



CMA.No.587 of 2014

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2023

CORAM:

The HONOURABLE MR.JUSTICE K.RAJASEKAR

C.M.A.No.587 of 2014

The Branch Manager,
Tamil Nadu State Transport
corporation Limited,
Periyar Milaguparai,
Trichy-1.

... Appellant

Vs.

Nallusamy

... Respondent

PRAYER: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988 against the judgment and decree dated 12.12.2012 made in MCOP.No.305 of 2011 on the file of the Motor Accident Claims Tribunal, Principal District Judge, Perambalur.

For Appellants : M/s.J.Sivakumar



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JUDGMENT

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This Civil Appeal has been filed by the Transport Corporation challenging the award passed in MCOP.NO.305 of 2011 on the file of the Motor Accident Claims Tribunal (Principal District Judge, Perambalur dated 12.12.2012 whereby Tribunal has awarded a sum of Rs.11,82,1926.68/- as compensation.

2. The parties are referred to hereunder according to status and ranking before the Tribunal.

3. The case of the Claimant is as follows:

On 04.05.2011 at about 11.00 am., when the claimant was proceeding near V.Periyapatti Kalathu Veedu branch road in TVS 50 XL, bearing Reg.NO.TN 45 AZ 7209, the bus bearing Registration No.TN 45 N 2176 came from east towards Tharagampatti, driven by its Driver in a rash and negligent manner in high speed and dashed against the claimant due to which he sustained multiple grievous injuries all over his body. A Criminal case case registered against the driver of the bus in Crime No.122/2011 under Section 279 and 337 of IPC. First aid to the injured



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was given at Manapparai Sindhuja Hospital and later he was admitted at Geethanjali Hospital, Tiruchirappali. The injured was aged about 54 years at the time of accident and was earning Rs.15,000/- pm., as Village Administrative Officer. Due to his injuries, he could not continue his avocation and unable to do his work as before. Hence, the injured has filed a claim petition seeking compensation for a sum of Rs.20,00,000/-.

4. State Transport Corporation has filed counter affidavit denying the age, occupation and monthly income of the injured. It is also further stated that the driver of the bus bearing Registration No. TN 45 N 2176, driven the bus in slow speed by following the traffic rules and regulations, at that time claimant was riding his TVS 50 XL bearing Reg.No.TN 45 AZ 7209 in a rash and negligent manner in high speed and on seeing the same, the driver of the bus applied brake and tried to avoid the collision, but the petitioner dashed against the bus in the front left side of the bus. The driver of the respondent corporation is no way responsible for the accident and the accident had taken place only due to the negligence on the part of petitioner alone, hence prays to dismiss the claim petition.



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5. Before the Tribunal, on the side of claimant, P.W.1 to P.W.3 were examined and Exs.P.1 to P.10 were examined. On the side of respondent R.W.1 were examined and no document was filed.

6. The Claims Tribunal in Point No.1, on perusal of the oral and documentary evidence available on record has held that the accident had happened only due to rash and negligence of the part of the driver of the respondent. In Point No.2, the Tribunal has quantified the quantum of compensation and awarded a sum of Rs.11,82,926.68/-.

7. It is submitted by the learned counsel for the State Transport Corporation that the quantum of compensation awarded to the claimant herein is on the higher side and more particularly the disability assessed is on the higher side and the lumpsum amount granted under the head of disability has to be revised and contended that compensation awarded under various heads are also on higher side, hence prays to modify the award.

8. To prove the disability claimant has examined P.W.3 Dr.Sivaprasath who has issued the disability certificate. He has deposed



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before the Tribunal that based on the records found in Exs.P.,P.8 and also other connected records, the disability of the claimant was assessed at 47%. He has noted the following injuries.

“1. For fracture shaft of femur left middle 1/3rd, the shaft of femur left was reduced and fixed with 9 hole broad DCP and 9 cortical screws....

2. For the supra condylar fracture left femur, the supra condylar left femur was reduced and fixed with 4 old left femoral condylar locking plate and 9 screws. Haemostasis obtained. Vicryl closed.

3. For fracture proximal tibia left, tibial condylar reduced and held with patella clamp and fixed with 1 cancellous screw and wash – vicryl closure. Ehtilon for skin. 2 drain.”

9. The evidence with regard to injuries are supported with the discharge summary which is marked as Ex.P.2. In Ex.P.2 at the time of admission of the injured before the Geethanjali Medical Centre, he was diagnosed with following injuries.

