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C.M.A.No.3692 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

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The Hon'ble Mr.Justice Krishnan Ramasamy

C.M.A.No.3692 of 2021

and

CMP.No.21863 of 2022

P.Dinesh

... Appellant

Vs.

The Managing Director,
Tamil Nadu State Transport Corporation Ltd.,
Villupuram Division, Villupuram.

...Respondent

Civil Miscellaneous Appeal has been filed under Section 173 of Motor Vehicles Act 1988 against the judgment and decree dated 23.01.2021, in M.C.O.P.No.6843 of 2014, and the rejection Docket Order passed in the Review Petition, dated 20.04.2021, on the file of the IV Small Causes Court, Chennai/Motor Accident Claims Tribunal, Chennai.

Appearance

For Appellant : Mr.R.S.Anandan

For Respondent : Mrs.S.Shanthakumari

JUDGMENT

Not being satisfied with the quantum of compensation awarded by the Motor Accident Claims Tribunal cum IV Judge, Court of Small Causes,



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Chennai (henceforth, referred to as 'the Tribunal') in and by its award dated 23.01.2021, in M.C.O.P.No.6843 of 2014, and the rejection Docket Order passed in the Review Petition, dated 20.04.2021, the present Civil Miscellaneous Appeal has been filed by the claimant, seeking enhancement of compensation.

2. On 10.03.2013, at about 11.00 hours, when P.Dinesh, (claimant herein) was travelling as a Passenger in a Bus, bearing Registration No.TN-21-N-1517, which was proceeding from Adyar, Chennai to Venngupattu and when the bus was nearing Perumanancherry Bridge, Kalpakkam, Sadras Police Limit, the driver of the bus attempted to overtake another bus, and in the process, he drove the bus in a rash and negligent manner, as an aftermath, the Bus hit across another Van, (registration number not known) which came in the opposite direction, and thus, caused the accident. In the said accident, the claimant sustained grievous fracture injury.

3. At the time of the accident, the claimant was a Bachelor, aged about 22 years and he was working as an Office Assistant, in a Private Concern, viz., Trioship Company, situated at T.Nagar, Chennai and earning a sum of Rs.6,000/- per month. Hence, he made claim in a sum of



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Rs.30,00,000/- as compensation against the driver of the offending Vehicle, viz., Bus and the respondent, Tamil Nadu State Corporation Ltd., as they being the owner of the Vehicle, they are vicariously and statutorily liable to pay compensation.

4. Before the Tribunal, the claimant examined himself as P.W.1. and marked 26 documents, as Exs.P.1 to P.26. On the side of the respondent, the driver of the Bus, viz., A.P.Arumugam was examined as R.W.1, however, no documents were exhibited.

5. The Tribunal on evaluation of both oral and documentary evidence placed on record came to the conclusion that the accident had occurred owing to the rash and negligent driving of the driver of the Bus, belonging to the respondent/State Transport Corporation. By coming to such a conclusion, Tribunal made calculation under different heads and passed an award for a total compensation amount of Rs.6,88,000/-.

5.1. The break up details of the compensation amount awarded by the Tribunal are as follows :-



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<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Functional Disability	Rs.4,14,375/-
2.	Pain and Suffering	Rs. 20,000/-
3.	Extra Nourishment	Rs. 15,000/-
4.	Transportation	Rs. 15,000/-
5.	Damage to clothes	Rs. 1,000/-
6	Attender Charges	Rs. 17,000/-
7	Medical Expenses	Rs.1,95,333/-
8	Loss of Amenities	Rs. 10,000/-
Total		Rs.6,87,708/- rounded off Rs.6,88,000/-

6. Finding the compensation amount as insufficient, the present Appeal has been filed by the appellant/claimant, as stated above.

7. As the present Appeal is filed only questioning the quantum of compensation awarded by the Tribunal, this Court is not traversing into the other aspects of the award passed by the Tribunal.

