



C.M.A.(MD)Nos.261 of 2019 and 290 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 05.07.2022

Delivered On : 10.08.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)Nos.261 of 2019 and 290 of 2021

C.M.A.(MD)No.261 of 2019

The General Manager,

Tamilnadu State Transport Corporation,

Trichy Town, Trichy District.

.. Appellant

Vs.

Ponraj,

.. Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the judgment and decree, dated 26.11.2018, made in M.C.O.P.No.200 of 2018, on the file of the Motor Accident Claims Tribunal – I Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur.

For Appellant

: Mr.P.Prabhakaran

For Respondent

: Mr.T.Selvakumaran



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C.M.A.(MD)No.290 of 2021

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Ponraj,

.. Appellant

Vs.

The General Manager,

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Trichy Town, Trichy District.

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For Appellant

: Mr.T.Selvakumaran

For Respondent

: Mr. P.Prabhakaran

COMMON JUDGMENT

C.M.A.(MD)No.261 of 2019 has been filed against the award, dated 26.11.2018, made in M.C.O.P.No.200 of 2018, on the file of the Motor Accident Claims Tribunal –I Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.



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2. C.M.A.(MD)No.290 of 2021 has been filed against the award, dated 26.11.2018, made in M.C.O.P.No.200 of 2018, on the file of the Motor Accident Claims Tribunal –I Chief Judicial Magistrate, Virudhunagar District at Srivilliputhur. The appellant herein is the petitioner and the respondent herein is the respondent in the original M.C.O.P. Petition.

3. Brief substance of the claim petition, in M.C.O.P.No.200 of 2018, is as follows:

On 11.09.2015, at about 01.30 pm., the petitioner / Ponraj was driving a lorry bearing Registration No.TN-57-W-0977, along the Madurai - Trichy four way track, near Kottampatti Vanjinagaram timepass hotel, he parked the vehicle on the extreme left of the road, a vehicle bearing Registration No.TN-28-AL-1156 was parked in front of the lorry and the lorry driver - Kaleeswaran was talking with the petitioner, at that time, a bus bearing Registration No.TN-45-N-3341 driven by its driver in a rash and negligent manner, tried to overtake some other vehicle, came to the extreme left of the road and dashed against the lorry bearing Registration No.TN-57-W-0977. The above said Kaleeswaran died on the spot. The petitioner sustained injuries and he claimed a sum of Rs.15,00,000/- as compensation.



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4. Brief substance of the counter filed by the respondent in M.C.O.P.No.

WE 200 of 2018 is as follows:-

The manner of accident, injuries, medical expenses, mode of treatment are all to be proved. On 11.09.2015, the respondent's bus driver drove the vehicle in a slow and steady manner, observing all the road rules. It was the driver of the lorry, bearing Registration No.TN-57-W-0977, drove the vehicle in a rash and negligent manner, without observing the traffic, moved the lorry from the left to right and dashed against the bus. Both the owner of the lorries, bearing Registration Nos.TN-57-W-0977 and TN-28-AL-1156 and their Insurance Companies are necessary parties to the case and the petition has to be dismissed for non-joinder of necessary parties. The petitioner has to prove that he is disabled and there is loss of income. The driver of the bus was not responsible for the accident. Hence, the respondent is not liable to pay compensation. The amount claimed is excessive.

5. On the side of the claimants, 2 witnesses were examined and 17 documents were marked. On the side of the respondents, 1 witnesses was examined and 1 document was marked. One document was marked as Court document. After considering both sides, the Tribunal awarded a sum of Rs.5,66,300/- as compensation.



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6. Against the award, the claimant filed an Appeal in CMA(MD)No.290 of

2021 and the Transport Corporation filed an Appeal in CMA(MD)No.261 of 2019.

The grounds of appeal in CMA(MD)No.261 of 2019, is as follows:-

The Tribunal has fixed the monthly income at Rs.8,000/-, without any specific proof for the same. The Tribunal has erred in adopting multiplier method for an injury case. The Tribunal is wrong in fixing 30% functional disability, without any basis. The amount awarded towards permanent disability and loss of earning capacity is excessive. The claimant is entitled only for Rs.3,000/- per 1% of the disability. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.50,000/- towards pain and sufferings, Rs.10,000/- towards attender charges, Rs.500/- towards damages to articles and Rs.30,000/- towards future medical expenses, which are all excessive.

