



C.M.A.No.1103 of 2020,
Judgment dated 11.09.2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.09.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.M.A.No.1103 of 2020

and

C.M.P.No.6960 of 2020

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The Managing Director,
Tamil Nadu State Transport
Corporation (Villupuram),
Villupuram-605 802.

.. Appellant

Vs.

Mohammed Bee Sahiba

.. Respondent

Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, against the Award and decree dated 03.11.2018 made in M.C.O.P.No.1140 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District and Sessions Court), Krishnagiri.



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For appellant : Mr.C.R.Suresh Kumar

For respondent: M/s.V.R.Anna Gandhi

JUDGMENT

This appeal is filed by the Transport Corporation challenging the Award of the Tribunal passed in M.C.O.P.No.1140 of 2007, dated 03.11.2018.

2. The facts in a nut-shell are that, on 25.10.2006, when the claimant was riding as a pillion rider in TVS-50-XL-TN-29-M-4354, driven by her husband from Tirupathur, the rider of the said two-wheeler drove the same slowly and cautiously on the left side of the road keeping the traffic Rules. At about 3.15 p.m., when the claimant was nearing Salem Junction Road in Tirupathur to Tiruvannamalai main Road in Tirupathur Town, a Transport Corporation bus bearing Registration No.TN-23-N-1577 came from Salem side in a high speed and driven by its driver in a rash and negligent manner and dashed



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against the claimant and due to the said impact, the claimant sustained fracture over left thigh (femur) right leg (tibia) and injury over the left foot and head, resulting in irregular location. The claimant was immediately taken to Government Hospital, Tirupathur and thereafter, at Christian Medical College, Vellore for treatment. The claimant was working as Headmistress in the Panchayat Union Middle School at Singarapettai and earning Rs.12,500/- per month. The claimant therefore filed the petition before the Tribunal and prayed for grant of compensation of Rs.15 lakhs.

3. The appellant/Transport Corporation has filed counter before the Tribunal disputing the manner of the accident and that the claim petition is bad for non-joinder of necessary parties, namely the owner and insurance company of the offending vehicle. It is further alleged that the rider of the two-wheeler did not possess valid driving licence. The amount of compensation claimed by the



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claimant is excessive and thus prayed to dismiss the Claim Petition.

4. Before the Tribunal, the claimant examined herself as P.W.1 and marked Exs.P-1 to P-11. On the side of the Transport Corporation, R.W.1 was examined and Ex.R-1 was marked. Wound Certificate was marked as Ex.C-1 as Court document. After enquiry, the Tribunal passed an Award granting compensation of Rs.4,84,750/- under the following heads with 7.5% interest per annum from the date of claim petition till the date of deposit:

<i>Sl.No.</i>	<i>Heads under which the compensation is awarded</i>	<i>Amounts awarded (in Rs.)</i>
1	50% disability	3,60,000
2	Medical expenses	89,750
3	Future medical expenses	10,000
4	Nutrition and attender charges	10,000
5	Pain and suffering	15,000
	Total	4,84,750

Challenging the above Award passed by the Tribunal, the Transport Corporation has filed the present appeal.



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5. Learned counsel appearing for the appellant/Transport Corporation submitted that F.I.R. has been registered against the husband of the respondent/claimant, as he had ridden the two-wheeler at the time of accident and only due to rash and negligent driving by the husband of the respondent, and dashed against the rear side of the bus and therefore, the claimant sustained injuries and a case was also registered. One eye-witness who was the passenger of the bus, was examined and he has clearly deposed about the manner in which the accident had occurred, from which it is clear that the rider of the two-wheeler has also contributed towards negligence, but the Tribunal failed to consider the contributory negligence against the rider of the two-wheeler, and instead, the Tribunal fixed the entire liability/negligence on the driver of the Transport Corporation bus and also observed that he was liable to pay the compensation, which warrants interference by this Court. The learned counsel also submitted that no medical evidence is

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produced and though the disability was fixed @ 50%, but the same was not proved by examining the Doctor who has given treatment to the claimant or the Doctor who has fixed the percentage of disability. Therefore, according to the learned counsel, the multiplier method may not be adopted in this case and the disability has to be ascertained based on the percentage method. In support of his submissions, learned counsel for the appellant/Transport Corporation relied on the decisions of the Division Bench of this Court reported in 2023 (1) TN MAC 127 (DB) (National Insurance Company Ltd. Vs. Santhkumari) and 2023 (1) TN MAC 348 (DB) (Reliance General Insurance Company Limited Vs. M.Manoharan).