8. Mr.R.S.Anandan, learned counsel appearing for the appellant/injured claimant would submit that due to the accident, he has sustained compound fracture in right hand humerus (shaft), right arm degloving injury, skin avulsion exposing muscle, tendon bone and also



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sustained multiple injury all over the body. Immediately, after the accident, i.e. on 10.03.2013, appellant was given first aid at Sadras Hospital, thereafter, he got admitted at Chettinad Hospital and later, referred to Miot Hospital, where, he was treated as in-patient from 10.03.2013 to 10.04.2013 (i.e. for a period of one month). The learned counsel submitted that since the fracture injury sustained by the claimant is grievous in nature, he was given treatment at MIOT Hospital for nearly one month and even thereafter, he took treatment as outpatient at various Hospitals for nearly one year. The appellant in support of his claim made towards disability, marked Ex.P.21, Disability Certificate issued by Institute of Rehabilitation Medicine, K.K.Nagar, Chennai – 83, wherein, disability sustained by the injured was assessed at 90% and Ex.P.22, certificate issued by the Commissionerate for Welfare of the Differently abled, certifying that the injured cannot travel without the assistance of another person. However, Tribunal, while determining compensation towards Functional Disability, regardless of Exs.P.21 and P.22 has taken the disability only at 25% by citing the reason that, Exs.P.21 and P.22 are only photostat copies, and as per the guidelines issued by the High Court, only Medical Board could assess the disability.



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8.1 The learned counsel contended that, at the time of marking Exs.P.21 and P.22, the respondent/State Transport Corporation raised no objection and hence, Tribunal ought to have relied on those unimpeachable evidence, viz., Exs.P.21 and P.22 and fixed the disability at 90%. The learned counsel further submitted that since the Disability Certificate was issued by the Government Institute of Rehabilitation Medicine, and the same was required by the appellant to avail other disability benefits from the schemes introduced by the Government, the appellant was not in a position to mark the originals, however, the learned counsel has produced the original Disability Certificate before this Court and sought permission to mark the said additional document and thereupon, to award just and fair compensation towards Functional Disability.

8.2. Further, the learned counsel referred to Workmen's Compensation Act, and submitted that as per Schedule I Part I of the said Act, wherein, list of injuries deemed to result in, were mentioned, and in the said list, disability that would occur due to loss of hand is mentioned in Serial No.2 as 'permanent total disablement'. Therefore, the learned counsel prayed that the disability may be fixed at 90%. It is his further submission that the Tribunal, while determining the compensation towards Functional



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Disability has added only 25% towards future prospects, which also resulted in awarding an inadequate compensation of Rs.4,14,375/- towards functional disability. The learned counsel, in support of his contention that 40% should be added towards Future Prospects, has placed reliance on the ratio laid down by the Honourable Supreme Court, *in re National Insurance Company Limited Vs. Pranay Sethi and others* reported in **2017 (2) TN MAC 601**. Therefore, the learned counsel prayed for appropriate enhancement of compensation towards Functional Disability.

8.3 The learned counsel for the appellant contended that appellant/injured apart from the treatment taken at MIOT Hospital, has also taken treatment at number of Hospitals, so as to get rid of the pain and sufferings due to the fracture sustained in his right hand and spent a sum of Rs.6,00,000/-, however, he sought for compensation under the head of 'Medical Expenses', at Rs.5,00,000/- and produced medical bills issued by MIOT Hospital, for a sum of Rs.3,92,115/- which was marked as Ex.P.14 (series). However, the Tribunal has granted only a sum of Rs.1,95,333/- by assigning the same reason as it assigned with regard to Exs.P.21 and P.22, that Ex.P.14 (series) are also photostat copies. The learned counsel submitted that at the time of marking medical bills also, no objection was



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raised by the respondent/State Transport Corporation, and in the absence of same, it is totally unfair on the part of the Tribunal to fix lowest compensation at Rs.1,95,333/- towards Medical Expenses.

