



C.M.A.(MD)No.603 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 13.10.2022

Delivered On : 19.10.2022

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.603 of 2019

The Managing Director

Tamil Nadu State Transport Corporation

(Madurai) Limited,

Bye pass Road,

Madurai District – 625 010.

.. Appellant /1st Respondent

Vs.

1.Karuppasamy

.. 1st Respondent / Petitioner

2.T.Moohamad Rafeek .

.. 2nd Respondent /1st Respondent

Prayer: This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the award and decree, dated 02.03.2019, made in M.C.O.P.No.95 of 2018, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar Camp at Srivilliputtur.

For Appellant

: Mr.K.Sudalaiyandi

For Respondent No. 1

: Mr.B.Dhanasekaran

For Respondent No.2

: No appearance



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JUDGMENT

WEB COPY This Civil Miscellaneous Appeal has been filed against the award, dated 02.03.2019, made in M.C.O.P.No.95 of 2018, on the file of the Motor Accident Claims Tribunal / Chief Judicial Magistrate, Virudhunagar Camp at Srivilliputtur. The appellant herein is the second respondent and the first respondent herein is the claimant and the second respondent herein is the first respondent in the original M.C.O.P. Petition.

2. Brief substance of the claim petition in M.C.O.P.No.95 of 2018, is as follows:

On 21.04.2017, at about 9.00 am., when the petitioner was riding a two wheeler-TVS XL bearing Registration No.TN-67-AX-4658 with his colleague-Duraipandian as pillion rider, were travelling along the Vathrairuppu - Krishnan Kovil main road, near Muniyandi Kovil vilakku, a bus bearing Registration No.TN-67-N-0585 came in a rash and negligent manner, dashed against the two wheeler. The petitioner sustained injuries and he claimed a sum of Rs.10,00,000/- as compensation.

3. Brief substance of the counter filed by the second respondent, in M.C.O.P.No.95 of 2018, is as follows:



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The manner of the accident, injuries, treatment are all to be proved. The petitioner is the tortfeasor. After stopping the bus at the Muniyandi Kovil bus stop, when the driver was about to move the bus, the two wheeler came from the opposite direction along the wrong side of the road in a rash and negligent manner and dashed against the bus and the petitioner invited the accident.

4. On the side of the claimants, 1 witness was examined and 10 documents were marked. On the side of the respondents, 1 witness was examined and no document was marked. After considering both sides, the Tribunal awarded a sum of Rs.3,82,600/- as compensation to the claimants.

5. Against the award, the second respondent / appellant has filed this appeal on the following grounds:-

The Tribunal ought not to have adopted multiplier method in fixing the loss of income. There is no evidence that the claimant was not able to do his duty after the accident. The Tribunal wrongly fixed the notional income at Rs.6,500/- . Ex.A7-disability certificate shows that the claimant has suffered 46% of partial permanent disability, but, without any basis, the Tribunal awarded functional disability at 20%, which is wrong. The Tribunal has awarded Rs.2,49,600/- towards permanent loss of income, Rs.5,000/- towards transport expenses, Rs.10,000/-



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towards extra nutrition, Rs.10,000/- towards attender charges, Rs.3,000/- towards damage to cloths, Rs.50,000/- towards pain and suffering, Rs.25,000/- towards medical expenses and Rs.30,000/- towards future medical expenses, which are all excessive.

6. On the side of the appellant, it is stated the the claimant is the root cause of the accident, he was rash and negligent, he was not wearing helmet and the negligence is on the part of the claimant and he is not entitled to claim any compensation. On the side of the respondents, it is stated that it was the bus driver, who was rash and negligent and that F.I.R and charge sheet were filed against the bus driver. The claimant was riding only a TVS XL vehicle, at the time of accident. F.I.R. and charge sheet were against the bus driver. Hence, it is decided that the accident has occurred due to the rash and negligent driving of the bus driver.

7. On the side of the appellant, it is stated that the claimant was not wearing helmet. The claimant sustained head injuries, which might have been avoided by wearing the helmet. Hence, 10% contributory negligence is fixed on the claimant.



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8. On the side of the appellant, it is stated that the medical board has issued disability certificate that the claimant sustained 46% partial permanent disability and that there was no functional disability and the Tribunal is wrong in fixing 20% functional disability and the Tribunal is wrong in awarding compensation by applying multiplier method.

9. On the side of the respondents, it is stated that the Tribunal has fixed Rs.6,500/- as monthly income, which is low and prayed the amount has to be enhanced.

10. The disability was fixed by the Medical Board. Hence, there is no necessity to alter the disability. For 46% of the partial permanent disability, the claimant is entitled to Rs.1,38,000/-(Rs.3,000/-X46=Rs.1,38,000/-) as compensation. It is stated that the claimant was a Mason and he was earning Rs.15,000/- per month. The Tribunal has fixed the notional income as Rs.6,500/-. The notional income during the year 2017 is Rs.12,000/-. For the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.72,000/- as compensation. The Tribunal has awarded Rs.25,000/- towards medical expenses. No document was filed on the side of the claimant, to prove the medical expenses. The treatment was given only in the Government Hospital. Hence, it is decided that the claimant is entitled to **Rs.5,000/-** towards medical expenses.

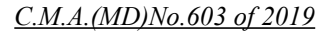


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11. The Tribunal has awarded Rs.30,000/- towards future medical expenses. It is seen that the claimant has undergone surgery and steel plate was affixed and to remove the same, the claimant requires further treatment. Hence, it is decided that the claimant is entitled to Rs.30,000/- towards future medical expenses. The Tribunal has awarded Rs.5,000/- towards transport expenses, Rs.10,000/- towards extra nutrition, Rs.10,000/- towards attender charges, Rs.3,000/- towards damage to cloths, and Rs.50,000/- towards pain and suffering, which are all reasonable.

12. The total compensation is calculated as follows:-

Disability	:	Rs.1,38,000/-
For treatment and rehabilitation	:	Rs. 72,000/-
Pain and sufferings	:	Rs. 50,000/-
Medical expenses	:	Rs. 5,000/-
future medical expenses.	:	Rs. 30,000/-
transport expenses	:	Rs. 5,000/-
extra nourishment	:	Rs. 10,000/-
attender charges	:	Rs. 10,000/-
damage to articles	:	Rs. 3,000/-
Total compensation	:	 Rs.3,23,000/-



from Rs.3,82,600/- to **Rs.3,23,000/-**.

(ii) The appellant/ Transport Corporation is directed to deposit the entire compensation of **Rs.3,23,000/-** (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 appellant/Transport Corporation, the first respondent herein / 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.**

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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R. THARANI, J.

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To

1.The Chief Judicial Magistrate,
Motor Accident Claims Tribunal,
Virudhunagar Camp at Srivilliputtur.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.603 of 2019

19.10.2022