



C.M.A.No.774 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.04.2023

CORAM:

The HONOURABLE MRS.JUSTICE N.MALA

C.M.A.No.774 of 2023

Arun Samuvel

... Appellant

vs.

1.Kavinkumar
2.The Managing Director,
Tamil Nadu Transport Corporation Limited,
Erode Transport,
No.37, Mettupalayam Road,
Coimbatore 641 043.

... Respondents

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the Judgment and decree dated 13.12.2021 made in M.C.O.P.No.1683 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

For Appellant : Mr.R.Navaneetha Krishnan

For R2 : Mr.M.Muralivinoth



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JUDGMENT

The Civil Miscellaneous Appeal is filed by the appellant/claimant challenging the Judgment and decree dated 13.12.2021 passed in M.C.O.P.No.1683 of 2018 on the file of the Motor Accident Claims Tribunal, Special Subordinate Court, Coimbatore.

2. The claimant has filed this appeal for enhancement of compensation.

3. The brief facts of the case are as follows:

On 03.07.2018 at about 10.15 A.M., while the appellant was riding a motorcycle along with one pillion rider on the left side margin of the Coimbatore Road, near Ganesapuram Pannariamman Mill, the driver of the bus bearing Registration No.TN.33.N.3154 came in a rash and negligent manner and hit the appellant, as a result of which, the appellant sustained fracture of right 2nd, 3rd and 4th rib in chest, left forearm distal bone fracture and inter hemispheric bleed in the brain and other grievous injuries all over his body. The appellant was taken to PSG Hospital for



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treatment and was later shifted to Ganga Hospital. The appellant therefore filed the Claim Petition claiming a sum of Rs.73,00,000/- as compensation as against the first and second respondents herein.

4. The second respondent/ Transport Corporation filed a counter to the claim petition stating that the accident occurred only due to the rash and negligent driving of the two wheeler rider and that the first respondent/ driver had driven the vehicle slowly and carefully by following road traffic Rules. Hence, according to the appellant the accident occurred only due to the rash and negligent driving of the two wheeler rider and so the claim petition deserved to be dismissed.

5. Before the Claims Tribunal, the appellant examined herself as P.W.1 and the Doctor was examined as P.W.2. The appellant filed documents Exs.P10 to P19 and Court documents were marked as Ex.C1 and Ex.C2 in support of his case. The second respondent on the other hand examined R.W.1, the driver of the Transport Corporation and further marked Ex.R1 in support of its case.



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6. The Claims Tribunal, on the basis of both oral and documentary evidence on record held that the accident occurred due to the negligence of the driver of the Transport Corporation.

7. The Tribunal considered the certificate issued by the Medical Board, the nature of injuries and the functional disability sustained by the claimant, adopted the multiplier method and assessed the loss of income at Rs.17,13,600/-. The Claims Tribunal thereafter awarded a sum of Rs.39,04,706/-.

8. Not satisfied with the amount of compensation awarded by the Tribunal, the appellant has preferred the above appeal.

9. The learned counsel appearing for the appellant submitted that from Ex.P.19, photograph, it is seen that the claimant sustained 100% functional disablement. The learned counsel for the appellant further submitted that the assessment of disability at 46% fixed by the Tribunal was erroneous in as much as the Doctor - P.W.3 had assessed the permanent disability at 85%.



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10. The learned counsel for the appellant further submitted that the appellant had sustained fracture of right 2nd, 3rd and 4th rib in chest, left forearm distal bone fracture and inter hemispheric bleed in the brain and therefore, the assessment of disability at 46% was disproportionate to the nature of injuries sustained by the appellant. He further submitted that the monthly income at Rs.12,000/- assessed by the Tribunal was on the lower side. The learned counsel for the appellant further submitted that the award of the Tribunal under the various heads was also very meagre and the same deserved to be enhanced.

11. The learned counsel for the second respondent submitted that the award passed by the Tribunal was just, fair and reasonable and did not call for any interference in this appeal.

12. I have heard both the learned counsel for the appellant and the learned counsel for the second respondent. I have also perused the materials available on record .



