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CMA.No. 597 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

CORAM :

**THE HONOURABLE MRS. JUSTICE N. MALA**

Civil Miscellaneous Appeal No. 597 of 2022

Periyasamy

... Appellant

Versus

1. K. Muthukumar  
2. Tamil Nadu State Transport Corporation  
Erode Division,  
Having Office at Chennimalai Road Near Diesel shed  
Kasipalayam, Erode-2  
TAMILNADU-638 002.

... Respondents

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, against the award and decree dated 15.06.2020 in MCOP.No. 550 of 2017 on the file of the Motor Accident Claims Tribunal, Special District Judge, Erode.

|                |                                |
|----------------|--------------------------------|
| For Petitioner | : Mr. V.S. Kesavan             |
| For R1         | : Ex-parte before the Tribunal |
| For R2         | : Mr. M. Murali Vinodh         |

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### JUDGMENT

The above appeal is filed by the claimant questioning the Award of the Motor Accident Claims Tribunal, Special District Judge, Erode in the award dated 15.06.2020 passed in MCOP. No. 550 of 2017 in so far as it relates to negligence as well as the quantum of compensation.



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2. On 01.01.2017, while the claimant was riding his motorcycle bearing Registration No.TN-86-A-8649, the driver of the bus bearing Registration No.TN-33-N-2822 belonging to the second respondent/Transport Corporation drove it in a rash and negligent manner and dashed against the motorcycle driven by claimant. Due to the impact, the claimant sustained grievous injuries. The claimant was aged about 32 years at the time of accident and was working as a Supervisor in India Tying Mill, Erode, and earning a sum of Rs.18,000/- per month as salary. The claimant therefore, filed the claim petition claiming a sum of Rs.30,00,000/- as compensation for the injuries suffered by him in the accident.

3. The respondents 1 and 2 contested the claim petition by filing counter denying all the averments made in the claim petition, apart from specifically disputing the negligence and quantum of compensation claimed in the claim petition.

4. Before the Claims Tribunal, the claimant examined himself as PW1 and the Manager of Ganga Hospital was examined as PW2. Exs.P1 to Ex.P16 were marked in support of the claim. On the side of the 2<sup>nd</sup> respondent/Transport Corporation, the 1<sup>st</sup> respondent examined himself as



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RW1 and one other witness was examined as RW2 and Ex.R1 was marked.

The disability certificate issued by the Medical Board was marked as Court document under Ex.C1.

5. The Claims Tribunal on an assessment of the entire evidence on record found that the claimant's negligence contributed to the accident and accordingly fixed the contributory negligence of the claimant at 50%. The tribunal deducted Rs.6,29,360/- towards 50% contributory negligence of the claimant from and out of the total award amount of Rs.12,58,720/-. Aggrieved by the finding of the Claims Tribunal, on the issue of negligence and quantum of compensation, the claimant has preferred the above appeal.

6. According to the learned counsel for the appellant it was the negligence of the driver of the Transport Corporation which resulted in the accident and therefore, the tribunal erred in deducting 50% of the award amount towards the contributory negligence of the claimant. The learned counsel further submitted that in any event, the bus being the heavier vehicle, the negligence of the bus driver would be more than that of the claimant, if any. The learned counsel also submitted that the Tribunal erred in fixing the income at Rs.10,000/- only even though, the salary certificate was produced to



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show that the claimant was earning Rs.16,000/- and on the said grounds, the counsel prayed that the appeal may be allowed.

7. The learned counsel for the 2<sup>nd</sup> respondent/Transport Corporation, on the other hand, submitted that the finding of the tribunal on negligence was fair and proper on the facts of the case. According to the counsel, the claimant hit the bus from behind and therefore, the Tribunal was justified in apportioning negligence at 50% against the claimant. On the issue of quantum, the learned counsel for the respondent submitted that the award was fair, just and reasonable and hence did not call for any interference in the appeal.

