

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 24.08.2022

Delivered On : 26.09.2022

CORAM:

THE HONOURABLE MRS.JUSTICE R.THARANI

C.M.A(MD)No.549 of 2022

The General Manager,
State Express Transport Corporation,
No.2, Pallavan Salai,
Thiruvalluvar House,
Chennai.

.... Appellant / Respondent

Vs.

Samuvel Joanson

... 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.282 of 2020, dated 20.12.2021, on the file of Motor Accident Claims Tribunal – III Additional Sub Court, Tiruchirappalli.

For Appellant : Mr.P.Prabhakaran

For Respondent : Mr.N.Sudhagar Nagaraj

J U D G M E N T

This Civil Miscellaneous Appeal is filed against the award, made in M.C.O.P.No.282 of 2020, dated 20.12.2021, on the file of Motor Accident Claims Tribunal – III Additional Sub Court, Tiruchirappalli. The appellant herein is the respondent and the respondent herein is the claimant in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.282 of 2020, is as follows:

On 29.07.2018, at about 10.00 pm., when the petitioner was riding a two wheeler bearing Registration No.TN-48-AF-3579 along with a pillion rider, by name, Arockiyasamy, along the Dindigul – Trichy National Highway, near Vannankovil bus stop, in a slow and cautious manner, a bus, bearing Registration No.TN-01-AN-1441 was driven by its driver in a rash and negligent manner, dashed against the two wheeler. The petitioner sustained injuries. He was admitted in Trichy Maruti Hospital and took treatment as inpatient from 30.07.2018 till 16.08.2018. He undergone surgery, plates and screws were affixed and K.Wires were

affixed. Before the accident, the petitioner was earning Rs.500/- per day as a construction coolie. The petitioner claimed a sum of Rs.15,00,000/- as compensation.

3. Brief substance of the counter filed by the respondent, in M.C.O.P.No.282 of 2020, is as follows:

The manner of accident as narrated in the petition is wrong. The bus was driven by its driver in a slow and cautious manner. It was the rider of the two wheeler, who all of a sudden crossed the road in a rash and negligent manner and invited the accident. The injuries are simple in nature. The petitioner was not wearing helmet. The profession, income are all denied.

4. On the side of the claimants, 1 witnesses was examined and 13 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. 1 document was marked as Court document. After considering both sides, the Tribunal awarded a sum of Rs.13,08,838/- as compensation.

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

The Tribunal has failed to fix the entire negligence on the injured, who rode the two wheeler, without wearing helmet in a rash and negligent manner, abruptly, crossed the road, without any indication. The Tribunal wrongly has fixed the entire responsibility on the Transport Corporation. The award is excessive. Without any proof of income, the Tribunal has fixed the monthly income as Rs.8,000/- which is too high. The Tribunal is wrong in adopting multiplier method and adding future prospects for partial disability. The Tribunal has awarded Rs.2,74,118/- towards medical expenses, Rs.1,25,000/- towards pain and sufferings, Rs.50,000/- towards loss of amenities, Rs.25,000/- towards future medical expenses, Rs.15,000/- towards extra nourishment, Rs.7,000/- towards transport expenses, Rs.10,000/- towards attender charges and Rs.4,000/- towards damage to articles, which are all excessive.

6. On the side of the appellant, it is stated that the accident has happened only due to the rash and negligent driving of the claimant himself. The driver of the bus drove the vehicle in a slow and cautious

manner, by observing the traffic. The rider and the pillion rider were not wearing helmet. The rider of the two wheeler has no driving licence.

7. On the side of the respondent / claimant, it is stated that R.W.1 is an official of the Transport Corporation and his evidence is not reliable. The Transport Corporation has failed to examine any other witnesses. The accident has happened only due to the rash and negligent driving of the bus driver.

8. Ex.P1 is the copy of the F.I.R, Ex.P5 is the copy of the charge sheet. Ex.P13 is the copy of the judgment of the criminal Court. On the basis of the evidence of P.W.1 and on the basis of Ex.P1 and Ex.P5, the Tribunal has fixed the liability on the bus driver. Except the oral evidence of R.W.1, no witness was examined on the side of the appellant / Transport Corporation. In view of the same, it is decided that the appellant is liable to pay compensation to the claimant.

