



C.M.A.(MD)No.524 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On : 28.10.2022

Delivered On :2022

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THE HONOURABLE MRS. JUSTICE R. THARANI

C.M.A.(MD)No.524 of 2017

and

C.M.P.(MD)No.5645 of 2017

The Managing Director

Tamil Nadu State Transport Corporation,

Pillai Thanneerpandal,

Thirumayan Road, Pudukkottai.

.. Appellant / Respondent

Vs.

Govindaraj

.. 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.252 of 2012, dated 24.11.2015, on the file of the Motor Accident Claims Tribunal / Additional District Court-Special Court, Pudukkottai.

For Appellant

: Mr.P.Prabhakaran

For Respondent

: Mr.Ganapathi Subramanian



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JUDGMENT

This Civil Miscellaneous Appeal has been filed against the award made in M.C.O.P.No.252 of 2012, dated 24.11.2015, on the file of the Motor Accident Claims Tribunal/Additional District Court-Special Court, Pudukkottai. 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.252 of 2012, is as follows:

On 27.12.2012, at about 8.00 pm., when the petitioner was riding a two wheeler bearing Registration No.TN-45-AB-8267, observing the traffic rules, near Thiruvengaivasal, a bus bearing Registration No.TN-55-N-0605, came in a rash and negligent manner, dashed against the petitioner. The petitioner sustained injuries, he was taken to Government Hospital, Pudukkottai, then, he was admitted in Thanjavur Medical College Hospital, then he was given treatment in KMC Hospital, Trichy. Subsequently, he was admitted in mount Dhabar Hospital, Matthur. The petitioner was working as a Welder in Ajantha Welding company and he was earning Rs.15,000/- per month. The petitioner was disabled and was not able to continue the work and he claimed a sum of Rs.20,00,000/- as compensation.



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3. A brief substance of the counter filed by the respondent, in M.C.O.P.No.

WE 252 of 2012, is as follows:-

The manner of the accident is wrongly stated in the petition. The driver of the bus drove the vehicle in a slow speed, observing the road rules. The petitioner came in a rash and negligent manner, over took another bus, bearing Registration No.TN-72-1504 and came along the right side of the road. Though the respondent's bus driver applied the brake and stationed the bus along the left edge of the road, it was the petitioner, who could not control the speed, dashed against the front side pumper and he invited the accident. The injuries are simple in nature. The age, profession and income are all denied. The petitioner undertook treatment only in the Government Hospital. The owner and insurer of the two wheeler were necessary parties. The petitioner has to prove that he was having valid driving licence. The claim is excessive.

4. 3 witnesses were examined and 19 documents were marked on the side of the petitioner. No 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.5,83,724/- as compensation.

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



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The Tribunal failed to fix the entire negligence on the injured, who drove the two wheeler in a rash and negligent manner and invited the accident. Without any specific reason, the Tribunal has fixed the monthly income as Rs.6,000/-, which is excessive. The Tribunal has awarded Rs.1,44,000/- towards loss of income for the period of 2 years, which is excessive. The Tribunal is wrong in awarding Rs.3,000/- per percentage of disability. The Tribunal has awarded Rs.65,000/- for pain and sufferings, Rs.5,000/- towards transport expenses, Rs.1,74,724/- towards medical expenses, which are all excessive.

6. On the side of the appellant, it is stated that it was the claimant, who over took a bus, came in a rash and negligent manner and dashed against the appellant's driver. On the side of the respondent, it is stated that it was the appellant's driver, who drove the vehicle in a rash and negligent manner and dashed against the two wheeler.

7. Copy of the F.I.R was marked as Ex.P1. Copy of M.V.I. report was marked as Ex.P13. On the basis of the evidence of P.W.1 and on the basis of Ex.P1 and P.13, it is decided that the accident has taken place only due to the rash and negligent driving of the bus driver.



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8. P.W.2 – Dr.Govindaraj has fixed the disability at 25% and issued a disability certificate-Ex.P14. P.W.3 – Dr.Adhiappan has fixed the disability at 45% and he has issued disability certificate-Ex.P16. On the side of the appellant, it is stated that the Tribunal has fixed the disability at 65% and has awarded Rs.1,95,000/- as compensation, which is excessive. On the side of the respondent, it is stated that due to the head injury, the petitioner is suffering memory loss and his left eye sight was affected and that his skull was broken.

9. It is seen that the claimant sustained fracture on the right ankle. P.W.2 has fixed the disability at 25%. P.W.3 has deposed that the claimant has hemorrhage in the brain and he sustained fractures on the skull and he fixed the disability at 45%. The Tribunal has fixed the disability at 65% and has awarded Rs.1,95,000/- for 65% disability, which is reasonable.

10. On the side of the appellant, it is stated that the claimant was inpatient only for a period of 15 days and there is no records to show that the claimant was admitted as in patient in the other hospitals. The Tribunal is wrong in awarding temporary loss of income for a period of 2 years and that the amount fixed by the Tribunal is excessive.



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11. The Tribunal has fixed the salary as Rs.6,000/- per month. The Tribunal has awarded Rs.1,44,000/- towards temporary loss of income, for a period of 2 years, which is excessive. For the period of treatment and for the period of rehabilitation, the claimant is entitled to Rs.72,000/-, towards temporary loss of income.

12. The Tribunal has awarded Rs.65,000/- towards pain and sufferings, which is excessive. The claimant is entitled to Rs.40,000/- towards pain and sufferings. The Tribunal awarded Rs.5,000/- towards transport expenses, which is enhanced to Rs.10,000/-. The Tribunal has awarded Rs.1,74,724/- towards medical expenses, which is modified as Rs.1,75,000/-.

13. The total compensation is calculated as follows:-

For 65% disability	:	Rs. 1,95,000/-
temporary loss of income	:	Rs. 72,000/-
pain and sufferings	:	Rs. 40,000/-
transport expenses	:	Rs. 10,000/-
Medical expenses	:	Rs. 1,75,000/-.
Total compensation	:	 Rs. 4,92,000/-



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14. This Appeal is partly allowed. The compensation is reduced from

Rs.5,83,724/- to Rs. 4,92,000/-.

(i) The claimant is entitled to Rs. 4,92,000/- as compensation.

(ii) The Transport Corporation is directed to deposit the entire compensation of Rs. 4,92,000/- (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 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. No costs. Consequently, connected Miscellaneous Petition is closed.

09.11.2022

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.



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R. THARANI, J.

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To

1.The Motor Accident Claims Tribunal /
Additional District Court-
Special Court, Pudukkottai.

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

Pre-delivery Judgment made in
C.M.A.(MD)No.524 of 2017

09.11.2022