1. Laceration of 5X2X1cm over left forehead



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2. Abrasions over left fore head and around left eye.
3. Abrasions of 2X2 cm over the abdomen.
4. Abrasions 2X2 cm right thigh and left foot, right knee.
5. Abrasions over left medial malleolus.
6. Swelling of right wrist with tenderness and deformity.
7. Swelling of left elbow and forearm, deformity, tenderness, abnormal mobility present.
8. Swelling at left thigh with tenderness and deformity present.
9. Swelling at right knee with tenderness present.

10. Subsequently, surgery were conducted under various dates which has been recorded by the Tribunal in the judgment as follows 11.05.2011, 16.05.2011 and 20.05.2011. The injuries sustained by the claimant shows that he has multiple injuries all over his body, leg, fore arm, femur, tibia. These multiple injuries have been considered by the Tribunal and lump sum amount of Rs.4,00,000/- has been awarded under the head Partial Permanent Disability. I am of the view that on considering the various multiple injuries sustained by the claimant the disability was assessed and fixed at 47% and the same is acceptable. The claimant was working as a Village Administrative Officer and requires



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more manual work in assisting the revenue authorities in the village and to carry out various government activities. Eventhough it is contended by the learned counsel for the appellant that injuries sustained by him has not prevented him from continuing in his earlier avocation, but the injuries diminished his body to move from place to place and to work like earlier and it reduced his performance. Based on the circumstances, I am of the view that by reducing of percentage of partial permanent disability into a functional permanent disability, the compensation shall be awarded by following the judgment of Hon'ble Apex Court in **Ajay Kumar vs. Raj Kumar** reported in (2011) 1 SCC 343. Accordingly disability is assessed at Rs.25% and since he has also having permanent employment he also entitle for future prospects in view of the law laid down by the Hon'ble Apex Court in **Erudhaya Priya Vs. State Express Transport Corporation Ltd.** reported 2020 SCC Online SC 601 . Accordingly, the Tribunal also accepted the monthly salary of the claimant Rs.13889/- and the same is taken as the monthly income by considering the age of the claimant as 54 years and proper multiplier applicable for the same is 11 as per **Sarla Verma (smt.) & Ors. vs. Delhi Transport Corporation & Another**, reported in (2009) 6 SCC 121, and Future prospect is fixed as 15%. This Court is of the opinion that the compensation awarded under



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other heads are just, fair and proper and not require any interference of this Court and the same is hereby confirmed.

11. Even though this Appeal is filed by the State Transport Corporation questioning the quantum of compensation and this Court once again revisited quantum of compensation awarded by the Tribunal as discussed above, quantum of compensation awarded under Permanent Functional disability alone is modified to the extent fixed above.

12. In view of the discussions made above, the Functional Permanent Disability : $15,972.35 \times 12 \times 11 \times 25/100 = \text{Rs.}5,28,000/-$.

Hence, the award of the Tribunal is modified as follows:

S. No	Description	Amount awarded by Tribunal (Rs)	Amount awarded by this Court (Rs)	Award confirmed or enhanced or granted
1.	Partial Permanent Disability (47%) as Lumpsum	4,00,000/-	Rs.5,28,000/-	Enhanced
2.	Medical Expenses including Rs.27,000/- for	5,78,926.68/-	5,78,926.68/-	Confirmed



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	transport charges (EX.P4 series)			
3.	Pain & Suffering for multiple fractures	30,000/-	30,000/-	Confirmed
4	Future Medical Expenses for removal of implant and other related expenses	70,000/-	70,000/-	Confirmed
5.	Attendant charges incurred	54,000/-	54,000/-	Confirmed
6	Extra Nourishment	10,000/-	10,000/-	Confirmed
7	Loss of amenities happiness etc	30,000/-	30,000/-	Confirmed
8	Boarding and Lodging	10,000/-	10,000/-	Confirmed
	Total	Rs.11,82,926.68/-	Rs.13,10,926.68/	Enhanced by Rs.1,28,000/-



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13. The claimant is entitled to get compensation of Rs.13,10,926.68/. The respondent is directed to pay the above said compensation amount together with interest at the rate of 7.5% per annum from the date of receipt of copy of this order, till the date of deposit within a period of six weeks from the date of receipt of copy of this order, less the amount, if any, deposited. On such deposit being made, the claimant shall be entitled to withdraw the same by making appropriate application before the Tribunal. The claimant is hereby directed to pay the necessary Court fee if any, on the enhanced compensation before the tribunal.

14. Accordingly, this Civil Miscellaneous Appeal is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No



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To:

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- 1.The Motor Accident Claims Tribunal,
Principal District Judge,
Perambalur.
- 2.The Section Officer,
VR Section,
High Court,
Madras.



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K.RAJASEKAR, J.

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