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13. From the materials available on record, it is seen that the Tribunal held that the accident occurred only due to rash and negligent driving of the transport corporation bus driver. The appellant sustained fracture in right 2nd, 3rd and 4th rib in chest, left forearm distal bone fracture and inter hemispheric bleed in the brain. He took treatment as inpatient at Coimbatore Ganga Hospital from 03.07.2018 to 13.08.2018, took further treatment as inpatient from 23.08.2018 to 03.09.2018 at Sri Ramakrishna Hospital and later re-admitted as inpatient from 28.01.2019 to 02.02.2019 at Ganga Hospital. The Medical Board vide Ex.C.1 Disability Certificate assessed the permanent disability at 50% .

14. It is the case of the appellant that he was working as an IT professional in a private company and earning Rs.15,000/- p.m. The Tribunal in the absence of any evidence in support of the appellant's employment assessed the income at Rs.12,000/- p.m. No doubt, there is no evidence to prove the actual salary of the claimant, but it is seen that there is no counter evidence disputing the fact that the appellant was working as an IT professional at the time of the accident. As the respondents have not let any counter evidence disputing the claim of the appellant, I am of the view that the monthly income of the claimant can be



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fixed at Rs.14,000/-. 40% of the income is taken towards future prospects.

15. The Tribunal awarded a sum of Rs.3,000/- towards damages to clothes, which sum in my view is very meagre. Therefore, the amount under the head damage to clothes is enhanced to Rs.10,000/-. In respect of other heads, the award of the Tribunal in my view is reasonable.

16. In the light of the above discussion, the compensation under the various heads is enhanced and modified as follows:-

Sl. No	Description	Amount awarded by the Tribunal (Rs.)	Amount awarded by this Court (Rs.)	Award confirmed or enhanced or granted or reduced
1	Loss of Income	Rs.17,13,600/- (Rs.12,000 + 40% = 16,800 x 12x17x50%)	19,99,200/- (Rs.14,000 +40% = 19,600 x 12x17 x 50%)	Enhanced
2	Pain and sufferings	3,00,000	3,00,000	Confirmed
3	loss of amenities	2,00,000	2,00,000	Confirmed
4	Medical Expenses	12,63,106	12,63,106	Confirmed
5	Loss of future marriage expectation	2,50,000	2,50,000	Confirmed



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6	Transport expenses	25,000	25,000	Confirmed
7	Extra nourishment	50,000	50,000	Confirmed
8	Attendant charges	1,00,000	1,00,000	Confirmed
9	Damage to clothes	3,000	10,000	Enhanced
Total		Rs.39,04,706	Rs.41,97,306	Enhanced by Rs.2,92,600/-

17. Thus, the appellant would be entitled to a sum of Rs.2,92,600/- together with interest at the rate of 7.5% per annum.

18. It is submitted by the learned counsel for the appellant that the appeal was filed with a delay of 221 days and this Hon'ble Court at the time of condoning the delay ordered that the appellant shall not be entitled to interest for the delay period of 221 days. It is therefore made clear that the appellant shall not be entitled to interest on the enhanced amount of compensation for the delay period of 221 days.

19. In the result,

(i)The Civil Miscellaneous Appeal is partly allowed.

(ii)The compensation awarded by the Tribunal is enhanced from Rs.39,04,706/- to Rs.41,97,306



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(Rs.41,97,306 - Rs.39,04,706/- = Rs.2,92,600)

which shall carry interest at the rate of 7.5% per annum from the date of filing of appeal till the date of deposit excluding the delay period.

(iii) The appellant is directed to pay the Court Fee for the enhanced compensation, if any, and the Registry is directed to draft the decree only after the payment of Court fee.

(iv) The second respondent/Transport Corporation is directed to deposit the entire amount modified by this Court along with interest and costs before the Tribunal within a period of six weeks from the date of receipt of a copy of this order, after deducting the amount already deposited, if any. The appellant shall thereafter be entitled to withdraw the entire amount. No costs.

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Index : Yes/No

Neutral Citation : Yes/No

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N.MALA, J.

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To:

The Motor Accidents Claims Tribunal,
Special Subordinate Court, Coimbatore.

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