6. Learned counsel for the respondent/claimant submitted that though initially a case was registered against the husband of the claimant, subsequently, on investigation, it was found that the accident had occurred due to rash and negligent driving of the driver of the appellant/Transport Corporation bus and to substantiate the



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same, the driver has not been examined and eye-witness was examined after ten years and he brought a ticket and he has stated that he is the eye-witness to the accident and it is unbelievable and there is no corroboration of the evidence of R.W.1 who was driving the bus at the time of accident and therefore, his evidence cannot be taken into consideration for fixing the liability.

7. Considering the entire facts and circumstances and the Motor Vehicle Inspector's report and the other materials, the Tribunal rightly held that the accident is only due to rash and negligent driving of the driver of the Transport Corporation and there is no contributory negligence on the part of the rider of the motor cycle and there is no merit in this submission made by the learned counsel for the appellant/Transport Corporation regarding the liability.

8. As far as the quantum is concerned, it is seen that the claimant was working as Headmistress in the Panchayat Union



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School and due to the accident, she could not do the very same work as before and subsequently she has been degraded after one year and she is not able to do any work and therefore, the Tribunal has rightly adopted the multiplier method and there is no merit in the above submission made by the learned counsel for the appellant/Transport Corporation.

9. Heard the learned counsel appearing for the parties and perused the materials available on record.

10. Admittedly, the respondent/claimant sustained injuries due to the accident. As far as the liability is concerned, though initially the case was registered against the rider of the two-wheeler, after investigation, the Police laid the charge-sheet against the driver of the Transport Corporation bus and though the learned counsel for the appellant/Transport Corporation submitted that the accident is due to the rash and negligent driving of the motor cycle, but however, the



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and no document has been produced to show that before the accident, the claimant was working as Headmistress and was earning. Due to the accident, she lost her job and she also lost her earning capacity and has not produced any oral and documentary evidence to support her case. In the absence of any medical evidence and also of any independent witness, this Court finds that the multiplier method adopted by the Tribunal is erroneous and therefore, in a case of this nature, the compensation has to be given based on percentage method and the disability certificate shows the disability as 50% and the Doctor who issued the Disability Certificate had not been examined and even the independent witness was also not examined. This Court is of the view that the disability is of 35%. During the relevant period, i.e. the year of accident is 2006 and at that time, Rs.3,000/- per percentage is to be adopted. Accordingly, the disability is awarded at Rs.1,05,000/- (Rs.3,000 x 35%), following the decision of a Division Bench of this Court reported in 2023 (1) TN MAC 348 (DB) (cited



12. The decision relied on by the learned counsel for the appellant/Transport Corporation reported in 2023 (1) TN MAC 127 (DB) (cited supra), is distinguishable on facts and the same is not applicable to the case on hand.

13. The compensation awarded by the Tribunal under the other heads is confirmed.

14. The break-up details of the modified Award are as follows:

Sl. No.	<i>Heads under which the amount of compensation is awarded</i>	<i>Amount awarded by the Tribunal (in Rs.)</i>	<i>Amount awarded by this Court (in Rs.)</i>
1	Disability	3,60,000	1,05,000
2	Medical expenses	89,750	89,750
3	Future medical expenses	10,000	10,000
4	Nutrition and attender charge	10,000	10,000
5	Pain and suffering	15,000	15,000
	Total	4,84,750	2,29,750



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15. The Civil Miscellaneous Appeal is partly allowed. The appellant/Transport Corporation is directed to deposit the entire Award amount now computed, to the credit of M.C.O.P.No.1140 of 2007 on the file of the Motor Accidents Claims Tribunal (Additional District Judge), Krishnagiri, along with interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit, and costs as awarded by the Tribunal, less the amount if any already deposited, within a period of 15 days from the date of receipt of a copy of this order, failing which, interest would be calculated @ 12% per annum from the date of claim petition till the date of deposit. On such deposit being made, the Tribunal is directed to calculate the above said compensation including the interest, costs, etc., after adjusting the amount, if any already withdrawn by the claimant and credit the actual amount in line with the judgment of a Division Bench of this Court in C.M.A.No.428 of 2016, dated 11.03.2016, reported in 2016 (2) LW 561 (The Divisional Manager, The Oriental

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Insurance Company Limited, Kannur Vs. Rajesh and others). The appellant/Transport Corporation is permitted to withdraw the excess amount, if any already deposited by them before the Tribunal.

16. In other respects, the impugned Award of the Tribunal is confirmed.

17. There shall be no order as to costs in the present appeal.

18. C.M.P.No.6960 of 2020 is closed.

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To

1. The Motor Accidents Claims Tribunal,
(Additional District and Sessions Judge),
Krishnagiri.

2. The Section Officer,
V.R. Section, High Court, Madras.

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