8. I have heard the learned counsel for both sides and perused the materials placed on record.

9. It is seen from Ex.P3-sketch that the accident occurred in the center of 20 feet wide road. The bus should have proceeded on the left of the road, but instead of keeping left, the bus driver drove the bus in the centre of the road. The claimant also was driving his two wheeler in the centre of the road. The bus being the heavier vehicle, the driver of the bus should have driven the bus on the left side leaving some space in the right. Therefore, the



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apportionment of negligence in the ratio 50:50 in my view is erroneous and cannot be sustained. Under the facts and circumstances of the case, I am of the view that the contributory negligence of the claimant should be fixed at 25%. Accordingly, the finding of tribunal on negligence is modified fixing the contributory negligence of the claimant at 25% instead of 50%.

**10.** As regards, the quantum of compensation, it is seen from the salary certificate of the claimant that his monthly income was Rs.5,557/- and after deduction of Rs.4,355/- he was paid a total salary of Rs.1,202/-. Therefore, even according to the salary certificate of the claimant his salary was only Rs.10,000/- and therefore, the income assessed by the Tribunal cannot be faulted.

**11.** In view of the above discussions, the award of the Tribunal is interfered with in respect of the apportionment of contributory negligence of the claimant. The compensation awarded by the Tribunal is accordingly modified as follows:-

| <i>Sl.No.</i> | <i>Heads under which the amount is awarded</i> | <i>Amount awarded by the Tribunal (Rs.)</i> | <i>Amount awarded by this court (Rs.)</i> |
|---------------|------------------------------------------------|---------------------------------------------|-------------------------------------------|
| 1             | Food and Nutrition                             | 15,000                                      | 15,000                                    |



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| <i>Sl.No.</i> | <i>Heads under which the amount is awarded</i>    | <i>Amount awarded by the Tribunal (Rs.)</i> | <i>Amount awarded by this court (Rs.)</i> |
|---------------|---------------------------------------------------|---------------------------------------------|-------------------------------------------|
| 2             | Pain and Suffering                                | 1,80,000                                    | 1,80,000                                  |
| 3             | 25% Loss of Temporary Disability                  | 4,80,000                                    | 4,80,000/-                                |
| 4             | Attender Charges                                  | 50,000                                      | 50,000                                    |
| 5             | Medical Expenses                                  | 4,63,720                                    | 4,63,720                                  |
| 6             | Transportation Expenses                           | 20,000                                      | 20,000                                    |
| 7             | Future medical expenses                           | 50,000                                      | 50,000                                    |
|               | <b>Total</b>                                      | <b>12,58,720</b>                            | <b>12,58,720</b>                          |
|               | <b>Less : 25% towards contributory negligence</b> |                                             | <b>9,44,040/-</b>                         |

**12.** The award of the Tribunal is modified and the compensation is enhanced to Rs.9,44,040/- along with 7.5% interest. The 2<sup>nd</sup> respondent/Transport Corporation is directed to deposit the enhanced compensation amount Rs.9,44,040/- along with 7.5% interest within a period of 8 weeks from the date of receipt of a copy of this Judgment. On such deposit being made, the claimant shall be entitled to withdraw the same by making appropriate application before the Tribunal.

**13.** It is submitted by the learned counsel for the appellant that the exemption of court fee was ordered by this Court at the time of filing the appeal and therefore, there shall be a direction to the claimant to pay the deficit court fee on the enhanced amount. Registry is directed not to draft the decree till the deficit court fee is paid on the enhanced amount.



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**WEB COPY**14. In the result, the Civil Miscellaneous Appeal is partly allowed.

There shall be no order as to costs.

**20.06.2023**

Speaking Order : Yes/No  
Neutral Citation : Yes/No  
MSM

To

1. The Special District Judge,  
Motor Accident Claims Tribunal, Erode.
2. The Section Officer, V.R. Section, High Court, Madras



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**N. MALA, J**

MSM

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