7. The grounds of appeal in CMA(MD)No.290 of 2021, is as follows:-

Though the disability is 30% , the Tribunal ought to have calculated functional disability at 100%. The monthly salary ought to have been taken as Rs.10,000/- per month. The Tribunal ought to have granted Rs.1,00,000/- towards loss of amenities and Rs.1,00,000/- towards pain and sufferings. The profession of the injured is Driver and the income to be fixed accordingly.



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8. On the side of the Corporation, it is stated that it was the driver of the lorry, who suddenly took the lorry, without observing the traffic and hit against the other lorry driver. The owners of the lorries and their Insurance Companies were not impleaded as parties to the case and the case is barred for non-joinder of necessary parties.

9. On the side of the claimant, it is stated that there is no necessity to implead the owner and Insurer of the other vehicles. It is the right of the claimant to choose any one of the tort feaser.

10. On the side of the Corporation, it is stated that the driver of the bus was not responsible for the accident and it was the lorry driver / claimant, who drove the vehicle in a rash and negligent manner and invited the accident.

11. Copy of the F.I.R was marked as Ex.P1. Observation mahazer was marked as Ex.P2, Rough sketch was marked as Ex.P3, Motor Vehicle Inspection Reports were marked as Ex.P4 to Ex.P6. Copy of the accident register was marked as Ex.P7. Charge sheet was marked as Ex.P8. Ex.P17 was the driving licence of the claimant. No document was filed on the side of the Corporation. On the basis of the evidence of P.W.1, Ex.P1 to Ex.P6 and Ex.P8 and considering the fact that there is



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no document filed on the side of the Corporation, it is decided that the accident took place due to the rash and negligent driving of the bus driver.

12. On the side of the Corporation, it is stated that for 30% of functional disability, the Tribunal has adopted multiplier method, which is unwarranted. No document was marked to prove the medical expenses, but, the Tribunal has awarded Rs.30,000/- towards medical expenses, which is excessive. On the side of the Corporation, it is stated that the claimant has filed the appeal claiming Rs.2,00,000/- towards enhancement of compensation and that the injured sustained only 39% disability, there is no evidence that the injured could not do driver job again. Doctor was not examined and the citations on the side of the claimant were not applicable to the facts of the present case.

13. On the side of the Corporation, it is stated that for a persons doing a Car cleaner job, multiplier method was not adopted by the Court. A judgment of this Court reported in **2010-3-LW-290 [Branch office, New India Assurance Co.Ltd., V. Krishnaveni]** is cited, wherein, it is stated as follows:-

“Adopting multiplier method is not sustainable, since there is no evidence to show that she has been prevented from running dry cleaner shop in future; Rs.2,000/- may be awarded for each percentage of the permanent disability. “



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14. On the side of the Corporation, it is further stated that even for 70% disability, the multiplier method was not adopted by this Court. Only Rs.3,000/- per percentage was granted by this Court. A judgment of this Court reported in **2013-1-TNMAC-49 (DB) [New India Assurance Co.Ltd V. E.Ponnurangam]** is cited, wherein, it is stated as follows:-

“The injured / claimant suffered multiple fractures in right leg and disability assessed by the Doctor at 70% permanent, accepted by the Tribunal. The claimant was not lost his job and attending to his job after his treatment. Hence, the question of applying multiplier method and assessing loss of earning power does not arise. The permanent disability fixed by the Tribunal at 70% on the basis of evidence of P.W.1. Ex.P9/Disability Certificate and evidence of the Doctor / P.W.2, though without any discussion, not interfered with. However, Rs.10,92,000/- awarded by the Tribunal by applying multiplier method is set aside and Rs.1,40,000/- awarded in the appeal towards 70% permanent disability at the rate of Rs. 2,000/- per percentage of disability is ordered.”

15. On the side of the claimant, it is stated that the claimant was a Driver and Driving licence was marked as Ex.P17. He has undergone surgery and he could not continue to work as a lorry driver. He sustained functional disability and the multiplier method adopted by the Tribunal is correct.



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WEB COPY 16. A judgment of this Court reported in **2017-1-TNMAC-813**[*National Insurance Co.Ltd., V. Gopalakrishnan*] is cited on the side of the claimant, wherein, this Court has ordered compensation by applying multiplier method. The relevant portion is reads as follows:-

“38% partial permanent disability assessed by Doctor. In the absence of any rebuttal evidence. The tribunal rightly fixed disability at 38% and fixed the income at Rs.4,500/- per month and applying multiplier of 13, the Tribunal awarded loss of earning capacity at Rs.2,66,760/- [Rs.4,500/- X 12 X 13 X 38 /100]. The application of multiplier method and award of loss of earning capacity held to be reasonable.”