8.4 The learned counsel further submitted that, Ex.P.14 (series) viz., the medical bills issued by MIOT Hospital would show that appellant has incurred a total medical expenses of Rs.3,92,115, out of which, a sum of Rs.1,05,000/- was reimbursed to the Hospital by the New India Assurance Company, through the Medi Assist Health Care Service based on the Employer's (Trioship Company) Medical Assistant Scheme, where, the appellant was working, however, therefore, balance sum of Rs.2,87,115/- paid by him has to be awarded. The learned counsel submitted that finally, claimant took treatment at Ramachandra Hospital, and spent a sum of Rs.90,000/- and therefore, prayed that said amount also has to be taken into consideration while awarding compensation towards Medical Expenses. The learned counsel also produced the original bills issued by the MIOT Hospital and Ramachandra Hospital before this Court for proof and reference and prayed for awarding reasonable compensation towards medical expenses.

8.5 It is further contended by the learned counsel for the



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appellant/claimant that at the time of the accident, the claimant was working as Office Assistant and earning monthly income of Rs.6,500/- and due to the accident, he is unable to do any work, however, the Tribunal failed to award any amount towards Loss of Future earning capacity. .

8.6 The learned counsel contended that the compensation awarded by the Tribunal under other head 'Pain and Suffering' is also low, since due to the fracture sustained by the appellant at his right hand, he is suffering till today, had his right hand got fully amputated, he would not have suffered much, however, since the same is in hanging condition, he has to suffer throughout his life and he cannot use the same for any purpose. Similarly, the compensation awarded by the Tribunal under other heads, viz., i) Extra Nourishment at Rs.15,000/-, iii) Transportation at Rs.15,000/-, and iii) Loss of Amenities at Rs.10,000/- are also very meager and it requires appropriate enhancement.

9. Per contra, Mrs.S. Shanthakumari, the learned counsel for the respondent/State Transport Corporation made her submission supporting the award passed by the Tribunal. She submits that, normally, Tribunal, while determining compensation in cases pertaining to motor accident, would rely



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on only the Disability Certificate issued by the Medical Board and in the present case, the appellant/claimant produced only the photostat copy of the Disability Certificate issued by the Doctor attached to the Institute of Rehabilitation Medicine, K.K.Nagar, Chennai – 83, based on which, the Tribunal fixed the disability at 25%. She further submitted that though the claimant examined himself as P.W.1 and stated that due to the accident he has disability at 100%, however, the Doctor, who examined the appellant/injured and issued Ex.P.21 was not examined, and in such circumstances, the Tribunal fixed the disability at 25%, which is correct. However, since the learned counsel for the appellant produced the original disability certificate before this Court, learned counsel for the respondent/State Transport Corporation submitted that disability may be taken as 80%.

9.1 As regards the compensation to be awarded under the head of medical expenses is concerned, the learned counsel submitted that since the medical bills adduced by the appellant/claimant for a value of Rs.3,92,115/ are also xerox copies, and as it has been admitted by the appellant/claimant that out of the said amount, a sum of Rs.1,05,000/- was reimbursed to him under medical insurance coverage, and the appellant has paid only



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Rs.2,87,115/- the Tribunal has awarded a reasonable sum of Rs.1,95,333/- as compensation towards medical expenses and the same cannot be found fault with. However, since it is submitted by the learned counsel for the appellant that the appellant has spent a sum of Rs.90,000/- at Ramachandra Hospital for treatment of his right hand and the appellant also produced the original medical bills issued by both MIOT (for a value of Rs.3,92,115/-) and Ramachandra Hospital (for Rs.90,000/-) she submitted that some reasonable compensation may be awarded towards medical expenses.

9.2 As regards the compensation awarded by the Tribunal under other heads are concerned, the learned counsel submitted that the same requires no interference as the compensation awarded thereunder are just and fair compensation .

