharge summary was marked as Ex.P2. Photograph was marked as Ex.P3. Wound certificate was marked as Ex.P4. Disability certificate was marked as Ex.P8. X-Ray was marked as Ex.P9. It is seen that the claimant sustained injury and his left leg was amputated from the knee level. In Ex.P8, the disability was assessed as 70%, but, the Tribunal has fixed the disability as 60%, which is reasonable.

8. On the side of the appellant, it is stated that the income fixed by the Tribunal is excessive and that there was no proof of income and the income is to be reduced. Considering the date of accident, the notional monthly income of the claimant is fixed as Rs.12,000/-. For 60% disability, the claimant is entitled to Rs. 7,200/- p.m (Rs.12,000/- X 60/100) as salary. The age of the claimant at the time of



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accident was 56 years and hence, multiplier '9' is applicable. After applying multiplier, the loss of income is calculated as Rs.7,77,600/- (Rs.7,200/- X 12 X 9).

9. On the side of the appellant, it is stated that the award under various other heads is excessive. Medical bills are marked as Exs.P5, P6 and P7. The Tribunal awarded Rs.97,060/- towards medical expenses, which is reasonable. The Tribunal awarded Rs.50,000/- towards pain and sufferings and Rs.1,000/- towards damage to articles, which are all reasonable.

10. Considering the need for fixing artificial leg, a sum of Rs.60,000/- is awarded.

11. The total compensation is calculated as follows:-

Loss of income	:	Rs. 7,77,600/-
Pain and sufferings	:	Rs. 50,000/-
Medical bills	:	Rs. 97,060/-
Damage to articles	:	Rs. 1,000/-
Artificial leg	:	Rs. 60,000/-
Total compensation	:	Rs. 9,85,660/-



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WEB COPY 12. In the result, this Appeal is partly allowed. No costs.

(i) The compensation is reduced from Rs.9,89,540/- to Rs. 9,85,660/-

(ii) The claimant is entitled to Rs. 9,85,660/- as compensation.

(iii) The Transport Corporation is directed to deposit the entire compensation of Rs. 9,85,660/- (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 with costs, within a period of eight weeks from the date of receipt of a copy of this order.

(iv) On such deposit being made by the Transport Corporation, the respondent / claimant is permitted to withdraw the entire award amount with accrued interest and costs, on filing of proper petition before the Tribunal, less any amount, if already withdrawn by him. Excess amount, if any, shall be refunded to the Transport Corporation.

19.12.2022

Index : Yes/No

Internet : Yes/No

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To

- 1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Dindigul.

- 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
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