9. The claimant has not proved that he was wearing helmet at the time of accident. Driving Licence of the rider of the two wheeler was not marked. Hence, 10% liability is fixed on the claimant.

10. On the side of the appellant, it is stated that for the disability, the Tribunal has applied multiplier method and fixed the salary as Rs.8,000/-, without any proof of income. The Tribunal has also added future prospects, only percentage method is to be adopted to fix the compensation. The Doctor, who gave treatment was not examined. It is stated that the claimant took treatment in a private hospital, even then, the Doctor was not examined.

11. On the side of the respondent, it is stated that 40% disability was fixed by the Medical Board. The disability is permanent and not a partial permanent disability. A judgment of the Hon'ble Supreme Court, reported in **2021-1-TNMAC-404(SC) [Karthik Subramanian V. B.Sarath Babu and another]** is cited, wherein, the Hon'ble Supreme Court has applied multiplier method for 40% disability. Relevant para stated as follows:-

“Learned counsel for the appellant had relied upon the recent judgment of this Court in [Erudhaya Priya v. State Express Transport Corporation Ltd.](#) - 2020 SCC OnLine SC 601. The judgment took into consideration the earlier judgments including in [Pranay Sethi \(supra\)](#) and [Sandeep Khanduja v. Atul Dande](#) – (2017) 3 SCC 351. The latter

judgment had opined that multiplier method was logically sound and legally well established to quantify the loss of income as a result of death or permanent disability suffered in an accident. The present case being one of permanent disability of 40 per cent, it has been urged that the same principle should be applied in the present case while in fact nothing has been granted on account of future prospects.”

12. Medical Certificate - Ex.C1 was given by the Medical Board. Considering the percentage of disability fixed by the Board and considering that the disability is permanent and not partial, it is decided that multiplier method is to be adopted.

13. The Tribunal fixed the monthly income as Rs.8,000/- per month and the appellant has disputed the monthly income. Considering the date of accident, the monthly income fixed by the Tribunal is reasonable. There is no necessity to add future prospects, in injury cases. Hence, adding 30% towards future prospects is not reasonable.

14. The age of the claimant is 33 years, multiplier '16' is applicable. Considering the 40% disability, the monthly income is fixed at Rs.3,200/- ($\text{Rs.8,000/-} \times 40/100 = \text{Rs.3,200/-}$). After applying

multiplier '16', the claimant is entitled to Rs.6,14,400/- (Rs.3,200/- X 12 X 16 = Rs.6,14,400/-) towards loss of income.

15. The claimant is entitled to Rs.50,000/- towards pain and sufferings, Rs.10,000/- towards loss of amenities, Rs.25,000/- towards future medical expenses, Rs.15,000/- towards extra nourishment, Rs.5,000/- towards transport expenses, Rs.10,000/- towards attender charges and Rs.4,000/- towards damage to articles.

14. The total compensation is calculated as follows:-

Loss of income	:	Rs.6,14,400/-
Medical Expenses	:	Rs.2,74,118/-
Pain and sufferings	:	Rs. 50,000/-
Loss of amenities	:	Rs. 10,000/-
Future medical expenses	:	Rs. 25,000/-
Extra nourishment	:	Rs. 15,000/-
Transport expenses	:	Rs. 5,000/-
Attender charges	:	Rs. 10,000/-
Damage to articles	:	Rs. 4,000/-
Total Compensation	:	Rs.10,07,518/-

After deducting 10% (Rs.1,00,751/-) towards contributory negligence, the claimant is entitled to Rs.9,06,767/- as compensation.

15. This Appeal is partly allowed. No costs. The compensation is reduced from Rs.13,08,838/- to Rs.9,06,767/-.

(i) The claimant is entitled to Rs.9,06,767/- as compensation.

(ii) The appellant -Transport Corporation is directed to deposit the entire compensation of Rs.9,06,767/- (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.

(iii) On such deposit being made by the 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. The Claimant is not entitled for interest for the default period, if there is any default. Excess amount, if any, shall be refunded to the appellant.

26.09.2022

Index:Yes/No
Internet:Yes/No
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R.THARANI.,J.

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To

1.The Motor Accident Claims Tribunal –
III Additional Sub Court,
Tiruchirappalli.

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

Pre-delivery Judgment made in
C.M.A(MD)No.549 of 2022

26.09.2022