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C.M.A.No.1569 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2023

CORAM :

THE HONOURABLE **MR.JUSTICE SUNDER MOHAN**

C.M.A.No.1569 of 2023

Deepak @ Deepan

...Appellant/Petitioner

Vs.

The Managing Director,  
TNSTC Villupuram Ltd.,  
Kancheepuram District – 631 552.

...Respondents/Respondent

**Prayer:** This Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, 1988, against the decree and Judgment dated 03.12.2021 made in M.C.O.P.No.4732 of 2015 in the Court of Principal Special Judge, Special Court under E.C. & NDPS Act, Chennai – 104.

For Appellant : Mr.U.Chithambaram  
For Respondent : Mr.C.R.Suresh Kumar



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### **J U D G M E N T**

The appellant has preferred the above appeal challenging the quantum of compensation awarded by the Tribunal.

2. The appellant had filed a claim petition, stating that on 04.04.2015, at about 11.45 hours while he was travelling as a pillion rider in a bike bearing Reg.No. TN-22-U-1912, a Government Bus bearing Reg.No.TN-21-N-0942 belonging to the respondent Corporation came in a rash and negligent manner and dashed against the vehicle, in which, the appellant travelled. As a result of which, the appellant sustained grievous injuries and hence, entitled to compensation.

3. The respondent resisting the claim petition and stating that the accident took place only on account of the negligence of the rider of the two wheeler, in which the two pillion riders including the appellant travelled; that the rider did not have a valid driving license at the time of the accident; and that in any case, the claim made by the appellant is excessive and prayed for dismissal of the claim petition.

4. The appellant examined himself as P.W.1 and Doctors who treated



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him as P.W.2 and P.W.3 and marked sixteen documents as Exs.P1 to P16.

The respondent examined R.W.1/conductor of the bus, belonging to the respondent Corporation. However, they did not mark any document.

5. The Tribunal after taking into consideration the evidence on record directed the respondent Corporation to pay a total compensation of Rs.12,66,600/- to the appellant.

6. The learned counsel for the appellant submitted that though the Medical Board assessed the disability as 90%, the Tribunal treated the functional disability only at 70%, which is erroneous; and that the notional income fixed by the Tribunal is meagre and prayed for enhancement of compensation.

7. The learned counsel for the respondent, *per contra*, submitted that the award of compensation is excessive; that the Tribunal ought to have seen that the rider of the two wheeler was guilty of negligence as he had travelled



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with two pillion riders. The learned counsel further submitted that in the facts, the notional income fixed by the Tribunal was correct as the appellant had neither proved the avocation nor the income before the Tribunal. Therefore, the learned counsel prayed for dismissal of the appeal.

8. Heard the learned counsel appearing for the appellant as well as the respondent and perused the materials available on record.

9. On perusal of the records, this Court finds that the appellant had examined P.W.2 and P.W.3/Doctors to prove the nature of injuries and disability suffered by the appellant. P.W.2/Ortho Doctor had issued the Disability Certificate/Ex.P.15, assessed the disability percentage as 60%. P.W.3, who is an Eye Doctor had assessed the disability as 30% partial permanent disability. Considering, the disability certificate and the avocation of the appellant, the Tribunal fixed the functional disability as 70%. This Court is of the view that the said finding cannot be faulted. The Tribunal had rightly adopted multiplier method in the facts and circumstances of this



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case. However, the Tribunal had fixed the monthly notional income as Rs.8000/-. Considering the year of the accident, age of the appellant and his avocation, this Court is of the view that it would be just and reasonable to fix Rs.10,000/- per month as notional income. Thus, the award under the head Pecuniary Loss is modified as follows:-

$$\text{Rs.10,000/-} \times 12 \times 18 \times 70 / 100 = 15,12,000/-$$

10. The compensation awarded by the Tribunal under other heads is just and reasonable and hence, the same are confirmed. Thus, the compensation awarded by the Tribunal is enhanced from Rs.12,66,600/- to Rs.15,69,000/-, break-up as follows :-

| Sl. No | Description         | Amount awarded by Tribunal (Rs) | Amount awarded by this Court (Rs) | Award confirmed or enhanced or granted |
|--------|---------------------|---------------------------------|-----------------------------------|----------------------------------------|
| 1.     | Pecuniary Loss      | 12,09,600/-                     | 15,12,000/-                       | Enhanced                               |
| 2.     | Pain and Sufferings | 40,000/-                        | 40,000/-                          | Confirmed                              |



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|    |                                                                          |                    |                    |                                               |
|----|--------------------------------------------------------------------------|--------------------|--------------------|-----------------------------------------------|
| 3. | Extra Nourishments,<br>Attender Charges<br>and Medical<br>Transportation | 15,000/-           | 15,000/-           | Confirmed                                     |
| 4. | Medical Expenses                                                         | 2,000/-            | 2,000/-            | Confirmed                                     |
|    | <b>Total</b>                                                             | <b>12,66,600/-</b> | <b>15,69,000/-</b> | <b>Enhanced<br/>by<br/>Rs.3,02,400/<br/>-</b> |

11. With the above modification, this Civil Miscellaneous Appeal is partly allowed and the compensation awarded by the Tribunal at Rs.12,66,600/- is hereby enhanced to Rs.15,69,000/- together with interest at the rate of 7.5% per annum (excluding the default period if any) from the date of petition till the date of deposit. The respondent is directed to deposit the award amount now determined by this Court along with interest and costs, less the amount already deposited, if any, within a period of eight (8) weeks from the date of receipt of a copy of this Judgment. On such deposit, the appellant is permitted to withdraw the award amount along with interest and costs, less the amount if any, already withdrawn. The appellant is directed to



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pay the necessary Court Fee, if any, on the enhanced award amount.

No costs.

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*dk*

Index: Yes/No

Neutral Citation: Yes / No

Copy To:-

1.The Principal Special Judge, Special Court under E.C. & NDPS Act,  
Chennai – 104.

2. The Section Officer,  
VR Section,  
High Court of Madras,  
Chennai.



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**SUNDER MOHAN, J**

*dk*

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