10. I have given due considerations to the submissions made by the learned counsel for the appellant/claimant and the learned counsel for the respondent/State Transport Corporation and also perused the materials placed on record, including the Original Disability Certificate produced by the appellant before this Court, which is taken on record and marked as



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Ex.P.27 and the Medical Bills issued by both MIOT and Ramachandra Hospitals respectively.

i) Disability :-

11. I find due force in the submissions made by the learned counsel for the appellant/claimant. It appears that on account of the accident, the appellant/claimant had sustained the following fracture, as could be seen from Ex.P.2/Discharge Summary issued by Miot Hospital:-

- a) Compound Grade III B fracture right distal humerus, proximal ulna and proximal radius.
- b) Side swipe injury right elbow.
- c) Right acromion process fracture.
- d) Median and Ulnar nerve palsy
- e) Skin avulsion exposing muscle tendon bone
- f) And also sustained multiple injuries all over the body as the glass pieces pierced and sprinkled all over the body.

11.1 Today, the claimant also appeared before this Court and as far as his physical appearance is concerned, it is an eyesore that his right hand is totally nonfunctional, as there appears to be a disconnection between elbow and upper limb, due to which, his right hand is in hanging condition, an owing to such disability, appellant has to suffer throughout his life and he cannot carryout his day to day work by his own and for each and everything



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he has to depend on others, and in particular, his life has become a question mark and only God alone can pacify him, and he cannot be assuaged by mere grant of money that he would receive as compensation.

11.2 Therefore, as rightly pointed out by the learned counsel for the appellant, the disablement sustained by the appellant would amount to permanent total disablement, as mentioned in Serial No.2 of Schedule I Part I of Workmen's Compensation Act. Therefore, this Court, by taking into consideration of the original Disability Certificate issued by Institute of Rehabilitation Medicine, K.K.Nagar, Chennai – 83, which has also been verified by the learned counsel for the respondent/State Transport Corporation, and considering the present plight of the appellant in person, is inclined to fix disability at 80%.

11.3 As far as future prospects is concerned, the Tribunal has added only 25%, and as per the ratio laid down by the Honourable Supreme Court, in **Pranay Sethi's (referred to supra)** for the age group of 23 years, 40% has to be added towards Future Prospects. Since the appellant/claimant was aged 22 years at the time of the accident and was earning a sum of Rs.6,500/- per month, this Court is inclined to fix monthly income of the



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injured as it is, i.e. at Rs.6,500/-. So far as multiplier aspect is concerned, as per the ratio laid down by the Hon'ble Supreme Court in the case of **Sarala Verma Vs. Delhi Transport Corporation**, reported in [(2009) 5 LW 561], the multiplier applicable herein is '18' and the same is adopted.

11.4 Thus, by fixing the monthly income of the injured at Rs.6,500/-; adding 40% towards future prospects; applying multiplier of '18' (since the injured is aged 22 years) and disability at 80%, the total loss of income due to functional disability of the injured works out to Rs.15,72,480/-, in the manner as hereunder:-

$$\text{Rs.6,500/-} + 40\% (\text{Rs.2,600}) \times 18 \times 12 \times 80\% = \text{Rs.15,72,480/-}$$

11.5 Consequently, the sum of Rs.4,14,375/- awarded by the Tribunal under the head 'Functional Disability' is hereby modified and enhanced to Rs.15,72,480/-

11.6 Since this Court awarded compensation of Rs.15,72,480/- towards Functional Disability, there is no need to award any compensation under the separate head, Loss of future Earning Power, as the Loss of Income due to Functional Disability and Loss of Future Earning Power are



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intertwined.

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ii) **Medical Expenses:-**

12. It is seen that claimant made a claim of Rs.5,00,000/- towards medical expenses by marking Exs.P.14 (Series) whereas, the Tribunal has awarded only a sum of Rs.1,95,333/- by citing the reason that Ex.P.14 (series) are only xerox copies. Today, the learned counsel for the appellant also produced original medical bills issued by the MIOT Hospital for a value of Rs.3,92,115/- as well as the original medical bill issued by Ramachandra Hospital, for a sum of Rs.90,000/- and the same is also verified by the learned counsel for the respondent/State Transport Corporation. Therefore, it is clear that due to the fracture and injury sustained by the claimant, he was admitted in MIOT Hospital, and final bill issued by the MIOT Hospital would show that a sum of Rs.3,92,115/- was payable by the claimant, out of which, a sum of Rs.1,05,000/- was reimbursed to the Hospital by way of medical insurance coverage by the New India Assurance Company, and the balance sum of Rs.2,87,115/- which was paid by the appellant, has to be paid as compensation.

