



C.M.A(MD)No.301 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2022

Pronounced on : 01.07.2022

CORAM

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

C.M.A(MD)No.301 of 2019

and

C.M.P.(MD)No.3939 of 2019

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
New Junction Road,
Kumbakonam,
Thanjavur District.

... Appellant

Vs

Kumaresan

... Respondent

PRAYER :-

This Civil Miscellaneous Appeal is filed under Section 173 of the Motor vehicle Act, 1988 to set aside the award and decree made in M.C.O.P.No.458 of 2018 dated 08.10.2018 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Thanjavur.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mr.G.Kannan



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JUDGMENT

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This appeal is filed against the order in M.C.O.P.No.458 of 2018 on the file of the Subordinate Court, Thanjavur. The appellant is the respondent and the respondent herein is the claimant in the claim petition.

2.The brief substance of the claim petition is as follows:

On 17.10.2017, at about 6.15 p.m., when the petitioner and his wife were travelling in car bearing registration number TN 66 J 8888, along the Thiruvarur road, near Kudithangiseri, a bus bearing registration number TN 49 N 1478 was driven by its driver in a rash and negligent manner, dashed against the car and the petitioner sustained injuries in the accident. He took treatment as inpatient for a period of 14 days. The petitioner lost his eye sight in the left eye. The petitioner was working as a police constable in the Police Department and was earning Rs.30,000/- per month. The petitioner claims a sum of Rs.15 Lakhs as compensation.

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

The bus was driven by its driver in a moderate speed, observing all the road rules. The place of the accident is a turning. The bus driver drove the



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vehicle in a very slow manner. It was the car, which came in a rash and negligent manner, dashed against the bus. The petitioner is responsible for the accident. The petitioner has to prove the nature of the injury and the treatment undertaken by him. The age, avocation and income are all denied.

4.Four witnesses were examined and eleven (11) documents were marked on the side of the petitioner. One witness was examined and no document was marked on the side of the respondent. The Tribunal awarded a sum of Rs.5,93,700/- as compensation.

5.Against the award, the appellant Transport Corporation, has approached this Court on the following grounds:

Without considering the materials on record, the Tribunal has fixed the entire negligence on the appellant. It was the car, which came from the opposite direction in a high speed along the curve of the road, dashed against the right side body of the appellant's bus. The Tribunal fixed the disability at 61.5% which is very excessive. The amount awarded towards pain and sufferings, loss of amenities, loss of expectation of life, medical expenses and the rate of interest awarded by the Tribunal are excessive and the same is to be reduced.



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6. On the side of the appellant, it is stated that the age of the injured was 50 years. P.W.2, the or the Doctor who treated the claimant fixed the disability at 26%. P.W.3 and 4, Doctors fixed the disability as 50% and 23%, A disability of 20% was fixed towards the loss of function of the taste buds and that the tribunal fixed the disability at 61.5% which is very excessive.

7. On the side of the respondent it is stated that the claimant sustained head injury. He lost his eye sight. He sustained fracture in the shoulder and his neuro system was also affected. The Tribunal has considered the evidence of the Doctors and has verified the medical records and fixed the disability.

8. Records perused. It is seen that the left eye sight of the petitioner was affected. The Eye Doctor and the neuro surgeon fixed the disability at 50%. The Neuro surgeon has fixed 20% disability for the defects in identifying smell and taste. There was no specific medical test report to prove the same.

9. Hence, the disability is fixed at 45%. For each percentage of the disability the petitioner has to be awarded Rs.3,000/-. For 45% of disability, the petitioner is entitled to Rs.1,33,500/- as compensations. The Tribunal has awarded Rs.1 Lakh towards pain and sufferings Rs.1,50,000/- towards loss of



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amenities and has awarded Rs.1 Lakh towards loss of expectations of life Rs. 50,000/- towards pain and sufferings, Rs.35,000/- towards loss of amenities Rs.25,000/- towards loss of expectations of life, which are all excessive. The Tribunal has awarded Rs.39,191/- towards medical expenses, Rs.10,000/- towards extra nourishment, Rs.5,000/- towards transport expenses which are all reasonable.

10.In the above circumstances, the award amount fixed by the Tribunal is modified as under:

	Amount awarded by the Tribunal	Modified Award Amount in this CMA
Disability	Rs.1,84,500/-	Rs.1,35,000/-
Pain and Sufferings	Rs.1,00,000/-	Rs. 50,000/-
Loss of amenities	Rs.1,50,000/-	Rs. 35,000/-
Loss of expectation of life	Rs.1,00,000/-	Rs. 25,000/-
Medical Expenses	Rs. 39,191/-	Rs. 39,191/-
Extra nourishment	Rs. 10,000/-	Rs. 10,000/-
Attender charges	Rs. 5,000/-	Rs. 5,000/-
Transport expenses	Rs. 5,000/-	Rs. 5,000/-
Total	Rs. 5,93,691	Rs.3,04,191/-



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In total the award amount is fixed as Rs.3,04,191/-, rounded off to **Rs.3,04,500/-**-(Rupees Three Lakhs Four Thousand and Five Hundred only).

11.The Civil Miscellaneous Appeal is allowed in part. No costs.

(i) The quantum of compensation awarded by the Tribunal is reduced from Rs.5,93,691/- to Rs.3,04,500/-(Rupees Three Lakhs Four Thousand and Five hundred only) which shall carry interest at the rate of 7.5% per annum.

(ii) The Appellant Transport Corporation, is directed to deposit the entire compensation of Rs.3,04,500/- (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 to the credit of M.C.O.P.No.458 of 2018 dated 08.10.2018 on the file of the Motor Accident Claims Tribunal / Special Sub Court, Thanjavur, within a period of eight weeks from the date of receipt of a copy of this order, less any amount already deposited.

(iii) On such deposit being made by the appellant/transport corporation, the respondent / claimant is permitted to withdraw the entire award amount, along with proportionate interest and cost, less any amount already withdrawn



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by him. The claimant is not entitled for interest for the default period, if any.

Consequently, connected miscellaneous petition stands closed.

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Index: Yes / No

Internet : Yes / No

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To

1.The Judge,Motor Accident Claims Tribunal / Special Sub Court,
Thanjavur.

2.The Record Keeper, Vernacular Records,
Madurai Bench of Madras High Court, Madurai.



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Pre-Delivery Judgment made in

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