17. On the side of the claimant, it is stated that the monthly income ought to have been fixed at Rs.12,000/- per month and the Tribunal has wrongly fixed the monthly income at Rs.8,000/-. A judgment of this Court reported in **2015-2-TNMAC-171** [*R.Mallika V. A.Babu*] is cited, wherein, it is stated as follows:-

“Fixation of the deceased, aged about 30 yrs, a building demolition Contractor, earning Rs.10,000/- per month as per claim. The claimants though produced employment proof / Ex.P9 and



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Diploma certificate of commercial practice and Typewriting Higher Grade, no proof of income produced. In the absence of proof of income, the Tribunal fixed Rs.7,000/- per month as notional income including future prospects. If proper, the following Apex Court in Neeta, held, in absence of proof of income, monthly income of the deceased can be fixed at Rs.12,000/-, particularly when deceased possessed Diploma Certificate in Higher Grade Typewriting“

18. On the side of the claimant, it is stated that the claimant sustained 39% functional disability. On the side of the claimant an appeal was filed seeking enhancement of compensation. It is stated that instead of fixing 30% for functional disability, the functional disability ought to have been calculated at 100%. The Doctor, who gave treatment to the injured, was not examined. The injury is only on the leg. Though the injured could not work as a driver, the injured can do some other work and can earn livelihood, which may not be equivalent to the income of a lorry driver. In the above circumstances, the point raised by the injured is not maintainable.

19. Medical board has fixed the disability at 39% and the disability certificate was marked as a Court document. The claimant is a driver and the disability will affect his functions as a driver. The Tribunal has fixed the functional



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disability at 30%, which is reasonable. The age of the injured was fixed at 35 years.

The injured was a lorry driver and the driving licence was marked as Ex.P17. As the claimant worked as a lorry driver, the monthly income fixed at Rs.8,000/- per month is very reasonable. For 30% of the disability, considering the age of the injured, the Tribunal has awarded a sum of Rs.4,60,800/- ($\text{Rs.8,000/-} \times 12 \times 16 \times 30 / 100 = \text{Rs.4,60,800/-}$), which is reasonable.

20. On the side of the claimant, it is stated that Rs.1,00,000/- ought to have awarded towards pain and sufferings and Rs.1,00,000/- towards loss of amenities. The injuries are only on the leg and the functional disability is only fixed at 30%. In the above circumstances, there is no necessity to award any amount towards loss of amenities. Considering the percentage of disability, the amount awarded for pain and sufferings (Rs.50,000/-) is excessive and that amount is reduced to Rs.25,000/-.

21. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.10,000/- towards extra nourishment, Rs.50,000/- towards pain and sufferings, Rs.10,000/- towards attender charges, Rs.30,000/- towards future medical expenses, Rs.500/- towards damages to cloth articles, which are all reasonable.



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22. Considering the above said points, the amount of compensation is

calculated as follows:-

For Functional Disability	: Rs.4,60,800/-
For Transport expenses	: Rs. 5,000/-
For Extra nourishment	: Rs. 10,000/-
For Pain and sufferings	: Rs. 25,000/-
For Future medical expenses	: Rs. 30,000/-
For Attender charges	: Rs. 10,000/-
For Damages to cloths	: Rs. 500/-
Total compensation	: Rs.5,41,300/-

23. CMA(MD)No.290 of 2019 is dismissed. CMA(MD)No.261 of 2019 is partly allowed. The compensation is reduced from Rs.5,66,300/- to **Rs.5,41,300/-**.

(i) The claimant is entitled to **Rs.5,41,300/-** as compensation.

(ii) The Transport Corporation is directed to deposit the entire compensation of **Rs.5,41,300/-** (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.



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(iii) 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.

25. In the result, C.M.A.(MD)No.261 of 2019 is partly allowed and C.M.A.(MD)No.290 of 2021 is dismissed. No costs.

10.08.2022

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.

To

1.The Motor Accident Claims Tribunal –
I Additional Subordinate Judge,
Tiruchirappalli.

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 Judgments made in
C.M.A.(MD)Nos.261 of 2019 and 290 of 2021

10.08.2022