12.1 It is further seen that the appellant/injured despite completion of



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out-patient treatment at MIOT Hospital, since the pain and suffering due to fracture sustained by him at the right hand still persisted, he undertook treatment at the hands of various Orthopedic Doctors for a period of one year apart from taking indigenous medicine and finally, the appellant took treatment at Ramachandra Hospital, and spent a sum of Rs.90,000/- and the appellant also produced original medical bill issued by the said Hospital. Therefore, this Court is of the view that the said amount of Rs.90,000/- has also to be taken into consideration while awarding compensation towards medical expenses. Consequently, the sum of Rs.1,95,333/- awarded by the Tribunal under the head of 'Medical Expenses' is hereby modified and enhanced to Rs.3,77,115/-(viz., the amount spent by the appellant at MIOT Hospital at Rs.2,87,115 and the amount spent at Ramachandra Hospital at Rs.90,000/-)-

12.2 Insofar as the compensation awarded by the Tribunal under other heads are concerned, viz., i) Pain and Suffering, ii) Extra Nourishment and iii) Transportation, iv) Damages to Clothes, v) Attender Charges and Loss of Amenities, the same remains unaltered.

13. Thus, the total compensation payable to the appellant/claimant is



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as hereunder:-

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<i>S.No</i>	<i>Head</i>	<i>Amount granted</i>
1.	Loss of income due to Functional Disability	Rs.15,72,480/-
2.	Pain and Suffering	Rs. 20,000/-
3.	Extra Nourishment	Rs. 15,000/-
4.	Transportation	Rs. 15,000/-
5.	Damage to clothes	Rs. 1,000/-
6	Attender Charges	Rs. 17,000/-
7	Medical Expenses	Rs.3,77,115/-
8	Loss of Amenities	Rs. 10,000/-
Total		Rs.20,27,595/-

13.1 Consequently, the total compensation amount of Rs.6,88,000/- awarded by the Tribunal is hereby modified and enhanced to **.Rs.20,27,595/-** which shall carry interest at the rate of 7.5% per annum from the date of claim petition till the date of deposit.

14. In the result, the Civil Miscellaneous Appeal is partly allowed on following terms:-



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i) The respondent, Tamil Nadu State Transport Corporation Ltd., is directed to deposit the entire amount awarded by this Court along with interest and costs before the Tribunal within a period of eight weeks from the date of receipt of a copy of this judgment, after deducting the amount already deposited, if any.

ii) It is made clear that if the respondent/State Transport Corporation fails to make payment within the stipulated time, they are liable to pay interest for the delayed payment.

iii) On such deposit being made by the Transport Corporation, the Tribunal is directed to transfer the award amount to the appellant's/claimant's bank account directly, by way of RTGS, within a period of three weeks from the deposit being made or from date of furnishing the RTGS particulars by the appellant/claimant, whichever is later. On such deposit, the appellant is permitted to withdraw the entire award amount along with interest accrued thereon

iv) Though at the time of filing this Appeal, the appellant/claimant is exempted from payment of Court fee, vide order, dated 20.12.2021, made in C.M.P.No.20914 of 2021, since this Court has now enhanced the



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compensation awarded by the Tribunal, the appellant/claimant is directed to pay the necessary Court fee, thereupon, Registry shall draft the decree.

v) However, there shall be no order as to costs.

14.07.2023

Internet : Yes / No

Index : Yes / No

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On the side of Appellants :

Ex: A.1. Disability Certificate issued by
Institute of Rehabilitation Medicine,
K.K.Nagar, Chennai – 83

To

IV Judge of Small Causes Court,

The Motor Accident Claims Tribunal, Chennai.



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<https://www.mhc.tn.gov.in/judis> **C.M.P.No.21863 of 2022**



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Krishnan Ramasamy,J.,

Allowed.

14.07.2023

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